

## COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-221 MA2023/00221
<b>PROPOSAL</b>	Sec 4.55(2) Modification to DA2019/01169 - additional level to eastern Tower B, reduction in the number of residential aged care facility beds (50 beds proposed), increased number of independent living units (107 units proposed), reduction and reconfiguration of residential apartments (159 apartments proposed) reduction and reconfiguration of commercial premises (two commercial tenancies proposed), reconfiguration of car parking and waste room, change to parking numbers and allocation 315 car spaces proposed), changes to landscaping and communal open space, staging of the development and amendments to conditions.
<b>ADDRESS</b>	309 King Street Newcastle West
<b>APPLICANT</b>	GWH
<b>OWNER</b>	Western Suburbs Leagues Club Ltd
<b>MOD LODGEMENT DATE</b>	30 June 2023
<b>ORIGINAL DA DETERMINATION DATE</b>	09 March 2021
<b>APPLICATION TYPE</b>	Modification Application under Section 4.55(2)
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	<p>Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>: General development with a Capital Investment Value (CIV) greater than \$30 million.</p> <p>Section 275 of the <i>Environmental Planning and Assessment Regulation 2021</i> states that a council must not determine an application to modify a development consent under the Act, Section 4.55(2), on behalf of a regional planning panel, if the application is of a kind specified in the <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents</i> published on the NSW Planning Portal on 30 June 2020.</p>

<b>CIV</b>	\$146,232,599.00
<b>CLAUSE 4.6 REQUESTS</b>	Not applicable to a Modification Application
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Coal Mine Subsidence Compensation Act 2017</li> <li>• Roads Act 1993</li> <li>• State Environmental Planning Policy (Planning Systems) 2021.</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH)</li> <li>• State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS</b>	Nil
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<u>Assessment report and associated documents</u> <ul style="list-style-type: none"> <li>• <b>Attachment A</b> – Draft Schedule of Conditions</li> <li>• <b>Attachment B</b> – Architectural Drawings and landscape Plans</li> <li>• <b>Attachment c</b> – General Terms of Approval – Subsidence Advisory NSW</li> </ul>
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	The draft conditions will be sent to the applicant after the report has been submitted to the Panel.
<b>SCHEDULED MEETING DATE</b>	27 February 2024
<b>PLAN VERSION</b>	Plans dated 17 January 2024
<b>PREPARED BY</b>	W. Toose, Principal development Officer (Planning)

## EXECUTIVE SUMMARY

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This report is an assessment of a Section 4.55 (2) Modification Application made to City of Newcastle (Council) seeking consent for modifications to the development consent (DA2019/01169), for the following development on land known as 309 King Street Newcastle West ('the site):

*"Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), comprising seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon)"*

The application was referred and determined by the Hunter Central Coast Regional Panel (HCCRPP) on 09 March 2021, pursuant to clause 2 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* as the development was for general development with a Capital Investment Value (CIV) in excess of \$30 million (\$146,272,000 - estimated cost of works \$160,899,200 including GST).

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for amendments to a consent granted under DA2019/01169 approved by the Panel on 9 March 2021.

The proposed modification application will result in an increase to the CIV value of the original development, now being \$146,232,599 (estimated cost of works \$160,855,859 including GST).

The proposed modification is made under Section 4.55(2) and is referred to the HCCRPP for determination pursuant to the EP&A Act and Section 275(2) of the EP&A Regulation 2021 (formerly CI 123BA of the Regulation 2000) in the *Instructions on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consents* published on the NSW Planning Portal on 30 June 2020.

The proposed modification seeks a departure of over 10% from the prescribed 'height of building development standard', accordingly Council is not able to determine the application under section 4.55(2) of the Act and the application is referred to HCCRPP as the determining authority.

The modification application includes the relevant information required by Section 100 of the EP&A Regulation 2021.

Based on a detailed assessment of the modified development against the applicable planning controls it satisfies the applicable legislative requirements.

### Integrated Development

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

General Terms of Approval were issued on 28 July 2023 and included as a part of the modified consent.

#### External referrals

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

- Transport for New South Wales– Referred under Section 2.122 and Schedule 3 (Traffic generating development) of SEPP (Transport and Infrastructure) 2021, which repealed and replaced Clause 104 / Schedule 3 of SEPP (Infrastructure) 2007.  
Referral response provided 3 August 2023 raising no objection to the proposed modified development.
- Ausgrid - referred under Section 2.48 of SEPP (Transport and Infrastructure) 2021) which repealed and replaced Clause 45 of SEPP (Infrastructure) 2007.

Referral response provided 7 August 2023 providing advice to satisfy Ausgrid requirements.

#### Approved Development - DA2019/01169

The approved development comprised the following:

- Demolition of car parking area and associated building, and vehicle ramp from King Street into the 'West City' building (which is also commonly known as NEX).
- Construction of two 14-storey tower buildings with shared basement carparking; including:
  - Three shared levels of car parking (286 car spaces - including 11 accessible spaces, 17 x motorcycle spaces, and 168 bicycle storage spaces) across the site, including two basement levels and one part-basement level.
  - Ground floor commercial facilities fronting King Street and the laneway, including a café (133m<sup>2</sup>), restaurant (148m<sup>2</sup>), medical centre (242m<sup>2</sup>) and salon (hair or beauty – 39m<sup>2</sup>).
  - A seniors aged care facility for 114 beds, consisting of 92 x one-bedroom and 11 x two-bedroom, in addition to dining and communal activity rooms.
  - 82 seniors independent living units (ILUs) consisting of 34 x two-bedroom and 48 x three-bedroom apartments.
  - Community facilities supportive of the ILUs, including dining and recreational facilities (indoor and outdoor).

- Residential flat building comprising 166 apartments and consisting of 17 x studio, 52 x one-bedroom, 70 x two-bedroom and 27 x three-bedroom apartments.
- Rooftop recreation space (level 14) provided for use by general residential units, including communal facilities such as BBQ areas and a swimming pool.
- Construction of a publicly accessible pedestrian laneway between the proposed development and the 'West City' building. The laneway provides connections between King Street and Bull Street and includes a memorial to the 1989 Newcastle earthquake victims (public art element).
- Associated site works including earthworks, tree removal, landscaping of the proposed pedestrian laneway, recreational spaces and street frontages.

#### Subdivision Application - DA2019/01171

A separate development application (DA2019/01171) proposing a Torrens title subdivision of the site and rationalisation of car parking, loading and access for 'West City' club was approved on 23 December 2023. The subdivision results in the separation of the 'West City' club (and associated car parking) from the development site. The development site subject of this report is located on proposed lot 1 of the approved subdivision.

#### Public Notification

The application was placed on public exhibition from 03 July to 21 July 2023. No submissions were received.

#### Panel briefings

A Preliminary Briefing was held with the Panel on 31 August 2023 where key issues were discussed, including:

- *The Panel want to understand the rationale and feasibility of a 50 bed RAC. This needs to be factually documented from an operational perspective.*
- *The Panel will need to factually understand the degree of change proposed, including changes in height, FSR, car parking etc.*
- *ADG compliance needs to be demonstrated.*
- *Waste collection was previously carefully worked through and the Panel want to understand how this has been accommodated in the proposed changes including access for small rigid vehicles.*

A further briefing was held with the Panel on 5 December 2023 where a number of key issues were discussed, including:

- *Revised package of information recently received, and Council haven't had a chance to review comprehensively at this stage.*
- *The Panel had raised concerns about the reduction in size and viability of a 50 bed RAC (previous briefing). Council to follow up with applicant given the extent of change now proposed.*

- *Traffic and parking and driveway layout reconfigured (ambulance and small rigid vehicle arrangements refined) and consistent with previous DA and new DCP rates for residential car parking spaces.*
- *Waste Management is now refined and properly designed.*
- *Parking numbers clearly indicated and consistent with DCP and SEPP requirements.*
- *Bicycle and visitor parking are still being resolved.*
- *Reduction and location of accessible parking needs to be assessed and considered.*
- *Stormwater within basement level has been resolved.*
- *Public domain and other elements are generally acceptable.*
- *Council needs further information regarding the ambulance bay operations and lift arrangements which have been discussed with the applicant.*
- *Since the previous briefing Council has completed a detailed ADG assessment and several issues required additional information. A very preliminary review of recently submitted information suggests that there a few matters that still require more information and review.*
- *Further clarification is required on the provision of communal and public open space arrangements given staging is now proposed, so that amenity is provided to each stage.*
- *It is understood that the applicant is seeking flexibility in terms of staging and which tower would be built first. The Panel supports the Council's position that communal open space needs to be provided with the first tower.*
- *The modification proposes stratum subdivision, and this is also a new issue that the Council is still assessing as the original approval was for one building and subdivision was not applied for.*
- *Documentation has been provided to allow assessment of deep soil, visual privacy, natural ventilation, apartments size and circulation.*
- *Council is still assessing solar access and it is noted that the submitted shadow diagrams are not sufficient and need to show the full extent of the shadow with an overlay of the approved and now proposed arrangements.*
- *It appears that the storage arrangements should be capable of achieving compliance but Council needs to clarify over which storage relates to which apartments. This detail is needed as part of the DA and will not be conditioned.*
- *Minor amendments to design statement requirements given this is a modification.*
- *The Panel need clarity over the exact changes — comparison with that approved and now proposed — this needs to be show diagrammatically to enable a quantitative and qualitative assessment.*
- *Minimum building separation is still being assessed.*
- *The proposal has been generally signed off by the UDRP. Further review will be required prior to the CC and OC given the reliance on the UDRP process to achieve design excellence.*
- *Noted that the increase in floor height required to meet floor to height on each level (National Building Code requirements) with amenity impacts still being assessed.*

Following consideration of the matters for consideration under Section 4.15(1) and 4.55 of the EP&A Act, it is considered that the proposed modification can be supported.

## **1. THE SITE AND LOCALITY**

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## **1.1 The Site**

The subject site is known as 309 King Street, Newcastle West and is legally described as Part Lot 1 DP 826956) and is located adjacent the existing West City Club and associated carparking structure. The 'West City' club (also known as NEX) is located on the same allotment, however a separate development application DA2016/00711 recently determined by Council granted approval for the two lot Torrens title subdivision of the site. The development site is located on proposed Lot 1.

The development site area is 6,631 m<sup>2</sup> (proposed Lot 1) and is irregular in shape. The site has frontages to King Street (104m), Ravenshaw Street (27m) and Bull Street (136m). The development site has a future shared boundary with the 'West City' club to the east of approx. 91m. The site has a gradual slope from Bull Street to King Street, with levels ranging from RL 7m AHD in the south-east of the site to RL 3m AHD in the north-west. The development site has previously been partially filled with brick and concrete retaining walls fronting King Street and Ravenshaw Street

The site has a subtle slope from Bull Street to King Street, with levels ranging from 7m AHD in the south-east of the site to 3m AHD in the north-west

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

The development site is zoned MU1 Mixed Use and is identified as a 'Key Site' within the 'Newcastle City Centre' under Newcastle Local Environmental Plan 2012 ('NLEP2012'). The site is subject to several environmental constraints as mapped on CN's GIS system including:

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

## **1.2 The Locality**

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

The site is identified on the 'Key Sites' Map within the 'Newcastle City Centre'. The provisions of the NLEP 2012 and Newcastle Development Control Plan 2012 (NDCP 2012) identifies the site as being within the 'Parry Street Character Area'. This area is identified as containing a mixture of commercial development with some residential and retail development and its future character (as stated within the NDCP 2012) is outlined below:

The key principles applying to development in the 'Parry Street Character Area' include:

- *Public domain spaces are improved to support the evolving character of the area into a high-density residential and mixed-use precinct.*
- *Distinctive early industrial and warehouse buildings that contribute to the character of the area are retained and re-purposed.*
- *Development along Cottage Creek provides a building address to encourage activity, pedestrian and cycleway movement, and improve safety.*

The modified proposal will continue to provide new areas of high quality public domain (e.g. the publicly accessible pedestrian laneway) and enhance the existing surrounding streetscapes via landscaping and associated public domain works. Overall, the proposal continues to align with the objective to support the evolving character of the area into a high-density residential and mixed-use precinct.

## **2. THE PROPOSAL AND BACKGROUND**

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### **2.1 Background**

Development Application DA2019/01169 was approved on 09 March 2021 for the following development:

*"Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (285 spaces), comprising seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (cafe and restaurant) and retail premises (salon)."*

The NSW Government Architect (GA NSW) issued a design waiver for the development at that time. The waiver provided the following conditions:

*"A process of design integrity is to be established to ensure the scheme retains design excellence through to completion of construction. This should include continuing review by the Newcastle City Council UDCG at regular intervals through documentation and construction stages of the projects, whenever a significant change is being considered (such as would require a Section 96 application) or at the request of the UDCG themselves, the Newcastle City Council or the proponent. A record of this process including UDCG meeting minutes and proponent's responses should be provided as part of the Development Application. A separate Independent Design Review Panel will not be necessary, as we anticipate the UDCG can undertake that role, with our GA NSW representative Philip Pollard or Peter Webber in the role of chair of the UDCG".*



## 2.2 The Proposed Modification

The proposed modification seek consent to modify the approved development to include:

- Reconfiguration of the internal layout of Tower A (west) to provide 50 Residential Aged Care ('RAC') beds, 107 independent living units ('ILUs') and communal areas throughout the tower.
- Modifications to the ground floor level of Tower A to remove the approved medical centre and salon to enable commercial premises to support the RAC provider.
- An additional level to Tower B (east) to provide 152 apartments including and rooftop communal open space,
- Modifications to the ground floor within Tower B to accommodate two commercial units.
- An increase in the number of ILUs (107 units proposed).
- Reconfiguration of basement level car parking and waste room.
- Change to parking numbers and allocation.
- Modification of landscaping and communal open space across the site.
- Staging of development. and
- Amendment to conditions.

## 2.3 Proposed changes to approved development

**Table 1: Proposed changes to design of approved development**

<b>Basement Level 2</b>	Reconfiguration of the basement level including access ramp and car parking configuration to accommodate 144 car parking spaces (53 ILU & 91 residential), five motorbike parking spaces, and lift lobbies for Towers A and B.
<b>Basement Level 1</b>	Reconfiguration of the basement level including access ramp and car parking configuration to accommodate 137 car parking space (58 ILU + 79 residential), 4 motorbike parking spaces, and lift lobbies for Towers A and B.
<b>Ground Floor Level</b>	<p>Removal of the medical centre and salon within Tower A to accommodate commercial facilities ancillary to the Residential Aged Care (RAC), that will be utilised by the aged care provider.</p> <p>Removal of 'podium residential lobby' and 'podium café' to create two retail premises within Tower B.</p> <p>Reconfiguration of ground level car parking arrangements:</p> <ul style="list-style-type: none"><li>- Approved: 34 car space, 17 motorbike, 168 bicycle spaces, 1 ambulance and 1 loading bay).</li><li>- Proposed: 48 car spaces (10 RAC, 9 retail/com, 26 residential, 3 disabled accessible), 1 ambulance, 10 bicycle.</li></ul>

	Proposed secure bicycle parking with end-of-trip (EOT) facilities in Tower B.
<b>Level 1</b>	<p>Removal of 17 RAC rooms on level 1 to facilitate ground level communal facilities within Tower A comprising a library, residential lounge, residential dining, theatre, arts and crafts, party room, gym, indoor pool, and terrace garden.</p> <p>Reconfiguration of Tower B to accommodate 3 x 3-bedroom apartments and 6 x 2-bedroom I apartments.</p> <p>Reconfiguration of communal area on podium level to include proposed outdoor swimming pool and landscaping.</p>
<b>Levels 2 and 3</b>	<p>Decrease in the number of RAC rooms within Tower A from 31 to 25 to provide more communal areas and rooms for the needs of the care providers.</p> <p>Reconfigure Tower B to provide 3 x 3-bedroom, 7 x 2-bedroom, and 1x 1-bedroom residential apartments.</p>
<b>Level 4</b>	<p>Reconfiguration of Tower A to remove 24 RAC rooms and provide 11 Independent Living Units (ILUs) comprising 2x 3- bedroom ILUs, 7x 2-bedroom ILUs, and 2x 1-bedroom ILUs.</p> <p>Reconfiguration of Tower B floor plan to provide 3x 3-bedroom, 7x 2-bedroom, and 1x 1-bedroom residential apartments.</p>
<b>Level 5</b>	<p>Removal of outdoor space and reconfiguration of ILUs in Tower A to provide 11 Independent Living Units (ILUs) comprising 2 x 3-bedroom ILUs, 7 x 2-bedroom ILUs, and 2 x 1-bedroom ILUs.</p> <p>Reconfiguration of Tower B floor plan to provide 3x 3-bedroom s, 7 x 2-bedroom, and 1 x 1-bedroom residential apartments.</p>
<b>Levels 6 to 11</b>	<p>Reconfiguration of ILUs in Tower A to provide 11 Independent Living Units (ILUs) comprising 2x 3-bedroom ILUs, 7 x 2-bedroom ILUs, and 2 x 1-bedroom ILUs.</p> <p>Reconfiguration of Tower B floor plan to provide 3 x 3-bedroom, 7 x 2-bedroom, and 1x 1-bedroom residential apartments.</p>
<b>Level 12 and 13</b>	Reconfiguration of ILUs in Tower A to provide 'sky dining lounge' and 8 ILUs including 1 x 3-bedroom ILU, 5 x 2-bedroom ILUs, and 2x 1-bedroom IULs.

	Reconfiguration of residential floor plan to provide 4x 3-bedroom, 5 x 2-bedroom, and 2 x 1-bedroom residential apartments.
<b>Level 14</b>	An additional residential level to provide 11 apartments comprising 4 x 3-bedroom, 5 x 2-bedroom I, and 2 x 1-bedroom residential apartments.
<b>Level 15</b>	Rooftop communal open space including landscape strategy onto the new roof area. This space is proposed to comprise seating, lounges, dining areas, a variety of plantings, BBQ facilities, shade structures, and pathways.
<b>Level 16</b>	Plant services and equipment.

## 2.4 Proposed changes to conditions of consent

**Table 2: Proposed Changes to Conditions**

<b>Condition</b>	<b>Condition requirements</b>	<b>Proposed amendment</b>	<b>Comments</b>
1	Approved plans and documents	Amend condition.  Modify condition to update plans to reflect proposed modification	Supported
<b>CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE</b>			
<b>ENGINEERING AND PUBLIC DOMAIN</b>			
4	On-site car parking accommodation is to be provided for a minimum of 285 car parking vehicles (includes minimum of 24 residential visitor parking, 109 Residential Unit spaces, 10 spaces for medical centre/salon/café & restaurant parking, 106 spaces for independent living units, 17 car spaces for aged care centre out of which 6 is to be dedicated for staff parking) and 1 space for wash bay, 1 ambulance parking bay, 9 motorbike spaces and	Update condition to reflect revised parking arrangements	Supported

	<p>150 bicycle parking (Class 2) and 18 bicycle parking (class 3) being set out generally in accordance with the minimum parking layout standards indicated in Element</p> <p>7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012 and State Environmental Planning Policy (SEPP) (Housing for Seniors and People with a Disability) 2004. Full details are to be included in documentation for a Construction Certificate application.</p>		
7	<p>The proposed vehicular access from King Street is to be designed to comply with AS/NZS 2890.2:2004 - Off-street commercial vehicle facilities for access by Small Rigid Vehicles (SRV). The proposed driveway entry access width on King Street to the east will need to be increased by approximately 1m and the separation median island width will require to be amended to ensure the SRV do not impact on the safety of exiting vehicles. Full details are to be included in documentation for any Construction Certificate application.</p>	Delete	Not supported - condition amended
10	<p>The Developer must design and construct the following public domain and traffic works within the public road reserves along King Street, Bull Street and Ravenshaw Street frontage, at no cost to Council, and in accordance with the City Centre Public Domain Technical Manual, Newcastle City Council guidelines and design specifications...</p>	Revise wording to reflect proposed phased construction.	Not supported - consent under S138 must be obtained, or other satisfactory arrangements confirmed in writing, before the issue of a Construction Certificate
11	<p>A separate application must be lodged and consent obtained from City of Newcastle for all works within the road reserve pursuant to Section 138 of the Roads Act 1993 (NSW). The consent must be obtained, or other satisfactory arrangements confirmed in writing from</p>	As above	Supported

	Council, before the issue of a Construction Certificate.		
12	The height clearance for the proposed vehicular access and proposed roller door height at Level 0 which leads to the basement parking areas is to be minimum 3.5m clear to allow for minimum height clearance for small rigid vehicles in accordance with AS/NZS 2890.2:2004 - Off- street commercial vehicle facilities. Full details are to be included in documentation for a Construction Certificate application	Delete Condition  This is depicted on the revised plan and will form part of the approved documents	Supported
14	Suitable traffic management devices in the form of give way to pedestrian sign, line markings, safety mirrors and speed signs are to be installed in an appropriate location within the site. Opposing traffic flows on the car park ramps and the right of carriageway are to be separated by provision of appropriate safety barrier. Such device to be constructed in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off- street car parking. Full details are to be included in documentation for a Construction Certificate application.	Amend Condition. Revise wording to reflect relevant section of proposed phased construction. Example wording:  Full details are to be included in documentation for a Construction Certificate application for Phase 2 works.	Supported
15	The Developer designing and constructing the following drainage works in connection with the proposed development within the Bull Street public road reserve, adjacent to the site, at no cost to City of Newcastle and in accordance with Council's guidelines and design specifications: a) New street drainage with a minimum pipe size of 375mm diameter Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to City of Newcastle for approval pursuant to Section 138 of the	Amend Condition. Revise wording to reflect relevant section of proposed phased construction. Example wording:  The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council, before the issue of a Construction Certificate for Phase 2 works.	Supported

	Roads Act 1993 (NSW). The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council, before the issue of a Construction Certificate.		
16	All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the Stormwater Drainage plans prepared by GHD	Amend Condition Revise wording to reflect updated plans prepared as part of the modification application and relevant section of proposed phased construction.	Supported
17	The proposed lighting including car park lighting is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard AS 4282: 1997 Control of the obtrusive effects of outdoor lighting. CCTV cameras are to be installed around the perimeter of the site at appropriate locations for security and surveillance. Full details are to be included in the documentation for a Construction Certificate application.	Amend Condition. Revise wording to make reference to relevant construction certificate so that lighting details are provided for each respective Phase (2-4) of construction.	Supported
18	Prior to the issue of any construction certificate a residential waste collection bin storage area is to be designed in consultation with Council's Waste & Commercial Management team along Bull St frontage of the site within 10m-15m walking vicinity of the proposed Loading Zone on Bull St (Note: the loading zone can be relocated if required subject to consultation with Council) for potential waste collection by Council. The Bin Storage area is	Delete Condition.  This has been incorporated into the amended design and written approval should be provided as part of the internal assessment and determination process. Only subsequent changes should require further written confirmation.	Supported.

	to be appropriately sized and designed to accommodate for all residential bin collections (including accessibility design) generally in accordance with Council DCP requirements and the industry standards and is to be located in close proximity of lifts to service residential units. A written approval is to be attained from Council's Waste & Commercial Management to confirm the design approval prior to the issue of any construction certificate.		
UTILITIES, SERVICES AND APPROVALS			
23	The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's compliance certificate (refer s.50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.	Amend or Delete Condition.	Supported - Condition amended
24	Working drawings and specifications of the proposed building are to be submitted to the Subsidence Advisory NSW for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.	Amend Condition.  Reword to refer to relevant construction certificate other than that relating to preliminary works.	Not supported.
BUILDING			
27	The building is to be provided with access for persons with disabilities, to the extent necessary to comply with the Commonwealth's Disability (Access to Premises - Buildings) Standards 2010. Details are to be included in documentation for a Construction Certificate application.	Amend Condition. Reword to refer to <u>relevant</u> construction certificate other than that relating to preliminary works.	Supported

28	The construction or erection of appropriate swimming pool safety fences and gates and all associated work is to be carried out in accordance with the Swimming Pool Act 1992 (NSW) and Regulations. Full details are to be included in the documentation for a Construction Certificate application.	Amend Condition.	Supported
30	The swimming pool/spa water recirculation and filtration system installation shall comply with Australian Standard 1926.3:2010 - Swimming pool safety - Water recirculation systems. Full details are to be included in the documentation for a Construction Certificate application.	Reword to refer to <u>relevant</u> construction certificate other than that relating to preliminary works.	Supported
31	The proposed awnings are to be designed to meet the requirements of Element 7.10 'Street Awnings and Balconies' of Newcastle Development Control Plan 2012. Details are to be included in documentation for a Construction Certificate application.	Amend Condition.	Supported
32	Any private structure on or over the public road reserve, including balconies and awnings, being the subject of a separate consent from Council, under Section 138 of the Roads Act 1993, prior to commencement. In this regard structural engineering design plans and specifications for the works are required to be prepared by a suitably qualified practicing structural engineer with experience and competence in the related field and submitted in documentation for a Construction Certificate application.	Reword to refer to <u>relevant</u> construction certificate other than that relating to preliminary works.	Supported
ENVIRONMENTAL HEALTH			
33	The design and construction of the proposed development is to be in accordance with the relevant requirements of the Australian Standard 4674-2004 Design, Construction and Fit-Out of Food Premises. Full details	Amend Condition.  Reword to refer to <u>relevant</u> construction certificate as fit-out work may not occur under this approval but a	Supported



	are to be included in the documentation for the Construction Certificate application.	subsequent process (DA, CDC, etc.)	
34	The acoustic performance of all mechanical plant and equipment associated with the building being assessed by an appropriately qualified acoustic consultant prior to the issue of any required Construction Certificate. Appropriate acoustic treatment as recommended by the acoustic consultant being designed prior to the issue of a Construction Certificate. Written certification from an appropriately qualified acoustic consultant being submitted to the Principal Certifier prior to issue of an Occupation Certificate confirming that noise from all mechanical plant and equipment achieves the required acoustic attenuation to comply with the conditions of consent and the requirements of the Protection of the Environment Operations Act 1997.	Amend Condition.  Reword to refer to <u>relevant</u> construction certificate.	Supported
PLANNING AND DESIGN			
37	In accordance with the terms and conditions of the Competition Waiver Agreement (Dated 14 August 2018) the applicant shall obtain written approval from the Design Excellence Panel prior to the release of any Construction Certificates or tender documentation for the project.	Amend Condition.  Reword to refer to <u>relevant</u> construction certificate.	Supported
38	Written verification is required to be submitted to the Principal Certifier by a suitably qualified professional confirming that the approved aged care facility and independent living units have been designed in accordance with the relevant Australian Standards for accessibility as outlined in clause 41 State Environmental Planning Policy (Seniors Housing). Design should be undertaken in accordance with the recommendations of the Access Review (prepared by Morris Goding Access Consulting, dated 27 June 2019).	Amend Condition.  Update to reflect revised Access Report.  Delete reference to SEPP clause as the DA was not submitted under the SEPP and the Seniors Housing SEPP has been repealed.	Supported

40	<p>All proposed planting and landscape elements indicated on the submitted landscape concept plans and amended Level 1 Courtyard Plan – ILU (Drawing No SK-020.05) or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following...</p>	<p>Amend Condition.</p> <p>Reword to refer to <u>relevant</u> construction certificate that excludes preliminary site works and reflects phased construction.</p> <p>Update any reference to landscape plans as required.</p>	Supported
41	<p>A wind tunnelling report is to be prepared by an appropriate qualified and experienced engineer. This report is to be prepared in accordance with AS1170.2 and should consider the impact on the building, the environment and pedestrian movements surrounding the development. Architectural and landscape plans will need to reflect the recommendations of the wind tunnelling report and amended plans and the wind tunnelling report is to be provided to the Principal Certifier prior to issue of any Construction Certificate (excluding any construction certificate for remediation works or demolition). A copy of the wind tunnelling report is to be provided to Council.</p>	<p>Amend Condition.</p> <p>Reword to include preliminary earthworks and excavation.</p>	Supported
42	<p>A public art feature shall be designed for the site in consultation with City of Newcastle. The public artwork is to have a minimum value of 1% (\$1,608,992) of the capital cost of the development. The final details of all artworks within the site and associated costing are to be submitted to Council's Public Art Reference Group for written approval prior to the issue of a Construction Certificate.</p> <p>The written approval be obtained prior to commencement of above-ground works/ground level slabs and the approved artwork(s) be installed prior to</p>	<p>Amend Condition.</p> <p>Reword to refer to <u>relevant</u> construction certificate that excludes preliminary site works.</p>	Supported

	the use of the first Occupation Certificate. This feature is to provide visual interest for pedestrians and interpret or reflect the local setting, landscape setting and/or cultural setting of the Newcastle area. The feature is to be designed to ensure long-term durability and be resistant to vandalism.		
<b>CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE</b>			
<b>PLANNING</b>			
71	<p>Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifier at the stages of construction indicated:</p> <p>a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.</p> <p>b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.</p> <p>When the roof has been completed, confirming that the building does not exceed the approved levels.</p>	<p>Amend Condition.</p> <p>Reword to provide some flexibility/margin with floor levels. This will facilitate any minor adjustment required through detailed construction design to comply with Building Code etc.</p>	Not supported
<b>CAR PARKING</b>			
80	On-site car parking accommodation is to be provided for a minimum of a minimum of 285 car parking vehicles (includes minimum of 24 residential visitor parking, 109 Residential Unit spaces, 10 spaces for medical centre/salon/café & restaurant parking, 106 spaces for independent living units, 17 car spaces for aged care centre out of which 6 is to be dedicated for staff parking) and 1 space for wash bay, 1 ambulance parking bay, 9 motorbike spaces and 150 bicycle parking (Class 2) and 18 bicycle parking (class 3) and such being set out generally in accordance with the details	<p>Amend Condition.</p> <p>Update condition to reflect revised parking arrangements as approved in amendment.</p>	Supported

	indicated on the submitted plans except as otherwise provided by the conditions of consent.		
<b>CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE ENGINEERING</b>			
<b>ENGINEERING</b>			
93	All works within the road reserve required by this consent are to be completed prior to the issue of an Occupation Certificate.	Amend Condition.  Reword to refer to relevant construction certificate to reflect phased construction and nominated phasing of public domain works.	Supported
98	A public right of way shall be registered over proposed accessway linking Bull Street and King Street (Earthquake Memorial Way). A s88B (Conveyancing Act 1919) instrument shall be prepared nominating Council as a party to the instrument and submitted to Council for approval and endorsement. Evidence of the registration of the ROW and s88B instrument must be provided to Council in writing prior to the issue of any Occupation Certificate.	Amend Condition.  Reword to reflect the issue of an occupation certificate for Phase 3, being the relevant phase of construction containing these works.	Supported
99	A restriction as to user must be Registered against the titles of the approved Seniors Housing components of the development in accordance with section 88E of the Conveyancing Act 1919 limiting the use of any accommodation on these properties to seniors housing as defined under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Written evidence of the restriction is to be provided to the written satisfaction of Council prior to the issue of any Occupation Certificate.	Amend Condition.  Reword to reflect the issue of an occupation certificate for Phase 4, being the relevant phase of construction containing the seniors housing.	Supported
<b>PLANNING</b>			
101	A design verification statement from a qualified designer shall	Amend Condition.	Supported

	<p>be submitted to the Principal Certifier prior to the issue of an Interim or Final Occupation Certificate, whichever occurs first. The statement shall confirm the development has been constructed in accordance with the quality principles set out in Part 2 of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development. Note: 'Qualified Designer' means a person registered as an architect in accordance with the Architects Act 2003. This condition is imposed in accordance with Clauses 154A of the Environmental Planning and Assessment Regulation 2000.</p> <p>Details confirming the installation of the public artwork, required as part of this consent, shall be submitted to the Principal Certifier and City of Newcastle prior to the issue of the Occupation Certificate.</p>	<p>Reword to reflect the issue of an occupation certificate for Phase 3, being the relevant phase of construction containing the Earthquake Memorial which is the public art component of the project</p>	
106	<p>Lighting is to be provided to all entrances and exits of the premises and is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties. All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'. Full details are to be included in the documentation for a Construction Certificate application.</p>	<p>Amend Condition.</p> <p>Reword to refer to relevant construction certificate that excludes preliminary site works</p>	Supported
<b>ENVIRONMENTAL</b>			
108	<p>Acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Reverb Acoustics, dated August 2018. Written final certification verifying</p>	<p>Amend Condition.</p> <p>Reword to refer to relevant construction certificate that excludes preliminary site works</p>	Supported

	that the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifier and the City of Newcastle prior to the issue of an Occupation Certificate. Note: The acoustic consultant may need to be involved during the construction process, in order to ensure that final certification is achieved.																										
ENGINEERING																											
115	On-site car parking accommodation is to be provided for a minimum of 285 car parking vehicles (includes minimum of 24 residential visitor parking, 109 Residential Unit spaces, 10 spaces for medical centre/salon/café & restaurant parking, 106 spaces for independent living units, 17 car spaces for aged care centre out of which 6 is to be dedicated for staff parking) and 1 space for wash bay, 1 ambulance parking bay, 9 motorbike spaces and 150 bicycle parking (Class 2) and 18 bicycle parking (class 3).	Amend Condition.  Update condition to reflect revised parking arrangements as approved in amendment.	Supported																								
117	Hours of operation for the security door providing access to the ground level car park and loading and unloading area to be restricted to 9 PM to 7 AM, ensuring that the cars have clear access to ground level parking facilities between 7 AM to 9 PM.	Delete Condition.  The option for controlled access to all parking areas should be maintained to allow the building to appropriately cater for safety and security.	Not supported - condition amended																								
119	<div>The hours of operation or trading of the following premises are limited as follows:</div> <table><tr><th>Day</th><th>Start</th><th>Finish</th></tr><tr><td>Monday</td><td>7:00am</td><td>6:00pm</td></tr><tr><td>Tuesday</td><td>7:00am</td><td>6:00pm</td></tr><tr><td>Wednesday</td><td>7:00am</td><td>6:00pm</td></tr><tr><td>Thursday</td><td>7:00am</td><td>6:00pm</td></tr><tr><td>Friday</td><td>7:00am</td><td>6:00pm</td></tr><tr><td>Saturday</td><td>7:00am</td><td>6:00pm</td></tr><tr><td>Sunday</td><td>7:00am</td><td>6:00pm</td></tr></table> <div>unless a separate application to vary the hours of operation or trading has been submitted to</div>	Day	Start	Finish	Monday	7:00am	6:00pm	Tuesday	7:00am	6:00pm	Wednesday	7:00am	6:00pm	Thursday	7:00am	6:00pm	Friday	7:00am	6:00pm	Saturday	7:00am	6:00pm	Sunday	7:00am	6:00pm	Amend Condition.  Update to provide operating hours of 7am-10pm for the commercial / retail tenancies.	Supported
Day	Start	Finish																									
Monday	7:00am	6:00pm																									
Tuesday	7:00am	6:00pm																									
Wednesday	7:00am	6:00pm																									
Thursday	7:00am	6:00pm																									
Friday	7:00am	6:00pm																									
Saturday	7:00am	6:00pm																									
Sunday	7:00am	6:00pm																									

	and approved by the City of Newcastle.		
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### **Staged Construction**

This modification application seeks to stage the construction of the development, rather than construct the entire development at once. The development comprises two towers of thirteen and fifteen storeys, constructed over common basement and podium levels. The eastern tower is residential, comprising 152 apartments. The western tower is seniors housing with 107 independent living units and a 50-bed residential aged care facility. Lower levels contain basement parking, building services, communal areas, and retail / commercial tenancies.

A Construction Management Statement has been provided which outlines the proposed construction methodology and details how potential impacts will be ameliorated. It also identifies likely management outcomes for safely coordinating building works during any partial occupation of the site.

The phased construction is described below:

#### 1. Phase 1

The first phase will involve demolition of existing structures, lead in utility servicing, site preparation (including mine grouting), remediation (as required), bulk excavation, earthwork and shoring works, and inground construction works for basement levels.

#### 2. Phase 2

The second phase involves construction work to complete the basement to Level 1 (Bull St) podium structures, including two levels of basement parking, ground floor tenancies, parking and back of house servicing areas. While completion of Phase 1 is a precondition for commencement of Phase 2, it is intended that Phase 2 would commence as soon as practical after the completion of Phase 1.

#### 3. Phase 3

Phase 3 is contingent on the completion of Phase 2. The third phase will include the construction and fit out of residential Tower B (east) containing 152 dwellings, and associated works including:

- basement to podium level residential facilities (entry foyers, storage cages, bike store etc.)
- podium level pool and communal facilities,
- rooftop communal space. and
- ground floor retail / commercial including end of trip facilities.
- memorial walkway along the eastern boundary.
- relevant public domain works.

#### 4. Phase 4

Phase 4 is contingent on the completion of Phase 2. The fourth phase will include the construction of Tower A, comprising 107 ILUs and 50 RAC rooms and associated works including:

- basement to podium level facilities.
- podium level pool and other communal facilities (sauna, common rooms, etc.).
- top floor communal space.
- Relevant public domain works.

This phase relies on the completion of Phase 2; however, the applicant has advised that this could be completed concurrent with, or preceding phase 3 in relation to timing.

## 2.5 Background

A preliminary design of the development was presented to City of Newcastle on 29 November 2022 at a Pre-DA meeting. Formal correspondence addressing numerous matters was issued to the applicant's planning consultant on 6 December 2022. The proposal was also presented to the Urban Design Review Panel ('the panel') on two occasions on 13 December 2022 and 9 May 2023 prior to lodgement of the modification application ('MA').

The MA was lodged with CN on 26 June 2023. The proposal was presented to the Panel on 28 June 2023 (Refer to following sections of this report relating to the outcomes of these and other meetings with the Panel and the alternative design excellence process). The Applicant sought feedback from the Panel as to whether the concepts for the proposed modification were able to achieve design excellence. The Panel were generally supportive of the Applicant's approach however recommended a number of minor refinements and sought final design details in order to achieve design quality.

In response to the Panel's comments, the applicant submitted amended plans and additional information on 16 October 2023. The Panel confirmed via electronic referral dated 6 November 2023 that the modification application warrants the Panel's support.

A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 1: Chronology of the Modification Application**

Date	Event
<b>13 December 2022</b>	Urban Design Review Panel (UDRP) meeting (UD2022/00040).
<b>29 November 2022</b>	Pre-Development Application meeting - PR2022/07667.
<b>09 May 2023</b>	UDRP meeting (UD2022/00040.01).
<b>26 June 2023</b>	Modification Application (MA2023/00221) lodged.
<b>28 June 2023</b>	UDRP meeting (UD2022/00040.02).
<b>04 July - 21 July 2023</b>	Public exhibition of the application.



<b>3 July 2023</b>	Modification referred to external agencies. <ul style="list-style-type: none"> <li>- Subsidence Advisory NSW</li> <li>- Transport for NSW</li> <li>- Ausgrid</li> </ul>
<b>31 August 2023</b>	HCCRPP Preliminary Briefing
<b>16 October 2023</b>	Additional information received responding to UDRP comments.
<b>03 November 2023</b>	UDRP (Electronic Referral) confirming support of the modification application.
<b>5 December 2023</b>	HCCRPP Assessment Briefing.
<b>22 November 2023</b>	Request for information issued.
<b>30 November 2023</b>	Additional information received.
<b>5 December 2023</b>	HCCRPP Briefing.
<b>15 December 2023</b>	Request for information issued (Traffic and parking / inconsistencies in submitted architectural plans.
<b>19 January 2024</b>	Amended plans and additional information submitted.

### **3. STATUTORY CONSIDERATIONS**

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When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 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.

#### **3.1 Section 4.55(2) 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 HCCRPP subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act.

The matters include the following:

#### **Subsection 4.55(2)(a) – substantially the same development**

- (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)), and"*

#### Officer's comment

The consideration of the substantially the same development test, as established in several precedents by the NSW Land and Environment Court, should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of impacts of the developments. In these respects, the modified scheme should be 'essentially or materially' the same as that originally approved.

An assessment of the qualitative and quantitative elements of the development approved and as proposed to be modified has been undertaken, and found the development being modified is substantially the same development as the development for which consent was originally granted. Details are provided below.

#### *Qualitative Comparison*

The proposed development, as modified, is substantially the same development, in a qualitative sense, as that originally approved as:

- a) There will be no change to the land use.
- b) The architectural quality will not be diminished.
- c) There are no changes which would have a detrimental impact on the significance of the listed heritage items in the vicinity of the site, nor will it impact the character of the heritage conservation area of which the site is a part (being the Newcastle City Centre Heritage Conservation Area).
- d) There are no changes to the building footprint, and whilst the modified development includes an additional residential apartment level, the additional height as a result will not adversely impact on the adjoining properties or public domain.
- e) There is no significant change in impact or potential impacts to the natural environment or neighbouring properties such as overshadowing, visual and acoustic privacy.
- f) The changes will not preclude the development from complying with the conditions of consent, except where proposed to be modified within this application.

#### Quantitative Comparison

The following table provides a summary of the key features of the approved development and the modified development to assist with the quantitative assessment of the proposed modification.

Element	Approved	Proposed
<b>Site Area</b>	6,631sqm	6,631sqm (no change)
<b>Gross Floor Area</b>	36,161sqm	34,508sqm
<b>Floor Space Ratio</b>	5.45:1	5.20:1
<b>Maximum Height</b>	Tower A - 45.1m (RL51.6m AHD)  Tower B - 46.2m (RL52.70 AHD)	49.11m (RL 54.940 AHD)  51.75m (RL57.580 AHD)
<b>Aged Care Facility</b>	114 beds	50 beds
<b>Independent Living Units</b>	82 Units	107 Units
<b>General Residential</b>	166 Apartments	152 Apartments
<b>Commercial Space</b>	4 x tenancies on ground floor. Total GFA of 562sqm	2 x tenancies on ground floor for retail having a combined floor area of 417sqm. The remaining 'RAC tenancy' space will be utilised by the RAC's operation.
<b>Car Parking &amp; Servicing</b>	286 car spaces, including 11 accessible spaces; 168 bicycle storage spaces; 17 motorcycle spaces; 4 external passenger drop-off points, including 2 configured for ambulance and mini-bus use; 1 internal loading bay; 1 internal car washing bay; End of trip facilities (5 showers, lockers).	315 car spaces, including three accessible spaces; 259 storage cages (capable of storing bicycles); End of trip facilities (containing 20 bicycle spaces); 9 motorbike spaces; 14 public spaces (ground floor).
<b>Communal Space</b>	Communal open space: 2,370m <sup>2</sup> (36% of site area)	1,995m <sup>2</sup> (30% of site area)

The proposed development, as modified, is substantially the same development, in a quantitative sense, as originally approved as it:

- a) Does not significantly alter the number or mix of apartments.
- b) Does not significantly change the number of commercial tenancies.
- c) Does not significantly alter the gross floor area.
- d) Does not significantly increase the approved building height.

#### **Subsection 4.55(2)(b) – consultation**

*(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)), and"*

#### **Officer comment**

The development application (DA2019/00061) was submitted as 'integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from Subsidence Advisory NSW(SANSW) under s.22 *Coal Mine Subsidence Compensation Act 2017*, to erect improvements within a mine subsidence district. SANSW granted General Terms of Approval ('GTAs') on 28 April 2020 which included several conditions.

SANSW issued their amended GTAs on 28 July 2023 for the proposed modified development.

In addition, written advice was received from TfNSW and Augrid, which were consulted on the subject modification application of which they raised no objection. Their comments are detailed in the referral section of this report.

*(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)), and"*

#### **Officer Comment**

*(d) The MA was publicly notified for a period of 14 days, between 4 and 21 July 2023, in accordance with CN's Community Participation Plan. 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))."*

#### **Officer Comment**

No submissions were received during the public notification period.

*(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))."*

Officer comment:

The HCCRPP granted consent to the original development in a Notice of Determination dated 9 March 2021.

The Panel determined to uphold the clause 4.6 variation to building height and the clause 4.6 variation to floor space ratio and approve the application for the reasons outlined in the council assessment report and as below:

- 1. The Panel considers the development has been thoughtfully designed and is an appropriate design response for a key site. The design has been subject to a design review process by the City of Newcastle Urban Design Review Group, and the Panel is satisfied the built form exhibits design excellence.*
- 2. The development will provide a significant improvement to the streetscape, amenity and activation of the site and precinct and includes a positive and considered mix of land uses and housing options.*
- 3. The Panel is satisfied that the Seniors Housing components of the development are appropriately located having regard to existing services.*
- 4. Having regard to the provisions of SEPP 55, the findings of the Site Investigation Reports, the Remediation Action Plan and the conditions of consent, the Panel is satisfied the site will be remediated and will be suitable for the proposed uses.*

The proposed modification is consistent with these reasons for the decision on this consent 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.

Section 4.15(1) EP&A Act 1979 outlines the matters a consent authority is to take into consideration that are of relevance to the development. An assessment of the modification against the matters for consideration under Section 4.15 of the EP&A Act is provided below.

### **3.2 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 Section 4.55(3) which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) the provisions of—*
  - (i) any environmental planning instrument, and*

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

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

The relevant provisions under s4.15(1)(a) are considered below.

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

The modification application is assessed in accordance with the following relevant Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Newcastle Local Environmental Plan 2012

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 State Environmental Planning Policies (Preconditions in bold)**

EPI	Matters for Consideration	Comply (Y/N)
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BASIX SEPP	The provisions of the SEPP apply to the current development proposal. In this regard the applicant submitted a valid BASIX Certificate, which list the commitments to achieve appropriate building sustainability. A condition is included on the development consent requiring such commitments to be fulfilled.	Y
State Environmental Planning Policy (Housing) 2021	<p>Development Application (DA2019/00711) was assessed in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH), which was repealed and replaced by State Environmental Planning Policy (Housing) 2021 (Housing SEPP).</p> <p>Schedule 7A(2)(1)(d) - The development application was approved on 09 March 2021 prior to commencement of Housing SEPP and does not apply to the current modification application.</p> <p>The modified proposal remains consistent with the standards and guidelines of SEPP SH.</p>	N/A
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH)	<p>No compliance issues have been identified as a result of the proposed modifications.</p> <p>The modification application remains consistent with the standards and guidelines of the SEPP.</p>	Y
State Environmental Planning Policy (Design Quality of Residential Apartment Buildings)	<p>The proposal has been referred to the CN's Urban Design Review Panel (UDRP) prior to the lodgement of the modification application and during the development assessment process. Final advice received from the UDRP, dated 6 November 2023 was in support of the modified development and that the development, as modified, was considered to have achieved the requirements of the SEPP and Apartment Design Guidelines ('ADGs').</p> <p>The modified development remains consistent with both the design quality principles of the policy and consistent with ADG requirements. Refer to detailed assessment following this table.</p>	Y
SEPP (Resilience & Hazards)	<ul style="list-style-type: none"> <li>Section 2.10(1) &amp; (2) - Development on land within the coastal environment area.</li> </ul> <p>The modified development is consistent with the approved building footprint and unlikely to increase the risk of coastal</p>	Y

	<p>hazards and is consistent with the approved building footprint. Further consideration of coastal management is not required under this modification application.</p> <ul style="list-style-type: none"> <li>Section 4.6 - Contamination and remediation to be considered.</li> </ul> <p>Contamination and remediation have been considered in the assessment of the approved development application. The modified development remains consistent with the objectives of the SEPP.</p>	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<ul style="list-style-type: none"> <li>Section 2.48(2) - Determination of development applications (electricity transmission)</li> </ul> <p>The modified development remains satisfactory subject to conditions.</p> <ul style="list-style-type: none"> <li>Section 2.122 - Traffic generating development.</li> </ul> <p>Consultation with Transport for NSW (TFNSW) has occurred during the assessment of the modification application. TFNSW have provided comments to assist the consent authority in making a determination. No further consultation or assessment is required.</p> <p>The modified development remains consistent with the applicable sections of the policy and have been addressed by appropriate conditions of development consent, as required.</p>	Y

### **State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development**

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. SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development.

#### *Section 4 – Application of Policy*

Section 4(1) of SEPP 65 sets out development for which this policy applies. The subject application comprises a mixed use development with a residential accommodation component [seniors housing (50 bed aged care facility and 107 independent living units) and residential



flat building (152 apartments)] which consists of the erection of a new building 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 Section 4(1) of the policy.

Section 4(2) clarifies that if a particular development comprises development which Section 4(1) identifies and other development, SEPP 65 applies only to the part of the development identified under Section 4(1) and does not apply to the other part. As such, the commercial component (retail premises) of the development application is not subject to the provisions of SEPP 65 in accordance with Section 4(2).

### *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, Section 29(2) of SEPP 65 requires the consent authority to take into consideration; (a) the advice 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 ('ADG'), when determining a modification application for consent to which SEPP 65 applies.

CN's Urban Design Review Panel ('UDRP'), who operate under a charter stating that they undertake the functions of a design review panel for the purposes of SEPP 65 and Clause 7.6(6) of the NLEP 2012, have reviewed the proposed modified development on a number of occasions. Initially at the UDRP meetings on 13 December 2022 and 9 May 2023, prior to the lodgement of the modification application.

The applicant sought feedback from the UDRP as to whether the concepts for the proposed modification were able to achieve design excellence. The UDRP were generally supportive of the applicant's approach, however recommended a number of minor refinements and sought final design details in order to achieve design quality.

After receipt of the modification application, the proposal was reviewed for a third time, at the meeting of the UDRP held 28 June 2023. Written advice from the UDRP confirmed their position that the proposal demonstrates excellent design quality and included some relatively minor recommendations, which in the opinion of the UDRP should further enhance the design.

In response to the Panel's comments, the applicant submitted amended plans and additional information on 16 October 2023. The UDRP confirmed via electronic referral dated 6 November that the modification application warrants the Panel's support.

The design of the modified development has been amended during the assessment process in response to assessment matters raised by CN, including the recommendation of the UDRP. An assessment of the current modified development has been undertaken having regard to the UDRP 26 June 2023 advice in relation to the Design Quality Principles, as detailed in Table 1 below. The amendments and additional information submitted have adequately responded to the matters raised by the UDRP in respect to the previous iteration and is considered an appropriate design response.

**Table 1: Consideration of the UDRP advise in relation to the design quality principles under SEPP 65**

<b>Design Quality Principles</b>
<b>Principle 1. Context and Neighbourhood Character</b>
<p><b>UDRP Comment – 28 June 2023</b></p> <p><i>"The previous modification proposal considered by the UDRP at its November meeting included the introduction of a hospital into the podium volume of building A. This brought with it considerable new complexities in respect to access, parking, safety and other considerations.</i></p> <p><i>The hospital is no longer proposed as part of the Modification. The Panel was advised that the modification as presented to the current meeting has largely retained the original uses proposed uses in the approved scheme, with some changes in the relative proportions of the proposed uses."</i></p> <p><u>Officer Comment</u></p> <p>The submitted design documentation has demonstrated detail consideration of local context. The residential apartment component of the development has been sited and planned in order to maximise the number of dwellings with north, west and east aspect to maximise daylight access.</p>
<b>Principle 2. Built Form and Scale</b>
<p><b>UDRP Comment – 28 June 2023</b></p> <p><i>"The reinstatement of projecting "saw-tooth" balconies to the eastern side of the eastern tower (B) was supported by the Panel, as it provides some depth and articulation to this side of the building and orientates balconies towards the north-east. The simplification of the internal layouts of the adjacent apartments, which had also been angled to the central spine of the building in the approved design, has moderately reduced the depth of articulation to both towers. The depths of other articulated elements in the facades have also been somewhat reduced. However, an indentation has been introduced into the southern façade of the western tower, which both assists the internal planning of the otherwise very deep floor plates. This new recess reduces some of the bulk in the southern side of this block (A).</i></p> <p><i>Separation distances have been maintained between the towers, and in some locations moderately increased.</i></p> <p><i>An additional floor has been proposed to the eastern tower (B) which extends just beyond the LEP height control +10%. Given the moderate exceedance of the height plane is limited to communal use and roof garden, and the absence of significant adverse impacts arising from the height exceedance, the Panel considered the additional floor to be capable of support.</i></p> <p><i>The Panel noted that since the time of the current approval, updates to the BCA and waterproofing requirements have essentially mandated a step-down in the slab at the glass-</i></p>

line adjoining balconies. This has resulted in it now not being practically achievable to both maintain an ADG compliant 2700mm ceiling height in living spaces, and a level or near-level transition from the interior to paving on the balcony. The Panel is consequently recommending as a standard provision, a minimum floor-to-floor height of 3.2m - to ensure equitable, safe access between living rooms and balconies. This is especially needed in developments likely to house residents who will age in place. The Panel indicated that it considered this to be an important consideration, and anticipated a supportive response to a modest height increase to permit recommended minimum floor-to-floor dimensions."

Officer Comment

The UDRP were satisfied with the design development undertaken in response to their comments during the assessment process, and as such the development is considered to achieve an appropriate built form for the site and for the building's purposes in terms of building alignments, proportions, building type, and articulation of building elements. The proposal will result in a built form that defines the public domain, contributes to the streetscape and provides a high level of internal amenity and outlook.

**Principle 3. Density**

**UDRP Comment – 28 June 2023**

*"The Applicant indicated a slight reduction in FSR proposed from 5.46:1 in the approved design to 5.2:1. It does not appear that any issue of density arises in respect to the Panel's considerations."*

Officer Comment

The design is expected to achieve a high level of amenity for residents and each apartment, resulting in a density that is considered appropriate to the site and its context.

The proposed development will result in the provision of additional housing within an inner city with access to public transport, essential community infrastructure and services.

**Principle 4. Sustainability**

**UDRP Comment – 28 June 2023**

*"The panel reiterated its recommendation that electricity supply to the development be sufficient for all residential car parks to be capable of reasonably fast EV charging. Metering should and wiring should be designed to allow economical post-completion equipping of any car parks not provided with charging capacity at completion. "*

Officer Comment

Provision for EV charging is provided, and a number of relevant conditions included in any modified consent. Rooftop solar panels to the western tower have also been provided for.

**Principle 5. Landscape**

**UDRP Comment – 28 June 2023**

*"The Panel supported the design direction of the Landscape proposal, which is well-considered."*

*Set downs in slabs to accommodate partially sunken planters for trees were strongly supported and it was noted that these should not be substituted at a later stage with high walled planters on a level slab.*

*Given the need to ensure both an attractive landscaped space and ensure CPTED for the Memorial walkway, it was suggested that a selection of 3D representations or a digital model be produced demonstrating massing, levels and sight lines. This need not be a fully rendered presentation tool, but should allow an understanding of the space and its landscape in three dimensions. "*

#### Officer Comment

Comprehensive landscape design documentation has been prepared in support of the development application.

The landscape design documentation demonstrates comprehensive site planning with regard to landscaping treatment. The landscape design is considered to be appropriate in scale and context with the proposed residential development having considered useability, privacy and opportunities for social interaction.

Additional information is provided in support of the Memorial walkway design, in particular showing landscape massing and that crime risk and safety is maintained with appropriate sight lines to allow for surveillance. It is noted that there has been no substantive change to the approved landscape concept for this part of the development.

### **Principle 6. Amenity**

#### **UDRP Comment – 28 June 2023**

*"Amenity generally across the development is considered acceptable, and in a reasonable proportion of dwellings and facilities, amenity can be expected to be high.*

*Privacy between the blocks has been addressed satisfactorily in the Modification, and the issues raised in respect to the previous iteration have largely been addressed to achieve a satisfactory outcome. "*

#### Officer Comment

As acknowledged in the UDRP advice, the modification application has addressed the amenity concerns identified in previous UDRP referrals , which was provided prior to lodgement of the application.

### **Principle 7. Safety**

#### **UDRP Comment – 28 June 2023**

*'It was not clear from the documentation provided prior to the presentation, how the proposed four stages would be managed. The Applicant outlined to the meeting how the proposed stages would be undertaken, which was not opposed in principle by the Panel. However, greater detail in respect to staging and temporary arrangements for any parts of the site that are left to a later stage are presented and managed in the interim. Communal*

*spaces and the Memorial Walk landscape were proposed to be completed in the early stage, which was considered essential.*

*Casual surveillance of the Memorial walkway will be important after dark, possibly augmented by CCTV. Lighting should be non-glare downlighting, with potential places of concealment minimised – both in the soft landscape and structure.'*

Officer Comment

Submission of detailed landscape documentation, appropriate lighting to communal/ public areas and appropriate security mechanisms to control access after-hours are addressed via conditions of consent.

## **Principle 8. Housing Diversity and Social Interaction**

### **UDRP Comment – 28 June 2023**

*'The number of apartments proposed has been slightly reduced (166 to 152 units), with a greater reduction proposed in the number of residential aged care places (103 to 50). Other rearrangement of independent living units and communal spaces have also been proposed in the Modification, with ILU communal and service spaces now occupying most of Level 1 of the western tower podium. The Panel did not consider that the changes in the proportion of accommodation mix had any adverse impacts in respect to the ADG objectives.*

*The UDRP comments are noted.'*

Officer Comment

The UDRP comments are noted.

## **Principle 9. Aesthetics**

### **UDRP Comment – 28 June 2023**

*"The revised Modification has integrated a simplification of the structure and internal planning, which is likely to reduce construction complexity and costs. This has been achieved while in a number of useful respects, generally retaining the design intent. Solid upstands to many of the balconies are a positive revision that will make balconies more amenable for resident use and will improve the buildings' appearance.*

*The location of air-conditioning outdoor compressor units on balconies is discouraged for aesthetic and amenity reasons. Where it is desired to retain air-conditioning outdoor compressor units on balconies, this needs to be detailed at Modification stage, to demonstrate that A-C units are not visible externally and will not adversely impact comfort conditions on the balconies when in use, and will not cause significant acoustic impacts to neighbouring residences."*

Officer Comment

The UDRP noted that the changes have been made while retaining the design intent. Concerns regarding visual and acoustic impacts of A-C units on balconies have been addressed with these units being enclosed in structures integrated into the building design.

## **Apartment Design Guide (ADG).**

A SEPP 65 Design Verification Statement prepared by Fender Katsalidis was submitted in support of the current amended proposal in accordance with Section 102 of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg2021') which requires a modification application made under Section 4.55(2) of the EP&A Act1979 be accompanied by a statement by a qualified designer where the original development application was required to be accompanied by one. The submitted statement; (1) confirms that a qualified designer, which is defined in the EP&A Reg 2021 as a person registered as an architect in accordance with the Architects Act 2003, directed the design of the architectural drawings; (2) provides an explanation that verifies how the related development documentation achieves the design quality principals and objectives of the ADG; and (3) verifies that the modification does not diminish or detract from the design quality of the original development or compromise the design intent of the original development.

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 advise 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 ADG document is a guide which under Section 28(2) the consent authority must take into consideration when determining a modification application for consent to which SPP 65 applies, the provisions of Clause 6A under SEPP 65 establish that the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG will prevail over any inconsistent DCP control for the following topic area;

- a) visual privacy,
- b) solar and daylight access,
- c) common circulation and spaces,
- d) apartment size and layout,
- e) ceiling heights,
- f) private open space and balconies,
- g) natural ventilation,
- h) storage.

Assessment of the current modification application (as amended) has been undertaken having consideration for the ADG. The residential accommodation (seniors housing and residential flat building) component of the modification application is considered to demonstrate good design and planning practice.

Table 2 below, addresses compliance with the objective and design criteria of the relative topic areas in accordance with Clause 6A of SEPP 65. Where a topic area is not specified a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

**Table 2: Compliance with required topic areas of ADG**

<b>3B Orientation</b>		
<b>Objective 3B-1</b> Building types and layouts respond to the streetscape and site while optimising solar access within the development		
<b>Objective 3B-2</b> Overshadowing of neighbouring properties is minimised during mid winter		
<b>Comment:</b>		<b>Compliance:</b>
<p>The proposed buildings are sited to clearly address the street while maximising solar access to apartments.</p> <p>The scale and bulk of the built form is broken down into two towers, the separation of the two towers uses 'through' access zones as the communal open space and public open space. The twin residential tower building design will have identity with both King Street and Bull Street by facing both street frontages and incorporating direct access from both streets.</p> <p>The site does not directly adjoin any existing residential development, however given the height of the proposal, the potential impacts of the proposed development on the solar access of existing residential development within the vicinity of the subject site have been considered.</p> <p>There is currently limited high density residential development within the vicinity of the subject site, primarily being the seven storey 'Westcourt' building and eleven storey Marketown Shopping Centre development containing the 'Spire Apartments', both located to the south west of the subject site.</p> <p>Shadow diagrams have been submitted which demonstrate the impact of the overshadowing within the subject site and beyond the site. (For details refer to drawing DA560 and DA561, dated 30 November 2023, prepared by Fender Katsalidis).</p> <p>Overshadowing impacts on surrounding development are predominantly limited to commercial development and considered reasonable and acceptable.</p> <p>The proposed modified development has been suitably laid out having regard to the general orientation and aspect. Due to the general orientation of the site, North-South, the overshadowing impacts to adjoining buildings is minimized to an acceptable level within the tight urban context.</p> <p>The modified development does not result in unacceptable impacts by way of overshadowing to solar collectors on neighbour buildings.</p>		Complies
<b>3D Communal and public open space</b>		
<b>Objective 3D-1</b> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Communal open space has a minimum area equal to 25% of the site.	<p><b><u>Mixed-use development (Tower A + Tower B)</u></b></p> <p>The total site area equals 6631sqm 25% of the total site area equals 1,657.75sqm.</p>	Complies

	<p>The current modification application (as amended) includes three areas of communal open space;</p> <ul style="list-style-type: none"> <li>• Level 1 (Podium) Tower A = 394sqm</li> <li>• Level 1 (Podium) Tower B = 461sqm</li> <li>• Level 15 (Roof) Tower B (residential flat building) = 1140sqm</li> </ul> <p>The total communal open space provided is 1995sqm, or 30% of the total site area. This communal open space area is supported by landscaping areas.</p> <p>In addition to physical design changes, the subject application seeks to modify the original development consent to facilitate staged construction works and a one into two lot stratum subdivision. As such, the communal open space provisions for each of the towers have also been considered independently with respect to the objectives of this part of the ADG.</p> <p>Amendments to the staging of constructions works and the plan of subdivision, as original proposed under the modification application, have been made during the assessment process. These amendments primarily addressed concerns regarding assurance that, upon completion of each stage resulting in development subject to the provisions of SEPP65, the communal open space relied upon to satisfy the provisions outlined in this part of the ADG are also completed.</p> <p>In this regard, the following is noted:</p> <ul style="list-style-type: none"> <li>• Under the current modification application (as amended), the two towers are intended to be independent and have exclusive communal facilities within their own lots.</li> <li>• The approved development includes communal open space at Level 5 of Tower A (seniors housing), which the current modified development (as amended) proposes to remove. As such, Tower A (seniors housing) will rely on the communal open space at Level 1 (podium) located between the two towers to satisfy the provisions described in this part of the ADG.</li> <li>• Tower B (residential flat building) will rely on both the communal open space at Level 1 (podium) located</li> </ul>	
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	<p>between the two towers, and the communal open space located on Level 15 (roof) to satisfy the provisions described in this part of the ADG, which is consistent with the approved development.</p> <ul style="list-style-type: none"> <li>• The current modification application (as amended) includes changes to the approved communal open space at Level 1 (podium) to provide two dedicated communal open space areas; one for each tower, connected directly to the internal communal amenities of the respective towers.</li> <li>• An amended draft plan of subdivision has been prepared which shows: <ul style="list-style-type: none"> <li>○ Proposed Part Lot 22 encompasses those components of the development associated with Tower A (seniors housing)</li> <li>○ Proposed Part Lot 21 encompasses those components of the development associated with Tower B (residential flat building)</li> <li>○ The two communal open spaces at Level 1 (podium) dedicated to Tower A and Tower B form part of proposed Part Lot 22 and proposed Part lot 21 respectively.</li> </ul> </li> <li>• An amended Management Plan Phased Construction document provides details of the following; <ul style="list-style-type: none"> <li>○ The completion of the memorial walkway and communal open space at Level 1 (podium) have been linked with the construction of tower B (residential flat building) as these spaces are required during construction.</li> <li>○ The sequencing of construction is such that Tower B (residential flat building) will be constructed first, or at the same time as, Tower A (seniors housing).</li> </ul> </li> </ul>	
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	<ul style="list-style-type: none"> <li>○ This will ensure that Tower A (senior housing) is not built and operating without access to the communal open space at Level 1 Podium or the memorial walkway.</li> </ul> <p>The amendments made during the assessment of the application are considered satisfactory with respect to assurance that, upon the completion of each tower the relevant communal open space will also be delivered.</p>	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).	<p><u>Tower A (seniors housing)</u> The approved development includes a Terrace at Level 5 of Tower A (seniors housing), which was the principal useable part of communal open space for the seniors housing component of the approved development.</p> <p>The current modified development (as amended) proposes to remove the approved communal open space at Level 5. As such, Tower A (seniors housing) will rely on the Level 1 Courtyard located between the two towers for its principal useable part of communal open space.</p> <p>The current modification application (as amended) includes changes to the approved communal open space at Level 1 (podium) to provide a dedicated communal open space, connected directly to the internal communal amenities of Tower A.</p> <p>The communal open space at Level 1 (podium) dedicated to Tower A has northerly aspect and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.</p> <p>For details see 'VIEW FROM THE SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024).</p> <p><u>Tower B (residential flat building)</u> The Level 15 (Roof), which is the principle useable part of Tower B (residential flat building) communal open space, has northerly aspect and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.</p> <p>For details see 'VIEW FROM THE SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024).</p>	Complies

<b>Objective 3D-2</b> Communal open space is design to allow for a range of activities, respond to site conditions and be attractive and inviting		
<b>Objective 3D-3</b> Communal open space is design to maximise safety		
<b>Objective 3D-4</b> Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood		
<b>Comment:</b>	<b>Compliance:</b>	
<p>The current modified development (as amended) includes three areas of communal open space and one area of public open space; all of these spaces are internal to the site.</p> <p>The communal areas and the garden have been designed to provide large outdoor spaces, overlooked by the development, that can be enjoyed throughout the year by the residents and their visiting family and friends.</p> <p>Facilities are provided within communal open spaces and common spaces allow for a range of age groups.</p> <p>Public open space, in the form of a pedestrian through site link (memorial walkway), is provided adjacent the east sit boundary to connect King Steet to Bull Street and is reflective of the approved development. Condition 98 was imposed on the original development consent requiring a public right of way be registered over the proposed accessway linking King Street and Bull Street. This condition remains unchanged under the subject modification application.</p> <p>Details of the key features incorporated into each of the three areas of communal open space and the public open space are summaries below;</p> <p><u>Tower A (seniors living) communal open space at Level 1 (podium)</u> Outdoor dining and gathering space with BBQ under bespoke pergola with screening battens for privacy; seating for individuals or groups; and passive gathering spaces. (For details see page 14 of landscape documentation prepared by Oculus dated 19 January 2024)</p> <p><u>Tower B (residential flat building) communal open space at Level 1 (podium)</u> Seating for individuals or groups; pool area with timber deck surround; trellis tensile structure with screening climbers/ vegetation; and feature tree planting (For details see page 14 of landscape documentation prepared by Oculus dated 19 January 2024)</p> <p><u>Tower B (residential flat building) communal open space at Level 15 (rooftop)</u> Enclosed winter garden; undercover BBQ area with picnic setting beneath pergola structures; table tennis are surrounded by mass planting; raised communal vegetable planters; seating niches for individuals or groups; raised lawn picnic area; and mass planting. (For details see page 19 of landscape documentation prepared by Oculus dated 19 January 2024)</p> <p><u>Through site link (memorial walkway) public open space at Ground Level</u> Memorial reflection pool; feature wall to host memorial interpretation; memorial reflection pool; lawn picnic area; café plaza; water feature; feature tree planting; and mass planting. (For details see page 11 of landscape documentation prepared by Oculus dated 19 January 2024)</p>	Complies	
<b>3E Deep soil zones</b>		
<b>Objective 3E-1</b> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>

1. Deep soil zones are to meet the following minimum requirements:			<p><b>Mixed-use development (Tower A + Tower B)</b></p> <p>The total site area equals 6,631sqm 7% of the total site area equals 464.17sqm Large areas of deep soil with a minimum dimension of 6m are not provided (approximately 633sqm of deep soil area is located at ground level within the 'through site link' and within the building setback along Bull Street, however these areas do not achieve the 6m minimum dimension). The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where;</p> <ul style="list-style-type: none"><li>• The location and building typology have limited or no space for deep soil at ground level (e.g central business district, constrained sites, high density areas, or in centres); and or</li><li>• There is 100% site coverage or non-residential uses at ground floor level.</li></ul> <p>Achieving the design criteria is no possible due to the location and constraints of the subject sites (high density area and the site being part of a transportation precinct), and the extensive site coverage with non-residential development at ground. The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater management and alternative forms of planting such as planting on structures ('through site link', Level 1 podium, Level 15 (roof) Building B).</p> <p>This is considered acceptable.</p>	Satisfactory (Merit based assessment)	
Site area	Minimum dimensions	Deep soil zone (% of site area)			
greater than 1500m <sup>2</sup>	6m	7%			
<p><b>Objective 3F-1</b></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p>					
<p><b>Design Criteria:</b></p> <p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p>			<p><b>Comment:</b></p> <p>The site is irregular in shape, with three street frontages; King Street (north boundary), Bull Street (south boundary), and Ravenshaw Street (west boundary). As such, the site has one 'side boundary' – east boundary – for which the minimum separation distances described in this part of the ADG are applicable and are discussed below.</p> <p><b>Note:</b> Ground Level of the proposal does not contain residential apartments. As such the minimum separation distances from buildings to the side and rear boundaries</p>	<p><b>Compliance:</b></p>	
Building height	Habitable rooms & balconies	Non-habitable rooms			
up to 12m	6m	3m			

(4 storeys)			described in this part of the ADG are not applicable at these levels.	
up to 25m (5-8 storeys)	9m	4.5m		
over 25m (9+ storeys)	12m	6m		
<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>			<b>Separation distance to Tower B (residential flat building) to east boundary</b>	Complies
			<u>Up to 12m [Level 1, Level 2, &amp; Level 3]</u> At Levels 1 to 3, generally the building line of Tower B (residential flat building) is setback 12.5m from the east site boundary, with this setback reduced to a minimum of 10.6m where the projecting 'saw-tooth' balconies occur. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (6m for habitable).	
			<u>Up to 25m [Level 4, Level 5, Level 6 &amp; Level 7]</u> At Levels 4 to 7, generally the building line of Tower B (residential flat building) is setback 12.5m from the east site boundary, with this setback reduced to a minimum of 10.6m where the projecting 'saw-tooth' balconies occur. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable).	Complies
			<u>Over 25m [Level 8 to Level 15 (roof)]</u> At Levels 8 to 15 (roof), the general building line of Tower B (residential flat building) is setback 12.5m from the east site boundary which complies with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable). The exception being the projecting 'saw-tooth' balconies where the setback is reduced to a minimum of 10.6m. The spatial relationship of the towers and the resulting non-compliance with building separation distances of the ADG at the this height (12m for habitable) was supported by the UDRP. The UDRP 28 June 2023 advice states: <i>"The reinstatement of projecting "saw-tooth" balconies to the eastern side of the eastern tower (B) was supported by the Panel, as it provides some depth and articulation to this side of the building and orientates balconies towards the north-east."</i> This non-compliance is able to be accepted on a balanced view having regard for both visual privacy, access to light and air, and building bulk and scale.	Satisfactory (Merit based assessment)
			<b>Separation distance between Tower A (seniors housing) and Tower B (residential flat building)</b>	

	<p><u>Up to 12m [Level 1, Level 2, &amp; Level 3]</u></p> <p>At Level 1, over 16.4m separation distance is provided between habitable windows located in the east façade of Tower A (seniors housing) and the west facing apartment balconies and habitable windows of Tower B (residential flat building). This complies with the minimum separation distance of 12m required for buildings on the same site at this height (6m for habitable + 6m for habitable).</p> <p>At Levels 2 to 3, over 16.7m separation distance is provided between habitable windows located in the east façade of Tower A (seniors housing) and the west facing apartment balconies and habitable windows of Tower B (residential flat building). This complies with the minimum separation distance of 12m required for buildings on the same site at this height (6m for habitable + 6m for habitable).</p>	Complies
	<p><u>Up to 25m [Level 4, Level 5, Level 6 &amp; Level 7]</u></p> <p>At Level 4, a minimum 16.5m separation distance is provided between the east facing apartment balconies of Tower A (seniors housing) and the west facing apartment balconies of Tower B (residential flat building). Whilst the minimum does not comply with the 18m minimum distance for building on the same site at this height (9m for habitable + 9m for habitable), raised planter beds a minimum 2.1m wide are provided to the perimeter of the east facing apartment balconies of Tower A (seniors housing) which provide a landscape buffer and increase the minimum separation distance over 18m. On balance, the building separation and landscape design are considered to achieve suitable visual privacy within the development and is considered acceptable in this regard. Where the variation occurs, the apartments and their balconies have been configured to avoid direct overlooking between dwellings.</p> <p>At Levels 5 to 7, a separation distance of over 22.6m is provided between the east facing habitable windows and apartment balconies of Tower A (seniors housing) and the west facing habitable windows and apartment balconies of Tower B (residential flat building), which complies with the minimum 18m separation distance required for buildings on the same site at this height (9m for habitable + 9m for habitable).</p>	Satisfactory (Merit based assessment)

	<p><u>Over 25m [Level 8 to Level 15 (roof)]</u></p> <p>At Levels 8 to 13, generally a separation distance of over 24.5m is provided between the east facing habitable windows and apartment balconies of Tower A (seniors housing) and the west facing habitable windows and apartment balconies of Tower B (residential flat building) which complies with the 24m minimum separation distance required for buildings on the same site at this height (12m for habitable rooms + 12m for habitable rooms).</p> <p>The exception being where a minimum separation distance of 22.6m is provided between the east facing habitable windows and apartment balconies of Tower A (seniors housing) and the west facing apartment balconies of Tower B (residential flat building).</p> <p>Whilst a minimum separation distance of 24m is required between buildings on the same site at this height, in locations where the separation distance is less than 24m the configuration/ orientation of the Tower B (residential flat building) apartment balconies, combined with privacy screens to the Tower A (seniors housing) habitable windows, have ensured suitable visual privacy is still achieved.</p> <p>The apartments and their balconies have been configured to avoid direct overlooking between dwellings. On balance, the building separation and balcony articulation are considered to achieve suitable visual privacy within the development and is considered acceptable in this regard.</p> <p><b>Separation distance between Tower B (residential flat building) apartments '01' and '02' on Level 2 to Level 13</b></p> <p>At Levels 2 to 13, a separation distance of 2.5m is provided between the north facing living room window of apartments '01' in Tower B (residential flat building) and the south facing living room window of apartment '02' in Tower B (residential flat building). have</p> <p>Tower B apartments '01' and '02' on Levels 2 to 13 have narrow window to living room located directly across from each other with a building separation of 2.5 meters. A separation distance ranging from 12m to 24m, depending on the height above ground, is required between habitable windows to buildings on the same site and as such this does not comply.</p>	<p>Satisfactory (Merit based assessment)</p> <p>Satisfactory (Merit based assessment)</p>
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	<p>In response concerns raised by CN during the assessment in regard to this non-compliance, the applicant advised the following design measures would be incorporated to mitigate potential visual privacy impacts:</p> <ul style="list-style-type: none"> <li>• Translucent glazing to the north facing windows of the '01' apartments, and</li> <li>• Side opening awning mechanisms to the operable panel of the north facing window of the '01' apartments (to eliminate direct sight lines when windows are open),</li> </ul> <p>The above measures were not implemented for the south facing windows of the '02' apartments in order to better promote daylight access and both windows remain operable to promote natural ventilation.</p> <p>This can be accepted on a balance view. A condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment A</b>) to ensure translucent glazing and side opening awning mechanisms are provided to the north facing living room window of apartments '01' on Level 2 to Level 13 of Tower B (residential flat building).</p>	
<b>Objective 3F-2</b> Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.		
<b>Comment:</b> Generally, communal open space, common areas and access paths are separated from private open space and windows to apartments. A combination of substantial landscape planting, vertical fencing, and changes in level between private open space and common access paths, have been utilised at the ground plane to separate the private open space and windows of apartments from adjacent communal open space, common areas and public domain.		<b>Compliance:</b> Complies
<b>A4 Solar and daylight access</b>		
<b>Objective 4A-1</b> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
<b>Design Criteria:</b> 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<b>Comment:</b> <u><b>Mixed-use development (Tower A + Tower B)</b></u> Analysis of the submitted architectural drawings found 177 out of the total 259 apartments (independent living units + residential apartments) proposed, or 68%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to both the living room and private open space. For detailed calculations per tower see below.	<b>Compliance:</b> Satisfactory (Merit based assessment)



	<p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites. In response to CN's request for information during the assessment process, detailed solar access floor plans and 3D views were submitted showing solar and daylight access to all apartments living rooms and private open spaces mid-winter between 9am and 3pm.</p> <p>The written justification for the proposed variation provided in 'GWH Response to Council Request for Information dated 19/12/2023', explains:</p> <p><i>"The overall development achieves the ADG objectives, as the orientation of the buildings maximises the number of apartments with a northern aspect, and single aspect apartments have been minimized. A large percentage of the apartments achieve dual aspect, improving overall residential amenity. Living areas for most units are in the best position to achieve solar access. Regarding solar access, the design development process has sought to maximize the number of units with northerly or easterly aspect. Whilst a percentage of units face south, this is necessary to ensure the development presents appropriately to Bull Street on the southern elevation. Additionally, units with southerly aspect, particularly those at higher elevations, will benefit from district views across the low density Cooks Hill heritage precinct, National Park open space precinct, and further afield to the coastline and the ocean including the iconic Merewether surf beach. Units at lower elevation retain good amenity due to the wide and treelined nature of Bull Street and the existing setback and low height of adjacent development."</i></p> <p>The design drawings and written justification have suitably demonstrated how; (1) the site constraints and orientation (dual street frontages with significant views to the south preclude meeting the design criteria and, (2) the proposal has been designed having regard to optimizing the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space.</p> <p>As such, the proposal complies with the design guidance for this objective.</p> <p><b><u>Tower A (seniors housing)</u></b></p> <p>The submitted architectural documentation states 69 out of the 107 independent living</p>	<p></p> <p>Satisfactory</p>
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	<p>units proposed in Tower A (seniors housing), or 65%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to both the living room and private open space.</p> <p>For details see 'PROPOSED SOLAR ACCESS DIAGRAMS' prepared by Fender Katsalidis (drawings DA517 and DA519, dated 6 June 2023).</p> <p>Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024) confirmed the above.</p>	(Merit based assessment)
	<p><b><u>Tower B (residential flat building)</u></b></p> <p>The submitted architectural documentation states 99 out of the 152 apartments proposed in Tower B (residential flat building), or 65%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space.</p> <p>For details see 'PROPOSED SOLAR ACCESS DIAGRAMS' prepared by Fender Katsalidis (drawings DA517 to DA519, dated 6 June 2023).</p> <p>However, analysis of the submitted architectural documentation found 108 out of the 152 apartments proposed in Tower B (residential flat building), or 71%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space. As such, Tower B (residential flat building) complies.</p> <p>For clarity, details of the discrepancies are listed below:</p> <p><b><u>APARTMENT 401</u></b></p> <p>'PROPOSED SOLAR ACCESS DIAGRAMS' prepared by Fender Katsalidis (drawings DA517 and DA518, dated 6 June 2023) shows this apartment highlighted orange, indicating it receives at least 15min, but less than 2hrs, solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space.</p> <p>However, analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024) found this apartment receives solar access from 1pm to 3pm to both the living room and private open space. This equals 2hrs and complies.</p> <p><b><u>APARTMENT 402, 501, 601, 701, 801, 901, 1001, and 1101</u></b></p>	Complies

	<p>'PROPOSED SOLAR ACCESS DIAGRAMS' prepared by Fender Katsalidis (drawings DA517 and DA518, dated 6 June 2023) shows these apartments highlighted orange, indicating they receive at least 15min, but less than 2hrs, solar access between 9am and 3pm at mid-winter to both the living room and private open space. However, analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024) found these apartments receive solar access from 12noon until 2pm and 1pm until 3pm to the private open space and living room respectively. This equals 2 hrs and complies.</p>	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.	N/A	N/A
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<p><b><u>Mixed-use development (Tower A + Tower B)</u></b> Analysis of the submitted architectural drawings found 37 out of the total 259 apartments (independent living units + residential apartments) proposed, or 14%, receive no direct sunlight between 9am and 3pm at mid-winter. For detailed calculations per tower see below.</p> <p><b><u>Tower A (seniors housing)</u></b> The submitted architectural documentation states 28 out of the 107 independent living units proposed in Tower A (seniors housing), or 26%, receive no direct sunlight between 9am and 3pm at mid-winter. For details see 'PROPOSED SOLAR ACCESS DIAGRAMS' prepared by Fender Katsalidis (drawings DA517 and DA519, dated 6 June 2023). Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024) confirmed the above. The written justification for the proposed variation provided in 'GWH Response to Council Request for Information dated 19/12/2023', explains:</p>	<p>Complies</p> <p>Satisfactory (Merit based assessment)</p>

	<p><i>"...the extensive glazing, building setbacks, and internal configurations ensure that apartments with limited sunlight all achieve a high level of daylight access. The general compliance with this guidance indicates that the development is appropriately orientated, and the majority of units will have appropriate amenity.</i></p> <p>Whilst Tower A (seniors housing) alone does not achieve this design criteria, the development as a whole does comply. This is considered acceptable.</p>	
	<p><b><u>Tower B (residential flat building)</u></b></p> <p>The submitted architectural documentation states nine out of the 152 apartments proposed in Tower B (residential flat building), or 6%, receive no direct sunlight between 9am and 3pm at mid-winter.</p> <p>For details see 'PROPOSED SOLAR ACCESS DIAGRAMS' prepared by Fender Katsalidis (drawings DA517 to DA519, dated 6 June 2023).</p> <p>Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA558, dated 15 January 2024) confirmed the above.</p>	Complies
<p><b>Objective 4A-2</b> Daylight access is maximised where sunlight is limited.</p> <p><b>Objective 4A-3</b> Design incorporates shading and glare control, particularly for warmer months.</p>		
<b>Comment:</b>	<p>Full height glazing for the maximum practical extent of apartment frontages has been provided to maximise daylight access. The light source for all habitable rooms are glazing with sill heights lower the 1.5m. Courtyard and skylights as light sources are not proposed.</p> <p>All apartments within the development will have access to all areas of communal open space, maximising daylight access for future residents by providing multiple options to access northern sun no matter the time of day.</p> <p>The design incorporates shading devises such as eaves, external screening, and recessed balconies, to shade summer sun but allow winter sun to penetrate living areas.</p>	<p><b>Compliance:</b> Complies</p>
<b>4B Natural ventilation</b>		
<p><b>Objective 4B-1</b> All habitable rooms are naturally ventilated</p> <p><b>Objective 4B-2</b> The layout and design of single aspect apartments maximises natural ventilation</p>		
<b>Comment:</b>	<p>All habitable rooms are naturally ventilated via adjustable windows, located in external walls, with suitable effective operable areas.</p> <p>For the single aspect apartments, apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>Natural ventilation is further enhanced by providing generous window and door openings (full height glazing for maximum practical extent of apartment frontages has been provided)</p>	<p><b>Compliance:</b> Complies</p>
<b>Objective 4B-3</b>		

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

Design Criteria:	Comment:	Compliance:
<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p><b><u>Mixed-use development (Tower A + Tower B)</u></b></p> <p>Analysis of the submitted architectural drawings found a total of 83 out of the 163 apartments (independent living units + residential apartments) proposed on the first nine storeys of Tower A (seniors housing) and Tower B (residential flat building) combined, or <b>51%</b>, are naturally cross ventilated.</p> <p>For detailed calculations per tower see below.</p> <p>The written justification for the proposed variation provided in the applicants' response to CN's Request for Information dated 22 November 2023 (letter prepared by GWH dated 1 December 2023) explains:</p> <p><i>"Notwithstanding these figures the design is considered consistent with the objectives for natural ventilation within the ADG for the following reasons:</i></p> <ul style="list-style-type: none"> <li><i>• all habitable spaces are naturally ventilated (Objective 4B-1);</i></li> <li><i>• the layout of single aspect apartments maximises natural ventilation with large areas of operable glazing and suitable depth to achieve adequate air flow (Objective 4B-2); and</i></li> <li><i>• the number of apartments with natural cross ventilation, while below 60%, has been maximised having regard to the site and design constraints (Objective 4B-3).</i> <p>It is noted the UDRP have not taken issue with the number of apartments naturally cross ventilated and have supported the modified development .</p> <p>For the single aspect apartments, the layout and design maximises natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>Furthermore, annotations have now been included on the architectural floor plans to identify operable glazing (denoted by an 'OP') in response to concerns raised by CN during the assessment. Specifically, a number of dual aspect independent living units in Tower A (seniors housing) shown fixed glazing to the secondary aspect</p> </li></ul>	<p>Satisfactory (Merit based assessment)</p>

	<p>despite being identified by the applicant as achieving natural cross ventilation.</p> <p>A condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment A</b>) to ensure operable windows rely upon to satisfy the natural ventilation objectives of the ADG are delivered at construction.</p> <p>The non-compliance is able to be accepted on a balanced view.</p>	
	<p><b><u>Tower A (seniors housing)</u></b></p> <p>The submitted architectural documentation states 30 out of the 66 independent living units on the first nine storeys of Tower A (seniors housing), or 45%, are naturally cross ventilated.</p> <p>For details see 'PROPOSED CROSS VENTILATION DIAGRAMS' prepared by Fender Katsalidis (drawings DA514 to DA516, dated 6 June 2023).</p> <p>Analysis of the submitted floor plans and elevations prepared by Fender Katsalidis confirmed the above.</p>	Satisfactory (Merit based assessment)
	<p><b><u>Tower B (residential flat building)</u></b></p> <p>The submitted architectural documentation states 53 out of the 97 apartments on the first nine storeys of Tower B (residential flat building), or 55%, are naturally cross ventilated.</p> <p>For details see 'PROPOSED CROSS VENTILATION DIAGRAMS' prepared by Fender Katsalidis (drawings DA514 to DA516, dated 6 June 2023).</p> <p>Analysis of the submitted floor plans and elevations prepared by Fender Katsalidis confirmed the above.</p>	Satisfactory (Merit based assessment)
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	N/A	N/A
<b>4C Ceiling heights</b>		
<b>Objective 4C-1</b>		
Ceiling height achieves sufficient natural ventilation and daylight access.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	<p><b>Mixed use</b></p> <p>Under the Newcastle Local Environmental Plan 2012, the site is located within the MU1 Mix Use zone and as such the increased ceiling heights for ground and first floor described in this part of the ADG are applicable (a minimum ceiling height of 3.3m</p>	Satisfactory (Merit based assessment)

<b>Minimum ceiling height for apartment and mixed use buildings</b>		<p>measured from finished floor level to finished ceiling level).</p> <p>The Ground Level has an increased floor-to-floor height of 4.4m which should be capable of facilitating the increased minimum ceiling height of 3.3m described in this part of the ADG.</p> <p>However, the floor-to-floor height provided for the first floor (3.6m for Tower A and 3.2m for Tower B) will not be able to facilitate an increased ceiling of 3.3m as required.</p> <p>A minimum ceiling height of 2.9m, measured from finished floor level to finished ceiling level, for Level 1 of both towers is dimensioned on the submitted architectural sections prepared by Fender Katsalidis (drawings DA250 to DA252, dated 6 October 2023).</p> <p>Whilst this is less than the 3.3m ceiling height described in this part of the ADG, the approved development does not facilitate increased ceiling heights to the first floor apartments. As such, the current modification application(as amended) is consistent with the approved development in this regard.</p>	
Habitable rooms	2.7m		
Non-habitable	2.4m		
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use		
These minimums do not preclude higher ceilings if desired.			
		<b>Apartments</b> <p>All storeys containing apartments (Tower A Level 4 to Level 13, and Tower B Level 1 to Level 14) have a floor-to-floor height of at least 3.2m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</p> <p>No two storey apartments or attic spaces are proposed.</p>	Complies
<b>Objective 4C-2</b> <p>Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.</p>			
<b>Objective 4C-3</b> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>			
<b>Comment</b>		<b>Compliance:</b>	
<p>Ceiling heights that increased the sense of space within the apartment and provide well-proportioned rooms can be achieved within the proposed floor-to-floor heights. The Ground Level has an increased floor-to-floor height of 4.4m which should be capable of facilitating the increased minimum ceiling height of 3.3m described in this part of the ADG.</p> <p>A minimum ceiling height of 2.9m, measured from finished floor level to finished ceiling level, for Level 1 of both towers is dimensioned on the submitted architectural sections prepared by Fender Katsalidis (drawings DA250 to DA252, dated 6 October 2023).</p> <p>Whilst this is less than the 3.3m ceiling height described in this part of the ADG, the approved development does not facilitate increased ceiling heights to the lower level apartments. As such, the current modification application (as amended) is consistent with the approved development in this regard.</p>		Satisfactory (Merit based assessment)	
<b>4D Apartment size and layout</b>			

<b>Objective 4D-1</b> The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.												
<b>Design Criteria:</b> 1. Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.	Apartment type	Minimum internal area	studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<b>Comment:</b> All the apartments (independent living units + residential apartments) proposed are provided the minimum internal areas required. For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA121, DA122, DA130 to DA132, DA140 to DA143, DA150, DA160 to DA163, and DA170).	<b>Compliance:</b> Complies
Apartment type	Minimum internal area											
studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											
<b>Design Criteria:</b> 2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	<b>Comment:</b> All habitable rooms within the apartments are provided with a window within an external wall.	<b>Compliance:</b> Complies										
<b>Objective 4D-2</b> Environmental performance of the apartment is maximised.												
<b>Design Criteria:</b> 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<b>Comment:</b> N/A (all apartments are provided a combined living/ dining/ kitchen area)	<b>Compliance:</b> N/A										
<b>Design Criteria:</b> 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<b>Comment:</b> All the apartments (independent living units + residential apartments) proposed have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area, measured from glass line to furthest kitchen bench. For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA121, DA122, DA130 to DA132, DA140 to DA143, DA150, DA160 to DA163, and DA170).	<b>Compliance:</b> Complies										
<b>Objective 4D-3</b> Apartment layouts are designed to accommodate a variety of household activities and needs.												
<b>Design Criteria:</b> 1. Master bedrooms have a minimum area of 10m <sup>2</sup> and	<b>Comment:</b> All master bedrooms have a minimum area of 10sqm and all other bedrooms have a	<b>Compliance:</b> Complies										



other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	<p>minimum area of 9sqm (excluding wardrobe space).</p> <p>For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA121, DA122, DA130 to DA132, DA140 to DA143, DA150, DA160 to DA163, and DA170).</p> <p>For completeness it is acknowledged that the typical floor plan for apartment Type 1A and apartment Type 1B (drawing DA121, revision 5, dated 6 June 2023) show a label saying 9sqm on the master bedroom. However, scaling from the submitted floor plans these bedrooms have an area of 11sqm excluding wardrobe space which complies.</p>	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	<p><b><u>Mixed-use development (Tower A + Tower B)</u></b></p> <p>Analysis of the submitted architectural documentation found 245 out of the total 259 apartments (independent living units + residential apartments) proposed have bedrooms which achieve the 3m minimum dimension (measured excluding wardrobe space).</p> <p>For details per tower of the non-complying apartments see below.</p> <p>The non-compliance proposed is minimal and can be accepted on a balance view regarding both minimum dimensions and areas of bedrooms.</p> <p>Furthermore, the design drawings have suitably demonstrated the apartment bedrooms are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p>	Satisfactory (Merit based assessment)
	<p><b><u>Tower A (seniors housing)</u></b></p> <p>Analysis of the submitted architectural documentation found 107 out of the 107 independent living units proposed in Tower A (seniors housing) have bedrooms which achieve the 3m minimum dimension (measured excluding wardrobe space).</p> <p>For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA150, DA160 to DA163, and DA170).</p>	Complies
	<p><b><u>Tower B (residential flat building)</u></b></p> <p>Analysis of the submitted architectural documentation found 138 out of the 152 residential apartments proposed in Tower B</p>	Satisfactory (Merit based assessment)

	<p>(residential flat building) have bedrooms which achieve the 3m minimum dimension (measured excluding wardrobe space). For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA121, DA122, DA130 to DA132, and DA140 to DA143)</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 2E - 14 x 2 BEDROOM</u>          Apartments 110, 210, 310, 410, 510, 610, 710, 810, 910, 1010, 1110, 1210, 1310, and 1410 have a bedroom with a minimum dimension of 2.85m, which is less than the minimum 3m dimension required for bedrooms.          (For details refer to 'TOWER B APARTMENT TYPE 2E', drawing DA132, rev. 04, dated 6 June 2023, prepared by Fender Katsalidis)</p>	
<p><b>Design Criteria:</b></p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments.</li> <li>• 4m for 2 and 3 bedroom apartments.</li> </ul>	<p><b>Comment:</b></p> <p><u><b>Mixed-use development (Tower A + Tower B)</b></u>          Analysis of the submitted architectural documentation found 192 out of the total 259 apartments (independent living units + residential apartments) have either living rooms, or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.          For details per tower of the non-complying apartments see below.</p> <p>The design guidance for these objectives acknowledges that a merit based assessment is appropriate in circumstances where minimum areas or room dimensions are not met.          The design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.          As such, the proposal complies with the design guidance for this objective.</p> <p><u><b>Tower A (seniors housing)</b></u>          Analysis of the submitted architectural documentation found 68 out of the 107 independent living units proposed in Tower A (seniors housing) have either living rooms, or combined living/ dining rooms which</p>	<p><b>Compliance:</b></p> <p>Satisfactory (Merit based assessment)</p> <p>Satisfactory (Merit based assessment)</p>

	<p>achieve the minimum dimensions required for the number of bedrooms provided. For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA150, DA160 to DA163, and DA170). Details of the non-complying apartments are listed below;</p> <p><u><b>ILU TYPE 2B - 10 x 2 BEDROOM</b></u>          Apartments 410, 510, 610, 710, 810, 910, 1010, 1110, 1210, and 1310 have a living room with a minimum dimension of 3.48m, which is less than the minimum 4m dimensions required for a living room within a 2 bedroom apartment.          (For details refer to 'TOWER A - ILU TYPE 2A &amp; 2B, drawing DA160, rev. 04, dated 10 October 2023, prepared by Fender Katsalidis)</p> <p><u><b>ILU TYPE 2E - 9 x 2 BEDROOM</b></u>          Apartments, 403, 503, 603, 703, 803, 903, 1003, 1103, and 1203 have a living room which generally have a dimension of 4m or greater, as required for two bedroom apartments. However, a small portion of the living room has a dimension of less than 4m due to the curved corner of the façade design.          (For details refer to 'TOWER A - ILU TYPE 2E &amp; 2F, drawing DA162, rev. 04, dated 10 October 2023, prepared by Fender Katsalidis)</p> <p><u><b>ILU TYPE 2G - 10 x 2 BEDROOM</b></u>          Apartments 406, 506, 606, 706, 806, 906, 1006, 1106, 1206, and 1306 have a living room which generally have a dimension of 4m or greater, as required for two bedroom apartments. However, a small portion of the living room has a dimension of less than 4m due to the curved corner of the façade design.          (For details refer to 'TOWER A - ILU TYPE 2G &amp; 2H, drawing DA163, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p> <p><u><b>ILU TYPE 3A - 10 x 3 BEDROOM</b></u>          Apartments 402, 502, 602, 702, 802, 902, 1002, 1102, 1202, and 1302 have a living room which generally have a dimension of 4m or greater, as required for three bedroom apartments. However, a small portion of the living room has a dimension of less than 4m</p>	
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	<p>due to the irregular alignment of the built form responding to the street boundaries. (For details refer to 'TOWER A - ILU TYPE 3A &amp; 3B, drawing DA170, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p> <p><b><u>Tower B (residential flat building)</u></b></p> <p>Analysis of the submitted architectural documentation found 124 out of the 152 residential apartments proposed in Tower B (residential flat building) have either living rooms, or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided. For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA121, DA122, DA130 to DA132, and DA140 to DA143) Details of the non-complying apartments are listed below;</p> <p><b><u>APARTMENT TYPE 3A - 10 x 3 BEDROOM</u></b> Apartments 504, 604, 704, 804, 904, 1004, 1104, 1204, 1304, and 1404 have a living room with a minimum dimension of 3.35m, which is less than the minimum 4m dimensions required for a living room within a three bedroom apartment. (For details refer to 'TOWER B - APARTMENT TYPE 3A &amp; 3B', drawing DA140, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p> <p><b><u>APARTMENT TYPE 3B - 4 x 3 BEDROOM</u></b> Apartments 104, 204, 304 and 404 have a living room with a minimum dimension of 3.35m, which is less than the minimum 4m dimensions required for a living room within a three bedroom apartment. (For details refer to 'TOWER B - APARTMENT TYPE 3A &amp; 3B', drawing DA140, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p> <p><b><u>APARTMENT TYPE 3C - 6 x 3 BEDROOM</u></b> Apartments 903, 1003, 1103, 1203, 1303, and 1403 have a living room with a minimum dimension of 3.35m, which is less than the minimum 4m dimensions required for a living room within a three bedroom apartment. (For details refer to 'TOWER B - APARTMENT TYPE 3C &amp; 3D', drawing DA141, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p> <p><b><u>APARTMENT TYPE 3D - 4 x 3 BEDROOM</u></b></p>	<p>Satisfactory (Merit based assessment)</p>
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	<p>Apartments 503, 603, 703, and 803 have a living room with a minimum dimension of 3.35m, which is less than the minimum 4m dimensions required for a living room within a three bedroom apartment. (For details refer to 'TOWER B - APARTMENT TYPE 3C &amp; 3D', drawing DA141, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p> <p><u>APARTMENT TYPE 3E - 4 x 3 BEDROOM</u> Apartments 103, 203, 303, and 403 have a living room with a minimum dimension of 3.36m, which is less than the minimum 4m dimensions required for a living room within a three bedroom apartment. (For details refer to 'TOWER B - APARTMENT TYPE 3E &amp; 3F', drawing DA142, rev. 03, dated 6 June 2023, prepared by Fender Katsalidis)</p>																
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
<p>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>N/A (cross-over or cross-through apartments are not proposed)</p>	<p>N/A</p>															
<b>4E Private open space and balconies</b>																	
<p><b>Objective 4E-1</b> Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p>																	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m<sup>2</sup></td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m<sup>2</sup></td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m<sup>2</sup></td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m<sup>2</sup></td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	<p><u><b>Mixed-use development (Tower A + Tower B)</b></u> All the apartments (independent living units + residential apartments) have primary balconies that achieve the minimum depths required for the number of bedrooms provided. However, analysis of the submitted architectural documentation found 229 out of the total 259 apartments (independent living units + residential apartments) have primary balconies that achieve the minimum area required for the number of bedrooms provided. For details per tower of the non-complying apartments see below.</p> <p>The design guidance provided for this objective acknowledges that balcony use may be limited in some proposals, and in these situations other amenity benefits for occupants should be provided in the apartment or in the development or both.</p>	<p>Satisfactory (Merit based assessment)</p>
Dwelling type	Min. area	Min. depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															

	<p>The design drawings have suitably demonstrated how; (1) the site constraints (consistently high wind conditions present in the locality, and close proximity to road, and other noise sources) may limit balcony use and, (2) the proposal has been designed having regard to optimizing residential amenity for occupants (greater than minimum internal areas for apartments and increased communal open space). The non-compliances proposed are minimal (1sqm) and can be accepted on a balance view regarding both minimum balcony depths and areas.</p>	
	<p><b><u>Tower A (seniors housing)</u></b> Analysis of the submitted architectural documentation found 77 out of the 107 independent living units proposed in Tower A (seniors housing) have primary balconies that achieve the minimum area required for the number of bedrooms provided. For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA150, DA160 to DA163, and DA170). Details of the non-complying apartments are listed below;</p> <p><b><u>ILU - TYPE 2A - 10 x 2 BEDROOM</u></b> The is primary balcony of apartments 409, 509, 609, 709, 809, 909, 1009, 1109, 1209, and 1309 is 9sqm, which is less than the minimum 10sqm required for two bedroom apartments. (For details refer to 'TOWER A - ILU TYPE 2A &amp; 2B, drawing DA160, rev. 04, dated 4 October 2023, prepared by Fender Katsalidis)</p> <p><b><u>ILU - TYPE 2C - 10 x 2 BEDROOM</u></b> The is primary balcony of apartments 411, 511, 611, 711, 811, 911, 1011, 1111, 1211, and 1311. is 9sqm, which is less than the minimum 10sqm required for two bedroom apartments. (For details refer to 'TOWER A - ILU TYPE 2C &amp; 2D, drawing DA161, rev. 04, dated 4 October 2023, prepared by Fender Katsalidis)</p> <p><b><u>ILU - TYPE 2D - 10 x 2 BEDROOM</u></b> The is primary balcony of apartments 401, 501, 601, 701, 801, 901, 1001, 1101, 1201, and 1301 is 9sqm, which is less than the</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>minimum 10sqm required for two bedroom apartments. (For details refer to 'TOWER A - ILU TYPE 2C &amp; 2D, drawing DA161, rev. 04, dated 4 October 2023, prepared by Fender Katsalidis)</p>	
	<p><b><u>Tower B (residential flat building)</u></b> Analysis of the submitted architectural documentation found 152 out of the 152 residential apartments proposed in Tower B (residential flat building) have primary balconies that achieve the minimum area required for the number of bedrooms provided, which complies. For details refer to typical floor plans for each apartment type prepared by Fender Katsalidis (drawings DA121, DA122, DA130 to DA132, and DA140 to DA143)</p>	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.</p>	<p><b><u>Mixed-use development (Tower A + Tower B)</u></b> 31 out of the total 259 apartments (independent living units + residential apartments) are located on a podium or similar structure. For details per tower of the relevant apartments see below. Analysis of the submitted architectural documentation found all apartments (independent living units + residential apartments) located on podium or similar structure have a private open space (usable balcony area + landscaping) with a minimum area of 15sqm and minimum depth of 3m.</p>	Complies
	<p><b><u>Tower A (seniors housing)</u></b> 11 out of the 107 independent living units proposed in Tower A (seniors housing) are located on a podium or similar structure. Details of these apartments are:</p> <ul style="list-style-type: none"> <li>• Level 4 = 11 apartments (401 to 411)</li> </ul> <p>Analysis of the submitted architectural documentation found these apartments have a private open space (usable balcony area + landscaping) with a minimum area of 15sqm and minimum depth of 3m.</p>	Complies
	<p><b><u>Tower B (residential flat building)</u></b> 20 out of the 152 residential apartments proposed in Tower B (residential flat building) are located on a podium or similar structure. Details of these apartments are:</p> <ul style="list-style-type: none"> <li>• Level 1 = 5 apartments (101, 103, 104, 109, and 110)</li> </ul>	Complies

	<ul style="list-style-type: none"> <li>Level 2 = 5 apartments (202, 203, 204, 209, and 210)</li> <li>Level 3 = 5 apartments (302, 302, 304, 309, and 310)</li> <li>Level 4 = 5 apartments (402, 403, 404, 409, and 410)</li> </ul> <p>Analysis of the submitted architectural documentation found these apartments have a private open space (usable balcony area + landscaping) with a minimum area of 15sqm and minimum depth of 3m.</p>	
<p><b>Objective 4E-2</b> Primary private open space and balconies are appropriately located to enhance liveability for residents.</p> <p><b>Objective 4E-3</b> Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p> <p><b>Objective 4E-4</b> Private open space and balcony design maximises safety.</p>		
<b>Comments:</b>		<b>Compliance:</b>
<p>Private open space and balconies have generally been orientated with the longer side facing outwards to optimise daylight access into adjacent rooms.</p> <p>Private open spaces and balconies predominantly face north, east or west.</p> <p>Whilst a percentage of apartments face south, this is necessary to ensure the development presents appropriately to Bull Street on the southern elevation.</p> <p>Additionally, apartments with southerly aspect, particularly those at higher elevations, will benefit from district views across the low density Cooks Hill heritage precinct, National Park open space precinct, and further afield to the coastline and the ocean. South facing apartments at lower levels retain good amenity due to the wide and treelined nature of Bull Street and the existing setback and low height of adjacent development.</p> <p>Private open space and balconies have been designed as an extension of the main living area by being located adjacent to the living area, dining room or kitchen. A combination of solid, partially solid and clear glass balustrades have been selected to respond to the location. They have been designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. Full width full height glass balustrades have generally been avoided. The UDRP supported the introduction of solid upstands to many of the balconies as a positive revision that will make balconies more amenable for resident use and will improve the buildings' appearance.</p> <p>The projecting 'saw-tooth' balconies have been integrated into the building design and the design of soffits.</p> <p>Powdercoated aluminium horizontal and vertical louvres are integrated into the external façade design to control sunlight and wind.</p> <p>Clothes drying and storage are not located on balconies.</p> <p>Air conditioning units located on balconies have been enclosed in screening structures which are integrated into the building design to address concerns regarding visual and acoustic impacts.</p> <p>The design and detailing of private open space and balconies have avoided opportunities for climbing and falls. Horizontal screening has not been proposed.</p>		Complies
<b>4F Common circulation and spaces</b>		
<p><b>Objective 4F-1</b> Common circulation spaces achieve good amenity and properly service the number of apartments.</p>		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
	<b>Tower A (seniors housing)</b>	



<p>1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>Tower A (seniors housing) has a single circulation core containing four lifts; two lifts servicing the residential aged care facilities (Ground Level, Level 2 and Level 3); and two lifts servicing the independent living units (basement car parking levels, Level 1, Level 4 to Level 13).</p> <p>The maximum number of independent living units off the circulation core on a single level in Tower A (seniors housing) is 11.</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites by stipulating that where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	<p>Satisfactory (Merit based assessment)</p>
	<p><b><u>Tower B (residential flat building)</u></b></p> <p>Tower B (residential flat building) has a single circulation core containing three lifts. The maximum number of apartments off the circulation core on a single level in B (residential flat building) is 11.</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites by stipulating that where Design Criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>As such, the modified development complies with the design guidance for this objective.</p>	<p>Satisfactory (Merit based assessment)</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p><b><u>Tower A (seniors housing)</u></b></p> <p>Tower A (seniors housing) has a single circulation core containing four lifts; two lifts servicing the residential aged care facilities (Ground Level, Level 2 and Level 3); and two lifts servicing the independent living units (basement car parking levels, Level 1, Level 4 to Level 13).</p> <p>Two lifts servicing a total of 107 independent living units means on average a single lift will service 53.5 independent living units, which is greater than the maximum of 40 apartments per lift described in this part of the ADG.</p> <p>An analysis of the lift performance for the development has been prepared in support of the modification application (see '<i>Traffic Analysis Report for 309 King St Newcastle</i>', prepared by KONE, version: report 1, created 8 February 2023). The vertical traffic</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>analysis shows the lifts proposed will have an 'excellent' overall performance and meet the performance requirements for residential development.</p> <p>The written justification for the proposed variation provided in the applicants' response to CN's Request for Information dated 22 November 2023 (letter prepared by GWH dated 1 December 2023) explains:</p> <p><i>"The proposal is considered adequate and compliant with the ADG objectives as:</i></p> <ul style="list-style-type: none"> <li><i>• there is more than a single lift, which provides redundancy of operation during lift maintenance or repair;</i></li> <li><i>• the lift study demonstrates that the circulation achieves good amenity and appropriate operational performance for the number of apartment relative to the lift numbers and configuration; and</i></li> <li><i>• corridors and circulation spaces have natural light, good sight lines, and will allow for the safe movement and casual interaction of residents."</i></li> </ul> <p>The non-compliance is able to be accepted on a balanced view.</p>	
	<p><b><u>Tower B (residential flat building)</u></b></p> <p>Tower B (residential flat building) has a single circulation core containing three lifts. Three lifts servicing a total of 152 apartments means on average a single lift will service 50.6 apartments which is greater than the maximum of 40 apartments per lift described in this part of the ADG.</p> <p>Documentation submitted in support of the current modification (as amended) demonstrates consultation with lift service providers and shows that the number of lifts, speed, and size are adequate to serve the number of apartments proposed. For more details see comments above.</p> <p>The non-compliance is able to be accepted on a balanced view</p>	Satisfactory (Merit based assessment)
<b>Objective 4F-2</b> Common circulation spaces promote safety and provide for social interaction between residents.		
<b>Comments:</b> Internal corridors have been designed to provide clear and well-defined circulation paths. Direct and legible access has been provided between the vertical circulation points (lifts) and apartment entries by giving straight, clear sight lines.		<b>Compliance:</b> Complies
<b>4G Storage</b>		
<b>Objective 4G-1</b> Adequate, well designed storage is provided in each apartment.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>

<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>1 bedroom</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom</td><td>10m<sup>3</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	<p>The submitted architectural documentation states that all the apartments (independent living units + residential apartments) are provided with the minimum storage volumes required in accordance with the number of bedrooms provided.</p> <p>For details refer to the development schedule prepared by Fender Katsalidis (drawings DA550 to DA556, revision 1, dated 6 June 2023)</p> <p>The storage for each apartment is provided by a combination of; (1) storage located and access from within the individual apartments, and (2) storage volume access from a common area (a secure storage cage within the carparking areas).</p> <p>At least 50% of the required storage is located within the individual apartments.</p> <p>Whilst the submitted documentation states there is enough storage cages located within the basement car parking areas for the number of apartments, a condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment A</b>) to ensure each independent living unit + residential apartments is allocated a storage cage of adequate size to meet the total minimum storage volume described under this part of the ADG.</p>	<p>Complies</p>
Dwelling type	Storage size volume									
1 bedroom	6m <sup>3</sup>									
2 bedroom	8m <sup>3</sup>									
3+ bedroom	10m <sup>3</sup>									
<p><b>Objective 4G-2</b> Additional storage is conveniently located, accessible and nominated for individual apartments.</p>										
<p><b>Comments:</b></p> <p>In addition to the storage volume located within apartments, storage volume for individual apartments accessed from common areas (individual storage cages located in car parking areas) is proposed to achieve the total storage volume required.</p> <p>The individual storage cages, capable of storing larger and less frequently access items, are located in the car parking areas, are secure, and are capable of being clearly allocated to specific apartments.</p>		<p><b>Compliance:</b> Complies</p>								

**Note: Re repealing of SEPP 65 and saving provisions.**

## State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 of the Resilience and Hazards SEPP provides a strategic land use planning framework for coastal management. The site is mapped to be located within the 'coastal zone', being the 'coastal environment area' and therefore the SEPP applies.

### Clause 2.10 - Development on land within the coastal environment area

The proposed development, as modified, will not result in any impact greater than that of the approved application and is consistent with the provisions and intentions of Chapter 2 of the Resilience and Hazard SEPP.

### Chapter 4: Remediation of Land

The provisions of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP') have been considered in the assessment of the modification application. Section 4.6 of Resilience and Hazards SEPP requires the consent authority to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Remediation Action Plan has been prepared for the site. There are no proposed changes to the approved remediation plan that form part of the Modification Application.

The approved remediation management strategy for the site is the excavation and off-site disposal of contamination (heavy metals and asbestos). The proposed development, as modified, will not result in any impact greater than that of the approved application and satisfies the requirements of Chapter 4 of the Resilience and Hazard SEPP.

The requirements and provisions of the policy are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the modification application.

The proposal development, as modified, is considered to be consistent with Chapter 4 Remediation of Land of the Resilience and Hazards SEPP, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

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

Development Application (DA2019/00711) was assessed in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH), which is repealed and replaced by State Environmental Planning Policy (Housing) 2021. The development application was approved on 09 March 2021 prior to commencement of the Housing SEPP and does not apply to the current modification application [Schedule 7A(2)(1)(d)]

The proposed modification will result in a reduction in significant residential aged care beds and a minor increase in the number of Independent Living Units .

The modification application has been assessed against the design principles and development standards of the SEPP SH to ensure that built form responds to the characteristics of the site and its form, as well as ensuring that appropriate support services have been provided.

The modified development continues to accord with the aims of SEPP Seniors by providing various housing types to accommodate seniors, within close proximity to existing services and infrastructure, that will meet the needs of an ageing demographic within the area. The proposed development, as modified, is considered to be consistent with existing and desired future character for the locality, as provided in CN's development control plan. The proposal is compatible with the scale of the surrounding built form.

The applicant has undertaken a detailed assessment of the proposal against the relevant provisions and design guidelines of the SEPP. This assessment demonstrates that the proposal satisfies the relevant site related design requirements and development standards applicable to 'self contained dwellings' and 'residential care facility'.

In this regard, the development standards contained within SEPP SH have been considered in the merit assessment of the modification application as a relevant matter for consideration under s.4.15(1)(a)(i).

#### Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the Newcastle Local Environmental Plan 2012 ('the LEP').

#### *Zoning and Permissibility (Part 2)*

The site is located within the MU1 Mixed Use zone pursuant to Clause 2.2 of the LEP. The proposed development comprises the following defined land uses: seniors housing, residential flat building and commercial premises. All proposed land uses are permissible in the zone.

The development, as modified, is consistent with the following zone objectives:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*

The development, as modified, provides a mix of commercial, seniors housing, and residential land uses within the built form. The residential accommodation will provide housing people close to employment opportunities within the city centre location. The commercial units on the ground floor will provide employment opportunities and street activation.

- *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.*

It is consistent with the approved built form, the proposal maintains ground floor commercial units to ensure street activation is maintained. The ground floor relationship with the streetscape encourages pedestrian traffic to create a vibrant space.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposed land uses are consistent with the approved development and are permitted with consent within the MU1 zone.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

As mentioned above, the development, as modified, is consistent with the approved built form and maintains ground floor commercial units.

- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The site is located within close proximity to the Marketown Shopping Centre and access to public transport to the 'West End' and 'East End' of Newcastle. The site is well located to service existing commercial centres within the city centre.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 3** below.

The modified development does not comply with the 'Height of buildings' development standard in Part 4 of the LEP - Clause 4.3. This is considered in the key issues section of this report.

**Table 3: Consideration of the LEP Controls**

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	45m	<p>Clause 4.3(2) of the LEP specifies that a 45m height applies to the subject site.</p> <p>The approved development has an overall building height of 46.2m, including the lift overrun, building parapets, pool balustrades and stairs to the communal open space. The extent of the approved variation is 1.2m or 2.6%.</p> <p>The modification application (as amended) proposes to increase the height to 51.75m. This results in a non-compliance of 2.25m to the prescribed height control (i.e., 45m in addition to 10% bonus subject to design excellence. This non-compliance represents a 4.5% exceedance to the 49.5m permitted height.</p>	No

		Refer to detailed discussion below.	
FSR (CI 4.4(2))	5:1	<p>Clause 4.4(2) specifies that a maximum floor space ratio of 5:1 applies to the subject site.</p> <p>The approved development has a floor space ratio of 5.45:1, resulting in non-compliance with the standard.</p> <p>The modification application proposes a FSR of 5.20:1, which represents a reduction in FSR.</p>	Yes
Heritage (CI 5.10)		<p>The subject site is located within the Newcastle City Heritage Conservation Area (HCA), which is listed as Conservation Area C4 in sch. 5 NLEP. The site is identified as a non-contributory building within the HCA and is within the vicinity of four heritage items.</p> <p>The proposed development, as modified, will have minimal effect on the heritage significance of the Newcastle City Centre HCA and nearby individual heritage items. The proposed development is located a sufficient distance away from nearby heritage items that will not directly impact upon their setting or interpretation.</p> <p>The proposed development, as modified, is consistent with the provisions of 5.10 of the NLEP.</p>	Yes

Acid sulphate soils (CI 6.1)		<p>An Acid Sulfate Soil Assessment was submitted with the development application to assess the potential presence of ASS within the footprint of the proposed basement excavation.</p> <p>The ASS Assessment indicates the absence ASS and confirmed that the preparation of an ASS Management Plan was not required.</p>	Yes
Earthworks (CI 6.2)		No additional impacts are created in relation to associated earthworks.	Yes
Building Separation (CI 7.4)	24	<p>A minimum separation distance of 22.6m is provided between the east facing habitable windows and apartment balconies of Tower A (seniors housing) and the west facing apartment balconies of Tower B (residential flat building).</p> <p>Whilst a minimum separation distance of 24m is required between buildings on the same site at this height, in locations where the separation distance is less than 24m the configuration/orientation of the Tower B (residential flat building) apartment balconies, combined with privacy screens to the Tower A (seniors housing) habitable windows, have ensured suitable visual privacy is still achieved.</p> <p>The apartments and their balconies have been configured to avoid direct</p>	No



		overlooking between dwellings. On balance, the building separation and balcony articulation are considered to achieve suitable visual privacy within the development and is considered acceptable in this regard.	
Design Excellence (CI 7.5)		<p>The architect of the original design, Fender Katsalidis, remains the architect of the modified design.</p> <p>Clause 7.5(3) provides several matters that the consent authority must consider in deciding whether to grant consent on land to which the design excellence provisions apply.</p> <p>The proposed development, as modified, is considered to maintain 'design excellence' and is of a high standard of architectural quality, having regard to the design excellence considerations provided in Clause 7.5(3) of the NLEP 2012.</p> <p>This finding was further confirmed by the UDRP who provided full support for the modification application as detailed in the <i>SEPP 65</i> assessment in this report above.</p> <p>Conditions of consent have been recommended requiring the development to be undertaken in accordance with the architectural design competition waiver issued by the Government Architect</p>	Yes

		NSW and the Design Excellence Strategy which was the basis on which the waiver was granted.	
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- Principal Development Standards

#### *Clause 4.3 Height of Buildings*

Clause 4.3(2) of the NLEP 2012 specifies that a 45m maximum building height applies to the subject site.

The approved development has an overall building height of 46.2m, including the lift overrun, building parapets, pool balustrades and stairs to the communal open space. The extent of the approved variation is 1.2m or 2.6%.

Under clause 7.5(6) 'Design Excellence' of LEP a 10% bonus applies to the 45m maximum building height of cl4.3(2).

Clause 7.5 of the NLEP permits the consent authority to grant an additional 10% height if the building demonstrates design excellence (subject to conditions) and has been reviewed by a design review panel. The NSW Government Architect issued a waiver which determined that an architectural design competition was not required to achieve the bonus, if the UDRP deemed that the proposed development exhibited design excellence.

On 9 March 2021, the HCCRPP granted development consent to the development including a building with a height of 46.2m, exceeding the 45m building height development standard in multiple locations across the site. The UDRP considered that the proposed development presented a well-considered built form that responded to its context and the controls for the site. The 46.2m building height was below the permitted 49.5m height (45m control plus 10% additional bonus) under subclause 17.5(6).

The modification application lodged in June 2023 initially proposed to increase the building height to 50.7m, i.e. 1.2m above the 49.5m height control.

The UDRP considered the modification application at its meeting of 30 June 2023, and were generally satisfied with the design. It did however identify that the hob between the living area and the balcony was undesirable, especially given that one of the building towers is for seniors. It also considered a flush transition to be a better design excellence outcome for the residential component as well. It was supportive of the building height being increased to accommodate an improved, flush transition from the living areas to the balconies.

To accommodate the UDRP request, floor heights were adjusted across the entire building. The minor adjustments to each floor resulted in a 1 metre increase in the building height, now 51.75m, which is 2.25m above the permitted height. The sections of the building exceeding the 49.5m height plane are primarily the balustrade surrounding the rooftop open space, awning over the rooftop communal open space and lift overrun. No private, habitable floor space is contained in the area encroaching the building height plane. It is noted that Tower A remains completely below the 49.5m height plane.

The height of the modified development represents a 4.5% exceedance to the permitted building height of 49.5m control (45m control plus 10% additional bonus).

The proposed modification is considered acceptable having regard to the following:

- The building scale at the ground level is established by the ground level and podium which was a key feature of the approved design. Accordingly, the additional height will not result in any significant change in the built form relationship with the street. The podium will continue to establish a suitable interface between the building and the public domain.
- The proposed built form and massing is considered to positively contribute to the quality and transitioning identity of the area. It is considered that, overall, the modified development will deliver an appropriate built form that is consistent with the desired future character, while remaining compatible with the scale of nearby developments.
- The proposed increase in height at the upper levels of the built form will result in a minor change in the building scale that is unlikely to be perceived or will be of low visual significance from the public domain. The building scale remains appropriate for the city centre location where higher density is encouraged.
- The non-compliances relate to rooftop elements (lift overruns, pool balustrades, stairs) which are not easily visible from the streetscape and do not significantly alter the bulk or scale of the modified development.
- The modified development will not result in any overshadowing to key areas of public domain.
- The site does not contain any 'key views' or 'vistas', as identified within the Newcastle Development Control Plan 2012.
- The built form presents a very similar scale as to what was envisaged under the mapped 45m height limit given design excellence is being achieved.

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

The Newcastle Development Control Plan 2012 (NDCP) applies to the site. The modified development remains consistent with the relevant provisions of the NDCP controls as detailed in the assessment of the development application.

The DCP assessment discussed below is limited to only those matters that are relevant to the changes proposed to the approved development. Other aspects of the approved development, which do not form a part of the modification application were considered as part of the original assessment and as such are not included below.

Section 3.03 - Residential Accommodation; Section 3.10 - Commercial Uses; Section 3.11 – Community Services; Section 4.04 - Safety and Security & Section 6.01 – Newcastle City Centre

The approved development was assessed and considered acceptable in respect to these sections of the DCP. The modified development does not propose any significant changes to these aspects. It maintains a scale and built-form appropriate for its location, in accordance with the intended outcomes of the relevant sections of the DCP.

Building separation distances and setbacks are generally compliant with the ADG requirements and residential solar access and natural ventilation outcomes have been determined to be satisfactory as detailed within the SEPP 65 assessment of this report.

Section - 7.02 - Landscape, Open Space and Visual Amenity

The modified development includes minor design changes to the podium and to the approved landscaping concept. The modifications to the landscaping are primarily to ensure the landscaping aligns with the alterations to the building design. The modification development retains all spaces identified within the existing consent for open space purposes. The landscape plans demonstrate that high quality useable spaces will be delivered that complement the building façade and link closely with the public domain.

Section 7.03 - Traffic, Parking and Access

1. Vehicular Access, Driveway Design and Crossing Location

a) Car Parking, Access Design and Management

Internal vehicular access, ramps, vehicular circulation areas, car parking and other associated uses have generally been designed to the relevant Australian Standards.

Small rigid vehicles ('SRV's') and ambulances are expected to be the largest vehicle to access the ground floor parking area of the modified development. The submitted vehicular turning movements plan for the SRV and ground floor combined Service/Ambulance bays generally meet compliance requirements and vehicles will be able to enter and exit the site in a forward direction.

Additional space has been provided adjoining the Ambulance/Service bays, to provide for stretcher access. Lifts have been designed with adequate length and width to accommodate an ambulance stretcher.

Signs, line markings and traffic flows and safety within the development parking area must be further detailed and designed. Additional safety elements such as flashing lights, mirrors at the ramps, speed and slow down signs will further enhance safety within the parking and access areas.

The architectural plans indicate there is approximately 3.8m height clearance at the proposed driveway entry to the car parking space, however the height of the ramp leading to the ground floor parking, Service/Ambulance bay and circulation areas are designed with a minimum 3.5m height clearance for SRV access.

#### b) Development Driveway Access

There is an approved subdivision development (DA2019/01171) for the adjoining NEX site. Review of this DA indicates that the existing driveway to the NEX building car park from King Street will be removed. Vehicular access to the NEX building car park will be relocated to the Bull St frontage.

This change to the NEX building car park access from Bull Street and the proposed development car parking from the King Street frontage are considered an improvement to traffic flows and trip distribution on the local streets, it also limits the impacts on traffic signals on Union Street.

#### c) Car Parking Management Plan

The security gate and any card reader at the entry to the car parking and times for opening and closing of the security gate must be managed for operational purposes.

Furthermore, residential visitor car, bicycle and motorbike parking and ambulance bay access must be made accessible at all times. A detailed operational management plan for future strata owners must be developed to facilitate long term sustainable operation of the vehicular access and service areas. Other elements such as waste bin storage, service area accessibility and safety, access to lifts and wash bays etc. must form part of the management plan.

An additional condition of consent is recommended to ensure a detailed operational management plan is developed to manage the car parking and access arrangement.

## 2. Parking

#### a) Parking rates

Revised architectural plans confirm that a total of 329 car parking spaces are proposed within the multiple level car parking. The applicant has compiled a detailed analysis of changes to car parking for the proposed modified development. The analysis includes approved vs proposed parking compliance and comparisons, breakdown of parking allocations and disabled parking comparisons and provisions.

Although the current DCP has savings provisions which allows the use of the previous version (Prior to 1 Nov 2022) of Section 7.03 car parking rates for the modified development, the applicant has chosen to achieve compliance with the current version for the residential component of the development. The use of the new parking rates for this development is supported.

The increase in the total number of car parking from the approved 285 spaces to 329 spaces is mainly due to the redesign of the car parking layout, reduction of car parking spaces for people with a disability and changes to the development use configuration.

Car Parking	Ground Floor	Basement Level 1	Basement Level 2	Comments
Residential Visitor	3	-	-	Three dedicated full time visitor spaces
Commercial / retail	8 Spaces	-	-	(Eight commercial spaces to be used as visitor spaces outside business hours)
Residential Car Parking	30	79	92	Total 201 residential car parking
Residential Aged Care (RAC)	7	-	-	Total seven spaces
Independent Living Units (ILU)	-	55	52	Total 107 car spaces (Includes option for converting nine standard spaces to six Adaptable spaces, and six confirmed disabled spaces)
Wash Bay	1	-	-	Dedicated wash bay
Service Bay / Ambulance Bay	2	-	-	Dedicated combined Service and Ambulance bays
<b>Total Car Parking</b>	48 (plus 2 Service and 1 Wash Bays - total 51)	134	144	326 (plus 2 Service and 1 Wash Bays)
Motorbike	-	4	5	Total 9 Motorbike spaces
Bicycle	10 Shared Secure Spaces and 15 residential secure spaces Overall, a minimum of 152 bicycle parking spaces must be provided for residential Units at 1 space per unit	8 Shared Secure Spaces		Overall, minimum of 162 bicycle parking must be provided. Individual bicycle storage proposed within storage areas for residential units. End user facility including showers and change rooms have been provided on Ground Floor Level

b) Off-street Car Parking

The proposed development has amended the number of residential apartments, Residential Aged Care (RAC), Independent Living Units (ILU) and Commercial/retail units as follows:

**Residential Units** 201 allocated car parking spaces:

- Studio / 1 bedroom - 20 units
- 2 bedroom - 83 units
- 3 bedroom - 49 units

**Residential Visitor** 3 dedicated car parking spaces:

**RAC** 7 allocated car parking spaces  
(50 beds and 6 staff)

**ILU -** 107 allocated car parking spaces  
(214 beds)

**Commercial / retail** 8 car parking spaces (co-shared as visitor spaces)  
(427m<sup>2</sup>)

The residential and commercial/retail development components of the modified development generally meet the DCP requirements for car parking, bicycle, and motorbike parking requirements. RAC and ICU components of the development meet the SEPP requirements.

c) Staged Development Parking Provision

The submitted Management Statement and associated plans indicates that either of phases 3 being the eastern residential tower or phase 4 being the western tower could be constructed first. The development therefore must ensure that adequate parking is allocated to the relevant development phase.

Phase 3 - Eastern Tower B containing 152 Residential Units

Phase 4 - Western Tower 109 ILU and 50 RCU

Western Tower car parking is based on SEPP is simpler to calculate, generally as follows:

- 109 ILU @ 0.5/B/R - 54 spaces
- 50 RCU @ 1 car park per 15 beds - 3 spaces

It is recommended that a minimum 54 car parking spaces be set aside for the ILU Phase 4 development and 3 car parking spaces be set aside for RCU Phase 4. This will ensure the allocated parking spaces are appropriately managed for the Phase 4 RAC and ILU Western Tower units.

Car parking conditions are recommended to be amended to reflect staging/phasing of the development.

d) Residential Visitor and Commercial off-street car parking

The development will provide 3 dedicated residential visitor parking and 8 commercial car parking spaces. The 8 commercial spaces are proposed to be used as visitor parking outside of business hours and multi-use of commercial car parking is supported by CN.

e) Motorbike Parking Provisions

Seven motorbike parking spaces have been indicated on the revised plans. This proposal is supported.

f) Bicycle Parking Provision

The revised plans propose approximately 25 shared secure bicycle parking spaces on the Ground Floor which seems to be intended for commercial and visitor bicycle spaces.

End user shower and toilet facility has been provided on the Ground Floor and seems to be adequate for commercial and RAC staff use.

Each residential unit is required to be provided with 1 bicycle space and overall, proposed bicycle parking spaces achieves compliance with the DCP. Revised plans indicate the use of available storage spaces for bicycle parking for residential units. No objections are raised to this proposal.

Approximately 11 bicycle spaces shall be equipped with electric charging stations for electric bicycles.

#### g) Plugin Electric Vehicle Charging (EVC)

CN has recently adopted a revised Traffic, Parking and Access DCP policy which requires such developments to provide Electric Vehicle parking within the development.

The DCP requires at least 5% of the car parking spaces to be installed with Level 2 or higher electric vehicle charging points and 100% of the parking spaces to be designed with electrical infrastructure (such as cable size, distribution boards and electrical circuitry) to allow for future installation of car charging points.

The development will have approximately 326 car parking spaces, thus a minimum of 16 car parking spaces must be installed with Level 2 or higher electric vehicle charging (EVC) points. The current proposal indicates that 7 residential car parking spaces will be installed with EVC. An additional 9 spaces will be required to be installed with EVC. This has been conditioned accordingly.

Conclusion: This development has proposed a balanced approach towards provision and general use of car parking and associated use, while having also considered the different users. The proposal is considered acceptable against DCP and SEPP provisions subject to appropriate conditions.

### 3. Traffic Management

#### a) Traffic Generation

The traffic report has considered traffic generation and trip distribution and their impacts on the surround road networks.

The traffic report indicates that the proposed development will generate an estimated AM peak of 140 vtpd compared to the previously approved AM peak of 124 vehicle trips (16vtpd increase) and PM peak of 120vtpd compared to the previous 105 vtpd (15 vtpd). Although there is a slight increase in the AM and PM peak traffic by this development, this will have minimal impacts on the overall road traffic on King St. As informed in earlier discussions, proposed future relocation of the NEX driveway will also assist in reducing the traffic numbers accessing King St and improve the existing arrangement.

Given that King Street has existing driveways leading to the property and the proposal will be similar in the context allowing for left-in/left out movements only, the impact on King Street traffic efficiency is considered to be sustainable.



As shown on the traffic report, traffic generation and distribution from the development are not anticipated to cause significant impacts to the surrounding road network and upgrades are not required. The adjoining traffic signals will be at a serviceable level. Furthermore, TfNSW had not raised any issues with the proposed development.

b) Alternative Transport

Daily traffic generation numbers may be further reduced as the development is close to the Newcastle Transport Interchange, has good access to bus services and taxis outside the site and is in walking proximity to shops. The development is within walking and riding distances to the waterfront and the future Newcastle City Commercial hub in Newcastle West.

Newcastle west end public domain strategy has identified cycleways in this growth precinct and the use of bicycles are being encouraged as an alternative transport and recreation purpose.

c) Construction Traffic

A concept construction traffic management plan includes the methodology for managing the staged development including construction staff parking provisions, crane location and planning for elements such as works zones.

It is anticipated that Bull Street will be predominantly used as the main construction location. Provision of Works Zone can be resolved at construction stage in consultation with the CN Traffic and Transport Section.

There is a potential for damages to the road infrastructure. It is recommended that a dilapidation report for public infrastructure be prepared prior to the start of any construction and at the end of the project to determine if any construction related damage has occurred and may necessitate repair works.

Conclusion: The submitted Traffic Report and subsequent responses have demonstrated that the proposed development will not be likely to cause traffic delays or impact traffic flows. Construction activities may have an impact on traffic for a short period. It is anticipated that these matters can be appropriately managed by the developers.

Pedestrian flows at each stage are proposed to be appropriately managed, with Stage 1 building entry being provided with a secured access at OC.

In consideration of the above factors and noting recommendations from the traffic report, it can be concluded that the development will be acceptable in terms of the traffic generation and pedestrian management.

4. Public Domain Works and Local Area Traffic Management (LATM)

a) King Street Frontage

Currently, the parking restrictions on King Street fronting the development entail a Bus Zone and Ticketed parking space. The bus stop fronting the development is a school bus stop and previous consultation with Keolis Downer has recommended that the proposal be formalise as part of the parking changes on King St.

Generally, the proposed development will require the following changes to parking restrictions on King Street:

- i) Relocation of the Bus Zone on King St due to the new proposed driveway.
- ii) Implementation of approx. 6m length of No Stopping zone east of driveway to meet sight distance requirements.
- iii) A pick-up/drop-off zone on King Street to support the parking demand of Aged Care facility and multi-use of such space for general use by NEX.

Driveways will be made redundant along sections of the King St frontage of NEX as well as the development. Therefore, relocation of the Bus Zone can be achieved by moving the Bus Zone further south fronting the current driveway on King Street (Current driveway will be made redundant in the future as per the proposal) as per Figure 1 below. The proposal was consulted with Keolis Downer (Bus Operator) when addressing the current issue of trees in the Bus Zone.

#### b) Bull Street Frontage

Bull Street currently has ticketed parking spaces and existing driveways providing access to the development site.

The development proposes a Loading Zone on Bull Street. The proposed Loading Zone will mainly be for waste collection and general servicing purposes for this development and the surrounding commercial area.

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

#### c) NCTC Approval Process for On-Street Parking Changes

Changes to the on-street parking including the loading Zone on Bull Street have been previously referred to Newcastle City Traffic Committee and an in-principle support (Informal) has been obtained on 16 November 2020 Agenda Item 507

Further consultation relating to this development has been carried out with CN's Traffic and Transport team and the 16 November 2020 Item 507 has been confirmed to still be current.

To ensure that the in-principle support is formalised, detailed parking plans will be required to be submitted to CN's Traffic and Transport team for review. A formal approval must be attained from NCTC.

The development has proposed that residents will access Tower A and B from Bull Street and it is anticipated that this will result in a considerable increase in pedestrian movement in the area. The desired pedestrian link based on the major trip attractions such as the Market Town, Aldi in Arnott St or recreational and community sports on the Southern side of the Parry Street.

It is envisaged that the new pedestrian through link between Bull Street and King Street will be utilized to access the proposed Bus stop on King Street, hence improving the accessibility to transport.

Due to an increase in the vehicular movement in Bull Street and Ravenshaw Street and a significant increase in walking-based trips by the proposed development, this would result in an upgrade of safe pedestrian crossing facilities in Bull Street and Ravenshaw Street

While a raised pedestrian crossing with kerb extension is recommended on Bull Street, a crossing designed to retain the pedestrian refuge at Ravenshaw Street and kerb extensions at corner of Bull Street / Ravenshaw St with WSUD features is recommended.

d) Public Domain Proposal

Having regard to the above engineering aspects, the following public domain works are considered to be required in conjunction with this development:

- Changes to the on-street parking traffic and scheme as discussed above.
- Proposed pedestrian amenity including safe pedestrian crossing required to support the anticipated high pedestrian movements in vicinity of the development as discussed in 7.2 above.
- Upgrade to footpath amenity including pavement, street trees and streetscape works.
- Provision of street lighting to achieve compliance with current standards and for the pedestrian links.
- Provision of new driveway access and removal of redundant driveway
- Provision of additional facilities such as on-street cycleway to allow for safe use of alternative transport.
- Infrastructure works such as stormwater connections, possible temporary ground and dewatering connections.

The above-noted in principle public domain works will require separate approval under Section 138 of *Roads Act 1993* and are as follows:

- Construct new kerb and guttering on all three site frontages.
- Full footpath reconstruction on King Street fronting the site in accordance with Council's 'City Centre Public Domain - Technical Manual'. The footpath is to be Pavement Type 5 (Asphalt with bluestone unit paving). Footpath reconstruction is to be coordinated with CN's installation of Smart City infrastructure (smart poles, pits, conduits, etc.).
- Full footpath reconstruction on Bull Street and Ravenshaw Street along the site frontages in accordance with Council's 'City Centre Public Domain - Technical Manual'. The footpath is to be Pavement Type 6 (Asphalt).
- Provision of street lighting (P3 category) along site frontages on Bull and Ravenshaw Streets.
- New street tree planting generally at 10m intervals on all site frontages. Tree planting to be undertaken with linearly connected tree vaults containing structural soil as per CN's standard drawing. Final tree details, locations, species and specifications to be determined by CN's City Greening team.
- Construct a mid-block raised threshold pedestrian crossing with compliant kerb extensions, ramps, drainage and lighting on Bull Street generally aligned with the proposed pedestrian link. The pedestrian crossing is subject to NCTC approval. If the pedestrian crossing is not supported, a refuge with compliant kerb extensions, ramps, drainage and lighting will need to be provided at this location.
- Construct a pedestrian crossing with compliant kerb extensions, ramps, drainage and lighting on Ravenshaw Street at King Street. Existing refuge to be retained with the new pedestrian crossing to reduce crossing distance. The pedestrian crossing is

subject to NCTC approval. If the pedestrian crossing is not supported, the existing refuge will need to be upgraded with compliant kerb extensions, ramps, drainage and lighting.

- Provision of kerb extension at corner of Bull St and Ravenshaw St and such be designed as WSUD raingarden or similar.
- Upgrade existing bus stop on King Street with two shelters and seats in accordance with Council/DDA standards. The potential relocation of the bus stop near the existing driveway of the club to avoid trees. Relocation of bus stop subject to NCTC approval.

Public Domain works will generally be in accordance with the City Centre Public Domain Manual and the Newcastle West Public Domain Concept plan. Streetscape elements such as the provision of cycleways and any Smart City infrastructure including street lighting shall be provided as part of the public domain upgrade works.

The proposed development has been assessed against the relevant DCP controls, and is acceptable, subject to draft conditions.

- Section 7.06 - Stormwater Management

- i) Stormwater Reuse, Retention and Treatment

The revised stormwater design indicate a combined 135 KL retention and reuse tank located on Level 1 at the southeastern end of the site. Stormwater will be captured from roof areas and directed to the 70 KL stormwater reuse tank. Stormwater from the 70 KL tank will generally be reused with the proposed buildings. Retention is provided via 65 KL tank for stormwater run-off control purposes.

A second 5 KL rainwater tank is also proposed to be installed on the Roof Level, which will allow for stormwater reuse within the Roof Level landscape area.

The basements and lower levels including car parking will be managed with a pits and pipe system, this is directed to a 3KL pump-out tank at the northwestern corner within Basement Level 2. The discharge from the basement pump-out pit will be directed to the Ground Level stormwater treatment system.

Hardscape run-off from Ground Level, Level 4 and Level 15 open areas will be provided with a series of pits and pipes and be directed to the retention tank. Discharge from the retention tank will pass via a proprietary Humeguard gross pollutant trap and a Stormwater 360 Jellyfish treatment system to manage pollutants. These structures will provide necessary stormwater treatment for the development prior to discharge to the on-road drainage network.

Stormwater quality and quantity has been designed to mitigate downstream impacts and to meet CN DCP requirements. The following features are noted in the design:

- Rainwater Tank on Level 1 (70 KL) for stormwater reuse.
- Rainwater Tank on Roof level (5 KL) for stormwater reuse.
- Stormwater Detention (65 KL) for stormwater run-off control.
- Pump-out tank on Basement level (3kL) for stormwater control.
- Proprietary products, Humeguard gross pollutant trap and Stormwater 360 Jellyfish treatment system, for site stormwater treatment.

- Discharge is proposed to connect into the existing on-road drainage system on King Street.

ii) Drainage Connection

The on-site stormwater system has been designed to discharge into the existing kerb inlet pits (KIP) on King St. A new connection will be required, and necessary approval(s) must be attained as per the Section 138 Roads Act application process.

iii) Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan must be provided with the relevant phase 3 and 4.

Conclusion: The principles of WSUD and the requirements of the DCP have been applied to the development and the design is generally consistent with the previously approved DA. The submitted stormwater plans and supporting documents have demonstrated that the development will not impact on the downstream stormwater system and is considered sustainable.

- Section 7.08 - Waste Management

Waste Management aspects are designed to ensure that CN Waste team can service the development, especially for the residential component of the development.

The following features for waste collection and servicing aspects are noted:

- Waste collection can be carried out from the proposed kerbside loading zone on the Bull Street frontage of the site.
- Waste bin pick-up storage area along Bull Street frontage has been re-designed and is accessible by approx. 10m-15m in travel distance from the collection point to the proposed Bull St Loading Zone.
- The bin storage area has been re-designed on the Ground Floor and First Floor areas. Provision for Bin Tug and trailer parking (Ground Floor) and design of a Waste Hoist has been made in the design. These features will assist to bring the bins to the bought to the Bull St Bin Holding area.
- Specialist waste bin collection room (for RAC) seems to be provided on the Ground Floor. Pick-up of such wastes could be done via the proposed service bays on the Ground Floor or Bull St.
- 2 x combined Ambulance Bay / Service Bays for servicing purposes. Additional area is available for Ambulance stretcher access purposes and lifts have been designed to accommodate for stretchers.
- The 2 Service Bays are designed for SRV vehicles and have adequate height clearances for SRV and ambulances.
- 1 wash bay is proposed, which can be used for car and general washing.

A Loading Zone on Bull St frontage has been supported by NCTC in-principle on 16 November 2020 Item 507 (See Snip 1 above). The loading zone can be used for the purposes such as waste pick-up by CN HRV and for general servicing purposes.

Overall, the proposed loading and servicing aspects are consistent with the approved DA and the intent for waste collection and servicing has been additionally enhanced with the redesigned development.

**(c) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iiia))**

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

**(d) Provisions of Regulations (s4.15(1)(a)(iv))**

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

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

The consideration of impacts on the natural and built environments includes the following: The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts. In this regard, potential impacts related to the proposed modified development have been considered in this report and are otherwise generally consistent with the original approved development.

The amended plans are acceptable having regard to the proposed height, external appearance, character, bulk, and scale of the proposed development. The proposal has been assessed by CN's Urban Design Review Panel on several occasions and is acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide.

The height of building development standards is exceeded by the proposed modification. However, this variation has been considered in the context of adjoining and potential future development. The development also has minimal impacts on surrounding development and is acceptable.

The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties and has suitably considered the potential future development of the area.

There are no significant views that will be impacted in this location and the proposal does not have a significant adverse impact on the adjoining properties in terms of view loss. The development will alter the general outlook due to the proposed changes in size and scale, but this is reasonable having regard to the height and scale of adjacent developments and other approved developments in the area.

All environmental impacts of the proposed modified development are considered to be acceptable. The proposed modified development is unlikely to generate any significant adverse social or economic impacts in the locality.

The proposed modification to the approved development will continue to support the broader West End Precinct redevelopment. The proposed modified development will continue to result in a positive economic impact and subsequent employment opportunities that will be generated by the development.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

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

As provided above, the site conditions do not prevent the proposed modifications, nor does the modified proposal generate significant adverse impacts. The site is considered suitable for the proposed development.

The proposed development is considered substantially the same development as that approved as there is no significant change to the nature, intensity, character and relationship to adjoining properties and will not result in any adverse amenity impacts in terms of overshadowing, privacy and views.

The proposed development is consistent with the desired character and built form of the Newcastle City Centre, providing new residential opportunities that are well placed, highly accessible and functional.

The non-compliance sought to the building height and building separation development standards of the LEP are acceptable having regard to the built form and potential impacts. The application has been reviewed and supported by CN's UDRP during the assessment and is supported.

The site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, and subject to the recommended conditions of consent.

Furthermore, there is no significant change to the location, form, or function of the development as approved. Therefore, the suitability of the site remains unchanged as a result of the proposed modifications.

### **3.2.4 Section 4.15(1)(d) - Public Submissions**

No submissions were received.

### **3.2.5 Section 4.15(1)(e) - Public interest**

No public interest issues arise as a consequence of the proposed modifications to the approved development. A comprehensive assessment has illustrated that there will be no significant adverse ecological impacts, heritage impacts or traffic impacts. It is considered that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.

The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for

the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

The amendment development is in the public interest given it will address the need for housing well located to essential services and transport nodes.

The development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

### 3.3 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 7** below.

**Table 4: Consideration of the Requirements under the Regulation**

Matter	Comment	Comply
<b>Clause 100 Application for modification of development consent</b>		
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
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are no significant changes to the external building form or features.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
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 section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Y



BASIX Certificate (CI 100(3))	The proposed modification does involve BASIX development and an updated BASIX Certificate has been provided.	Y
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does involve residential apartment development and a qualified designer statement has been provided.	Y

## 4. REFERRALS AND SUBMISSIONS

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### 4.1 Agency Referrals and Concurrence

The modification application is Integrated Development (s4.46)

The original development application was referred as an integrated development as approval was required from Subsidence Advisory NSW (SANSW) under Section 22 of *Coal Mine Subsidence Compensation Act 2017*. General Terms of Approval were issued and included as a part of the consent.

The modification application was referred to Subsidence Advisory NSW in accordance with the provisions of s4.46 of Environmental Planning and Assessment Act 1979. General Terms of Approval were issued on 28 July 2023 and included as a part of the modified consent.

### 4.2 Notification and Community Consultation

The application was notified in accordance with the Regulations, as detailed and no submissions were received.

## 5. CONCLUSION

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This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues including building height, traffic and parking been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

## 6. RECOMMENDATION

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It is recommended:

- That the Modification Application MA2023/00221 for Sec 4.55(2) Modification to DA2019/00061 at 309 King Street, Newcastle West be APPROVED pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* [ subject to

the draft conditions of consent attached to this report at Attachment A; and

- Pursuant to Clause 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 Schedule of Conditions

- **Attachment B** – Plans/Documents submitted with the application for assessment.
- **Attachment C** – General Terms of Approval – Subsidence Advisory NSW