

**JOINT REGIONAL PLANNING PANEL  
HUNTER AND CENTRAL COAST**

<b>Panel Reference</b>	PPSHCC-27
<b>DA Number</b>	DA2019/01150
<b>LGA</b>	City of Newcastle
<b>Proposed Development</b>	Tourist and visitor accommodation - Adaptive reuse of heritage building for a hotel and associated alterations and additions
<b>Street Address</b>	163 and 169-185 Hunter Street, Newcastle (Lot 1 DP 610140 and Lot 1 DP 749729)
<b>Applicant/Owner</b>	Iris Land Pty Ltd
<b>Date of DA lodgement</b>	25 October 2019
<b>Number of Submissions</b>	Nine
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	As the application relates to a Concept DA approval that had a Capital Investment Value (CIV) exceeding \$30 million, the development is deemed to be Regional Development in accordance with Part 4 of State Environmental Planning Policy - State and Regional Development (SRD SEPP) 2011.
<b>List of All Relevant Section 4.15 (1)(a) Matters</b>	<p><b>Environmental planning instruments: s4.15(1)(a)(i)</b></p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• State Environmental Planning Policy 65 - Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul> <p><b>Development Control Plan: 4.15 (1)(a)(iii)</b></p> <ul style="list-style-type: none"> <li>• Newcastle Development Control Plan 2012</li> <li>• Section 94A Development Contributions Plan 2009</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p><b>Appendix A</b> - Conditions of consent</p> <p><b>Appendix B</b> - Documents submitted with the application</p> <p><b>Appendix C</b> - External Referral Comments</p>
<b>Report prepared by</b>	City of Newcastle
<b>Report date</b>	8 April 2020

**Summary of s4.15 matters****Yes**

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

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**Legislative clauses requiring consent authority satisfaction****Yes**

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

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

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**Clause 4.6 Exceptions to development standards****Yes**

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

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions?

**Not  
Applicable**

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

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**Yes**

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

## **Assessment Report and Recommendation**

### **1. Background**

A detailed background of the Development Application process for the four-block Newcastle East End precinct is provided within the separate report to the JRPP on the modification to the Staged Concept Development Application (No. DA-2017/00701.02) which was lodged to and assessed concurrently by the City of Newcastle and now forwarded to the JRPP for simultaneous consideration and determination.

In summary, a Staged Concept Development Application (No. DA-2017/00701) setting floor space ratio, height and building envelope parameters for the four block precinct was approved by the JRPP in December 2017. The JRPP concurrently approved the physical works for the first (western-most) city block "Block 1/Stage 1" (No. DA-2017/00700) and works have commenced to this mixed-use development (ground floor retail premises and shop top housing). The key aspects of this development included:

- Construction of three (3) multistorey buildings ranging from 10 to 11 storeys in height, with retail uses at ground level and residential apartments above (Buildings A, C and D);
- Retention and adaptive reuse of the heritage former David Jones Building (corner of Hunter and Perkins Street) for ground level retail uses and residential apartments above (Building B);
- Retention of heritage facades on Hunter and Wolfe Streets;
- 225 apartments and some 3,650m<sup>2</sup> of retail floor area;
- Two (2) basement levels accommodating 273 car parking space (comprising 198 resident, 45 residential visitor and 30 retail spaces), motorcycle parking, and bicycle parking, storage areas for apartments, waste facilities and service and plant;
- A publicly-accessible (privately owned) mid-block pedestrian connection linking Perkins Street and Wolfe Street, site preparations works, including demolition of all structures (except heritage buildings and/or facades proposed to be retained), excavation and remediation; and
- Public Domain Works.

Some modifications [section 4.55(1A)] to the Stage 1 physical works DA were approved by the City of Newcastle in February 2019. The modifications are listed below (from consent)

- Minor modifications to apartment layouts (Building C and D);
- Increase in the number of apartments from 225 to 227 (Building C and D);
- Reconfiguration of the retail tenancies and alterations to retail entries and glazing;
- Alterations to the materials and finishes (Building A only);
- Inclusion of solar panels on the roof (Buildings A, C, and D) and increase in rooftop plant area (Building A) only;
- Increase in the height of the roof level of Building C to accommodate structure and construction requirements. This does not increase the approved maximum height of Building C;
- Minor alteration to signage zones in the signage strategy for Building A;
- Minor increase in the footprint of the basement to accommodate additional plant and services;
- Alterations to the loading dock and associated changes to podium communal space (Building A);
- Reallocation of car parking for retail staff to retail customer and staff parking;
- Alterations to substation on King Street; and
- Alterations to fire egress.

A Development Application for physical works on Block 2 (Stage 2) was approved by the JRPP in March 2019. The proposed Stage 2 works were not consistent with aspects of the approved Staged Concept Approval (DA-2017/00701) so a concurrent application was lodged to the Staged Concept approval and simultaneously approved by the JRPP (Modification 01).

This current development application seeks amendments to the Stage 1 physical works, principally the use and building works within the heritage-listed former David Jones building located at the north-west corner of Block 1 (Building B). This constitutes a new development application but again seeks (in a separate application) modification to the overarching Staged Concept Approval (DA-2017/00701 – Modification 02), as the intended changes are not consistent with aspects of that approval, including building envelope/built form and floor space ratio.

#### Pre-lodgement Meeting(s)

A preliminary design of the development was presented to City of Newcastle staff on 20 March 2019 at a pre-lodgement meeting. Formal correspondence addressing numerous matters was issued to the applicant's planning consultant on 8 April 2019.

The proposal was also presented to the Urban Design Consultative Group at a separate meeting on the same day. (Refer to later sections of this report relating to the outcomes of these and other meetings with the UDCG and the alternative design excellence process).

## **2. Site and Locality Description**

The subject site ("Block 1") comprises two properties: 163 and 169-185 Hunter Street, Newcastle (Lot 1 DP 610140 and Lot 1 DP 749729) and generally comprises the city block surrounded by Hunter Street (northern frontage of 66m), Perkins Street (western frontage of 91), King Street (southern frontage 58m) and Wolfe Street (eastern frontage of 55m).

The properties within the block that do not comprise the subject site are 159 Hunter Street (north-eastern corner of site) and the Telstra Exchange at 114 King Street (south-eastern corner of site).

Block 1 forms the western-most block of the four-block 'Newcastle East End' project area located in the City Centre between the Hunter Street Mall and the Christ Church Cathedral (refer **Figure 1**).

The site has a total area of 6,556m<sup>2</sup> and has a fall of approximately 2.3m from RL 5.0m AHD at the south-eastern corner at Wolfe and King Streets (being near the lower slope north of Cathedral Park) to RL2.7m at the north-western corner at Hunter and Perkins Streets.

The approved development is under construction but does not currently accommodate any uses. With the exception of the former David Jones building and other heritage elements on Hunter and Wolfe Streets, all structures have been demolished. At the time of writing, site preparation works and the basement have been completed and level four is currently under construction.

**Figure 1:** Aerial photo showing the location of the subject site (Building B in red), Stage 1/Block 1 outlined in dashed blue, and part of Block 2 of the Newcastle East End Precinct to the east (Source: SIX Maps from Figure 3 SJB Planning, Statement of Environmental Effects p14)



The DA which is the subject of this report principally relates to the former David Jones building (referred to as 'Building B' as given in the Stage 1 approval) which is a five (5) to six (6) storey brick building, that comprises two (2) building elements:

- The former Scott's Ltd Building (1914), which is located on the corner of Perkins and Hunter Streets; and
- The former D. Mitchell & Co. Warehouse building, which adjoins the former Scott's Ltd Building (1914) and fronts Perkins Street.

The *surrounding land* is described as:

- North - development along the northern side of the Hunter Street Mall is a mix of two (2), three (3) and four (4) storey buildings with retail at ground and typically commercial office space above, and includes two (2) heritage buildings at 160 and 170 Hunter Street;
- West - Perkins Street forms the eastern boundary of the site. On the western side of Perkins Street is a mix of commercial development of various scales and building forms. Uses comprise the Crown and Anchor Hotel, retail shops and offices and the former Victoria Theatre. The streetscape presents a mixture of scale and form.
- South - The southern boundary of the site is King Street. On the opposite side of King Street, between Wolfe and Perkins Streets, is development of 2-6 storey commercial and residential development. Further to the south-east is Cathedral Park, the Christ Church Cathedral and the Newcastle Club above large sandstone retaining walls and steeply rising topography.
- East - Wolfe Street forms the eastern boundary of the site and falls steeply from King Street toward the Harbour. The eastern side of Wolfe Street is occupied by 2-3 storey retail and commercial buildings and the Masonic Hall/Lyrique Theatre building.





**Figure 2:** Former David Jones building (Building B) within Block 1 under construction and following demolition of buildings (Source: Figure 5 SJB Planning, SEE p15)



**Figure 3:** Former David Jones building as viewed from corner of Hunter and Perkins Streets. Former Scotts Building (1919) at corner and adjoining Mitchell and Co Building at right.

### 3. Subject Description

Development Application (No. 2019/01150) seeks consent to amend part of the works approved in the Stage 1 (Block 1) development approval, principally in relation to Building B (former David Jones building). The key changes proposed are:

- Change in the use of Building B [from shop-top housing (16 apartments) with ground level retail uses] to a 104 room hotel with associated ground level restaurant, bar, gaming lounge and roof-top bar;
- Provision of a new mezzanine level accommodating hotel staff amenities and facilities;
- Alterations to, and reinstatement of floor levels of the former D. Mitchell & Co. Warehouse portion of the building fronting Perkins Street;
- Restoration and repair of facades and openings;
- Demolition of existing rear (southern wall) above the ground level, lift lobby and stairs;
- Construction of new lift cores and fire stairs;
- A rear addition incorporating part the retained portions of the southern wall; and
- A roof-top addition, incorporating guest rooms, a roof-top bar and terrace.
- Miscellaneous internal alterations to accommodate the hotel rooms.

The application proposes the following consequential amendments to the approved Stage 1 DA-2017/700 (currently under construction):

- An increase in the gross floor area (GFA) from 26,224m<sup>2</sup> to 27,466m<sup>2</sup> (+1242m<sup>2</sup>);
- Increase in FSR from 4:1 to 4.19:1;
- A reduction in the total apartment numbers from 227 to 211 apartments;
- Alterations to the car parking allocation to reflect the reduction in apartments and introduction of the hotel use (Conditions C14, E20, F3);
- Minor alterations to waste facilities, service area and the lift within the basement;
- Amendments to window openings of Apartment 7.01 on Level 7;
- Alterations to the configuration east-west laneway where it adjoins Building B;
- Landscaping to the roof-top bar terrace and private terraces and additional landscaping at the ground level to the rear of Building B adjacent to the laneway;

- Additional demolition works to Building B including (but not limited to): existing shopfronts and awnings; lifts and stairs; part of southern wall (due to structural issues) and new opening; to parts of existing floor slabs; realignment of existing floors; walls in existing window openings; and existing roof; and
- Amended Stage 1 signage strategy.

A detailed description of each change will be provided within the relevant section later within this report.

#### Relationship to Concept DA-2017/00701.01 and Stage 1 DA-2017/00700

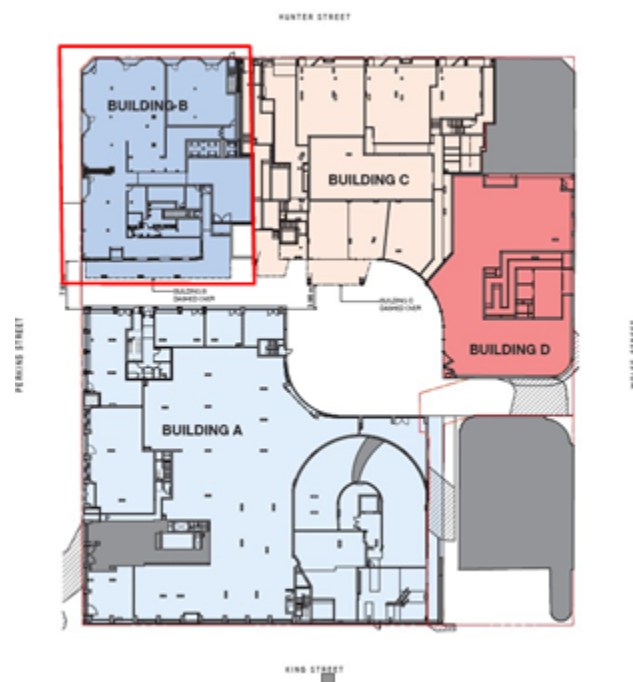
Should the application be approved, the works will need to operate in conjunction with the development consent issued for the Stage 1 works (under construction). In this regard, this application seeks modification to some conditions within the existing Stage 1 consent pursuant to s4.17(1)(b) and 4.17(5) of the *EP&A Act 1979* and Clause 97 of the *EP&A Regulation 2000*. Refer to **Appendix A**.

The works to Building B within DA-2019/01150 that are the subject of this assessment report result in a development that is *inconsistent* with aspects of the approved Staged Concept Approval as amended (DA-2017/00701.01).

However, the DA *does* conform with the proposed further modification to the Staged Concept DA which was lodged and assessed simultaneously, and which is the subject of a separate report to the JRPP (DA-2017/00701.02). Specifically, modification is sought to the consent, being the list of Plans and Documents Schedule, Condition 4 (amended GFA for whole precinct and Block 1); Condition 5 (amended FSR for entire precinct and Block 1); Condition 6 (amended building envelope plans); and Condition 44 (altered core access).

Unless otherwise indicated in this report, the current DA addresses/satisfies the other required conditions within the Staged Concept Development Consent.

**Figure 4:** Buildings within Block 1 (Level 01) showing proposed layout of Building B (Source: Design Report SJB Planning, p14)



**Figure 5:** Photomontage of Proposed Additions to Building B within Block 1 (Left: as viewed from corner Hunter and Perkins Street; and right: southern in-fill addition as viewed from Perkins Street. showing proposed layout of Building B (*Source: Cover Page, SEE, SJB Planning*))



The key documents and plans of the proposed concept developments are provided at **Appendix B**.

#### Design Excellence Process

Under Clause 7.5(4)(c) of Newcastle Local Environmental Plan (NLEP) 2012 the proposal would require a design competition as it is located on an identified key site and exceeds \$5 million. However, subclause (5) enables an exemption from a design competition if the Director General confirms one is not required.

On 7 March 2017, the NSW Government Architect (as a delegate of the Director General) granted an exemption to the requirement for a design competition for the Newcastle East precinct concept development site, subject to the implementation of alternative design excellence process in accordance with the Director General's Design Excellence Strategy. This exemption was applicable to the Precinct and each future stage of the four blocks of the precinct/Concept DA Area, with Stage 1/Block 1 being the first.

The alternative design excellence process is based on the Design Excellence Strategy. Part of this Strategy included the establishment of a Design Review Panel (DRP) to assess each individual stage. The nominated DRP is Council's Urban Design Consultative Group (UDCG). As part of their role, the UDCG are to advise the Government Architect if there is concern that the process is not delivering design excellence or is deviating from the terms outlined. In this case the process may be reset.

The Design Excellence Strategy for the Stage 1 DA involved different architectural firms, with individual firms responsible for the design of particular buildings within Block 1. The design approach for this DA is consistent with the design strategy for the Stage 1 DA as outlined below:



- SJB Architects has been maintained as the architect for the subject building (Building B);
- No changes are proposed to Building A, which was also designed by SJB Architects;
- TZG remains the architect for Building C and has prepared amended drawings to address the consequential amendments to Building C arising from this proposal;
- No changes are proposed to Building D, which was design by DBJ;
- City Plan Heritage has been maintained as the heritage architect for this proposal. In addition, NBRS Heritage Architects had a peer review role; and
- SJB Architects has been maintained as the lead architect and has prepared the amended precinct drawings which capture the consequential amendments to the Stage 1 DA arising from this proposal.

On 13 August 2019, GANSW granted a competition exemption for the DA on the basis of the continuation of the review process outlined in the approved strategy. A copy of correspondence from GANSW granting the exemption, is included at Attachment 3.

The Statement of Environmental Effects (SJB Planning p28) states:

*“Two (2) design meetings were held with Newcastle Council’s UDCG on 20 March 2019 and 24 April 2019. The design of the proposal evolved through this process in response to feedback from the UDCG, as well as ongoing review and analysis of the design team. Further details of the alternative design excellence process, including the feedback from the UDCG, is provided in the Design Report (accompanying the application).”*

The above submitted documentation has been assessed and it is considered that the alternative design process has been followed and is a sound approach to the overall site planning of Block 1. This is confirmed by the comments/notes of the UDCG meeting held on 19 February 2020 which considered the development application:

**Table 1:** UDCG Comments and response  
Background summary

**(a) FORMER DAVID JONES STORE**

**20 March 2019**

*The former retail building comprising the original Scott & Co Store and Mitchell Warehouse later forming David Jones Department Store is located at the corner of Hunter and Perkins Streets Newcastle. The heritage listed building within Newcastle East Stage 1 has been granted development consent for adaptation as retail and residential apartments within the approved development of Newcastle East Stage 1. Newcastle East Stage 1 is currently under construction with demolition of previous buildings to the south and east of the site completed.*

*The submitted amendment to the approved development seeks to change the adaptation of the former David Jones Store to a boutique Hotel of 100-110 guest rooms with ground floor bar, dining, reception and retail areas; mezzanine staff area; guest rooms to the existing levels 2-5 and construction of an additional level 6 housing further guest rooms together with a roof top bar and dining area. A further addition is proposed to the southern side of the existing building in the form of a colonnade at ground floor with metal and glass clad floors above rising to a vaulted roof. The addition would house 2 additional guest rooms on each of levels 2-5.*

**24 April 2019** No Change

Design Quality Principles	Assessment
<b>Principle 1: Context and Neighbourhood Character</b>	Satisfactory

UDCG comments:

**20 March 2019**

*The subject site comprises the northwest corner of a city block encompassed by Hunter, Wolfe, King and Perkins Streets Newcastle. The block was, until commencement of approved development, occupied by the former David Jones Department Store together with earlier retail buildings facing Hunter, Perkins, King and Wolfe Streets and a five-level carpark to the King and Perkins Streets elevations. The block represents the eastern end of the central retail precinct of Hunter Street. Much of the retail precinct has declined in patronage and use. Adaptive reuse is encouraged under current zonings and planning controls. The area forms part of the Newcastle City Centre Conservation Area. Several buildings in the block and in adjacent street frontages are listed as of heritage significance in Newcastle LEP.*

*The approved block development forms the first stage of the Newcastle East development proposal, providing new residential apartments in a context of adaptively reused existing buildings including retail and potential entertainment areas together with civic spaces within the block.*

**24 April 2019** - No Change

**19 February 2020** - No Change

**Principle 2: Built Form and Scale**

UDCG comments:

**20th March 2019**

The amended design retains the street elevations of the existing David Jones Building and elements of interiors including pressed metal ceilings, structural framing and window joinery.

The previously retained lift and stair core are to be replaced.

The key amendments to the exterior comprise an additional storey on the roof setback from the existing parapet, and a metal and glass

Satisfactory

clad addition to the southern side of the retained building rising over an open colonnade with metal cladding to the southern elevation and glazed infill to east and west elevations with vaulted roof above the fifth floor level.

The group supported the colonnade as a positive element within the pedestrian through route.

The striking form of the vaulted addition above raised several issues: -

- The southern metal clad elevation at 5.5m is within the 6m separation distance of the apartments to the south and potentially will impact on the outlook from the northern apartments of the building to the south [Block A]
- The east and west facing fully glazed infill's to the addition appear to require more sustainable sun protection.

There is a 'disconnect' between the vaulted addition and the additional floor over the existing roof. Further design development is required to better integrate the two elements.

24 April 2019

Following recommendations provided at the Design Excellence Review meeting of 20 March 2019, the following amendments are noted:

- The roof to the additional storey has been refined to a low pitch form with tapered eaves to exposed northern and western edges concealing gutters and downpipes and forming a neutral element viewed in relation to the original parapets of the existing building.
- The vaulted addition to the southern elevation has been investigated further as to appropriate height and form. Flat roofed, recessed, and vertically splayed elevations were presented in conjunction with varied heights to the original vaulted proposal. The option showing the vault rising to half the height of the additional storey is supported by the

<p>Group.,</p> <ul style="list-style-type: none"> <li>• The circular insertion at the top of the vault proposed in conjunction with future signage was not supported by the Group. This element should be further considered in conjunction with resolution of signage. It could well have a horizontal capping to provide a sensitive transition to the new building on the immediately opposite side of the lane.</li> </ul> <p><b><u>19 February 2020</u></b></p> <p>Following recommendations provided at the Design Excellence Review meeting of 24 April 2019, the following amendments are noted: -</p> <p>The proposed dormers and additional bay to the southern side of the hotel have been amended.</p> <p>Dormers have been deleted with the additional storey articulated as an 'arcaded' elevation of vertically proportioned openings framed by thin metal blades. The design provides emphasis to the transition from existing to new construction whilst referencing the existing arcaded articulation of the existing floor immediately below.</p> <p>Changes to the western elevation of the additional bay to the rear of the building comprise deletion of the metal vaulted top, lowering of the roof level to align with the top of the existing parapet to the Scott's Building and introduction of similar fine metal blade detailing to that proposed for the new roof addition.</p> <p>The group supported both amendments as providing cohesion of the additional storey height and rear bay with the existing built form.</p> <p>Consideration of adapting the corner dome for use in conjunction with the rooftop bar has been abandoned due to the extent of impact upon heritage significant fabric.</p>	
<p><b>Principle 3: Density</b></p> <p><u>UDCG comments:</u> <b><u>20th March 2019</u></b></p> <p>The additional works will exceed the FSR, impacting on the permissible floor area of later</p>	<p>Satisfactory</p>

<p>stages of Newcastle East.</p> <p><b><u>24 April 2019</u></b> - No change</p> <p><b><u>19 February 2020</u></b></p> <p>The additional storey to the hotel requires a variation under Clause 4.6 to the allowable FSR of 4:1, the proposed FSR of 4.19:1 being generated by the 200m<sup>2</sup> in the roof extension</p>	
<p><b>Principle 4: Sustainability</b></p> <p><u>UDCG comments:</u> <b><u>20th March 2019</u></b></p> <p>Issues raised above in relation to heat load on the vaulted addition need to be addressed.</p> <p><b><u>24 April 2019</u></b></p> <p>Options for solar screening of the western elevation to the vaulted additions were discussed, the indicated screening being of metal horizontal slats provided in 'top down' as opposed to 'floor up' setout.</p> <p>Reuse of rainwater was discussed and is encouraged.</p> <p>Integration of services with those two adjoining buildings is being investigated and will determine the form and location of plant rooms.</p> <p><b><u>19 February 2020</u></b></p> <p>External solar screening to the western elevation of the southern addition is supported subject to clarification of access for cleaning and maintenance.</p>	Satisfactory
<p><b>Principle 5: Landscape</b></p> <p><u>UDCG comments:</u> <b><u>20 March 2019</u></b></p> <p>The subject areas of amended design are currently either rooftops or hard paving. Treatment of the colonnade paving should be closely integrated with approved hard and soft landscaping to the through way.</p> <p>Any periphery landscaping to the roof deck needs to be appropriate having in mind</p>	Satisfactory



<p>climatic extremes of wind and heat.</p> <p><b><u>24 April 2019</u></b></p> <p>Perimeter planters to deck areas have been detailed with safety/wind screening attached.</p> <p>Planters and acoustic screening should also be provided to the southern and eastern enclosures of the rooftop deck.</p> <p>Street furniture and paving leading to the hotel are to be considered in the design development.</p> <p><b><u>19 February 2020</u></b> - No change</p>	
<p><b>Principle 6: Amenity</b></p> <p><u>UDCG comments:</u> <b><u>20 March 2019</u></b></p> <p>The reduction in the separation distance from 7m to 5.5m between the southern wall of the proposed addition to Block B and the northern wall of Block A needs to be very carefully resolved in terms of amenity impact.</p> <p>Treatment of the rooftop deck requires further development including provision of wind screens to the periphery, acoustic treatment /isolation of adjacent guest rooms and clarification of sound emissions. Any management statement that no amplified sound will be permitted on the open deck is not sufficient as similar management policies have seen the amplified sound source set inside the operable wall line with all doors open.</p> <p>The interior layouts of some guest rooms do not satisfactorily relate to the existing window openings. Modification of room layouts should be provided to enhance the quality and character of the existing external windows.</p> <p><b><u>24 April 2019</u></b></p> <p>Any plant placed on the roof of the new floor is to be 'non-noise generating' in nature, such as hot water heating.</p> <p>The amended guest room layouts better enhance existing windows</p>	<p>Satisfactory</p>

<p>Management of the return area to the roof top deck is to be facilitated by detailed landscaping and visual oversight from the bar.</p> <p>The interface of the southern elevation and the north facing apartments to Building A has been illustrated in detail covering privacy and view impacts.</p> <p><b><u>19 February 2020</u></b></p> <p>The principle entry to the hotel has been relocated to the Hunter Street frontage in response to cycle way planning.</p> <p>Improvements to room layouts relative to existing window openings and divisions are supported.</p>	
<p><b>Principle 7: Safety</b></p> <p><u>UDCG comments:</u> <b><u>20th March 2019</u></b></p> <p>Wind protection screens about the roof deck are to be designed to prevent climbing.</p> <p>Location of planters and furnishings is to maintain BCA requirements for balustrading.</p> <p>It is clarified that POPE licensing [Places of Public Entertainment] is no longer applicable, the provisions for occupation and escape now being determined by provisions of the BCA.</p> <p><b><u>24 April 2019</u></b> - No change</p> <p><b><u>19 February 2020</u></b> - No change</p>	Satisfactory
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDCG comments:</u> <b><u>20th March 2019</u></b> - Not addressed at this stage</p> <p><b><u>24 April 2019</u></b> - No Change.</p> <p><b><u>19th February 2020</u></b> - No change</p>	Satisfactory
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDCG comments:</u> <b><u>20th March 2019</u></b></p>	Satisfactory

*The Group supported the form of the southern vertical addition subject to resolution of amenity and sustainability issues.*

*Treatment of the southern wall to the vertical addition should be reviewed in terms of outlook from Block A.*

*Treatment of the additional floor requires design development to better relate to the existing articulated parapet and overall building form.*

*The small vaulted dormers to the west elevation of the additional floor do not align with arched openings in the retained building below and should be reconsidered.*

#### **24 April 2019**

Discussions as to the size and height of round-headed dormers to the western elevation considered options presented. The Group recommended the assertiveness of the dormer be played down with the dormers presented as separable hoods placed externally to the main western wall of the additional floor and set down by at least 0.5m, preferably more.

The western elevation of the southern vaulted additions is to be setback to at least the rear line of the existing western elevation to expose the existing wall moldings and wall depth.

Further resolution of external finishes to the additional floor viewed behind the vaulted addition is required.

A signage strategy is required utilizing discrete signage including additional signage at street soffit level.

The warm colour palette shown in amended drawings is supported, with a deep bronze finish considered more appropriate than the black illustrated in earlier documents.

#### **19th February 2020**

Changes to the western elevation of the additional storey and to the rear bay addition [see 1 Built Form and Scale] are supported on the basis of design refinement and cohesion with existing built form.

<p>Indicative changes to external signage are supported in principle. These are the subject of a separate DA.</p> <p>Public Art is recommended to be the subject of allowances for design development/mockups to ensure effective outcomes.</p>	
<p><b>Amendments Required to Achieve Design Quality</b></p> <p><u>UDCG comments:</u></p> <p>Further design development is to be provided for review under the Design Excellence process.</p> <p>Issues identified above are to be addressed</p>	<p>All issues identified are considered satisfactory.</p>
<p><b>Summary</b>  <b>UDCG comments:</b>  <b><u>20th March 2019</u></b></p> <p>The Group supports the proposed amendments in principle, subject to resolution of design and amenity issues identified in this report. Key elements yet to achieve design excellence are identified as:</p> <ul style="list-style-type: none"> <li>• The resolution of internal room layouts, relative to existing window openings.</li> <li>• The separation distance between the southern vaulted addition and the northern elevation of Block B.</li> <li>• Treatment of the southern elevation.</li> <li>• More sensitive articulation of the additional floor, particularly in relation to the retained parapet, corner design and overall roof form.</li> </ul> <p><b><u>24 April 2019</u></b></p> <p>The Group supports design amendments as presented, subject to resolution of design and amenity issues identified in this report. Key elements yet to achieve design excellence are identified as:</p>	

<ul style="list-style-type: none"> <li>• Setback of the southern addition to at least the rear of the existing western side wall.</li> <li>• Lowering of arched dormers by at least 0.5m, preferably more.</li> <li>• Consideration of alternate discrete signage rather than a prominent sign in the circular insert to the vaulted top of the proposed southern addition.</li> <li>• Top of new bay to be reconsidered to better relate to its immediate context.</li> <li>• Detailed landscape and surveillance of the western side deck return including possible utilization of the adjacent corner dome in the detailed design.</li> </ul> <p><b><u>19th February 2020</u></b></p> <p>The Group supports design amendments as presented, subject to resolution of design and amenity issues identified in this report.</p>	
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#### **4. Consultation**

DA-2017/00701.02 (relating to modification to the staged development concept DA) and DA-2019/01150 (relating to former David Jones building within Stage 1/Block 1) were exhibited concurrently. The proposed developments were publicly exhibited in a newspaper notice, placed online on CN's webpage, and notified by letter to adjoining and nearby properties (on 31 October 2019), with the exhibition period extending from 31 October to 18 November 2019.

Nine (9) submissions were received specifically referencing both DAs (ie this application and the modification to the Concept DA-2017/00701). Hence all the matters raised in the Concept DA and DA-2019/01150 submissions are summarised in this report. Unless specifically indicated below, each submission raised the same issues listed. Two of the submissions were received by Newcastle Inner Residents Alliance (NICRA) and Newcastle East Residents Group (NERG).

##### Modification process: Not substantially the same as existing approved DA

- Significantly changed - departs from a residential and commercial development to a hotel/serviced apartments/bar etc.
- Introduction of this use will change the amenity to the detriment of wider community
- Numerous and ongoing modifications make a mockery of the approval process (fourth DA for the Stage 1 site).
- No longer recognisable as the development originally approved.
- Increased impacts in terms of noise and traffic.
- Previous modifications whittle away initial intent.
- The present approval is already substantially different to original approval.

##### Erodes credibility of JRPP

- JRPP have not applied enough rigour to each successive modification to date.
- "Tick box" exercise devalues planning process.



#### Building Setbacks (6m) not complied with

- Will impact on the heritage value of the retained facades and create an unattractive wall massing.
- Rejects already approved 6m setback reductions for Block 3.

#### Increased FSR

- Will amplify the bulk and height of an already dominating building complex.
- The site is enormous and the developer could arrange space more efficiently without the need to increase floor area.
- Applicant's justification which is to "facilitate the retention and adaptive reuse of the heritage buildings and fabric for a hotel use" is inadequate and believe the hotel can be accommodated within the approved GFA allocation. No supporting evidence to substantiate statement that "*the departure of the FSR control does not give rise to adverse visual, amenity, or heritage impacts*".

#### Increased Building Heights

- The height will negatively impact on neighbouring properties.
- Increases height by 15% which is excessive and fails to respect heritage significance of the building.
- *Note: this is incorrect. The greatest height increase is at the rear of the building, with a proposed increase of 3.23m or 12.5% for this part of the building.*

#### Heritage Impacts

- The historical significance of the Hunter Street and Perkins Street elevations will be completely dominated by the massing of the new buildings. Architecture that relies on facadism sets a low benchmark in terms of heritage buildings.
- The rear addition to the former David Jones Building and additional storey will produce adverse visual, amenity and heritage impacts. The remaining voids will be filled, resulting in solid massing.

#### Impacts of Rooftop Bar

- to existing and proposed nearby residents.
- Noise travels and is difficult to control.
- Bar should be contained to within the building where can be managed/mitigated.

#### Narrowing of public laneway

- will compromise a pleasant outdoor environment and a human scale.
- enclosing, claustrophobic tunnel effect.
- further limits outdoor spaces.
- detrimental in visual and physical sense to diminish laneway.

#### Inadequate Public Exhibition Process of DAs

- Public access to the documents during exhibition process was excessive (volume of hard copies) and/or inadequate (not available online for much of the exhibition time) and involved a lack of due process.
- Extensions of time granted by Council for some to make submissions was inadequate and should have been universal (not only to those who requested).
- Future residents of the building under construction within the Iris site will be the most impacted but were not notified.
- A fresh and clear development application supported by documentation relative to the final concept should be submitted.

#### Failure to Comply with Construction Management Requirements (NICRA submission)

- The Community Liaison Committee established by the developer has failed to comply with the (generous) conditions of approval (eg. for construction hours and site/public safety) and Council has failed to enforce them.
- Council does not have an adequate process to deal with resident concerns. Needs a centralised (not ad-hoc) system for complaints and follow-up.
- This should occur for such as large development site over a long timeframe (5-10 years) that impacts on so many residents and businesses in the vicinity.

## **5. Referrals**

#### Approval Authorities- Integrated Development

The staged development is identified as 'Integrated Development' pursuant to Section 4.46 of the EPA Act 1979 on the following basis:

*Section 22, Coal Mine Subsidence Compensation Act 2017* (requires approval to alter or erect any improvements within a mine subsidence district). NB under the previous Stage 1 DA-2017/00700 the previous applicable legislation was the *Mine Subsidence Compensation Act 1961*. General Terms of Approval issued by the Subsidence Advisory NSW were reproduced as Conditions 1 to 11 in the Integrated Development Consent. The applicant advised that the mine subsidence works required by these conditions have been completed on site.

The current application was referred to Subsidence Advisory NSW. Correspondence received on 4 November 2019 advised that the *“application has had an initial assessment and exceeds the current guideline on the property...The application will now be assessed on its merit under section 22 of the Coal Mine Subsidence Compensation Act 2017. All meritbased approvals under section 22 of the Act will be determined within 40 calendar days of receipt unless additional information is requested by SA NSW to progress the application.”*

Subsidence Advisory NSW granted concurrence on the 21 November 2019 which included a number of conditions (refer to **Appendix C**).

Section 91 of *Water Management Act, 2000* is not relevant as no excavation is proposed as part of the current application. General Terms of Approval issued by the (then) Department of Primary Industries (Office of Water) did apply to the Stage 1 DA-2017/700 as the excavations on the site extended below the water table and required dewatering during construction (ie. which required an Activity Approval pursuant to s91 of the Water Management Act 2000).

#### External Authorities/Agencies (no statutory role)

The following provides a summary of the external referrals which were provided for the development application:

#### NSW Subsidence Advisory

GTA provided refer to **Appendix C**

#### Licensed Premises Reference Group (LPRG)

It is noted the applicant has applied for a Liquor Licence. No further comments were raised by NSW Police. It is noted a plan of management submitted is satisfactory refer to draft conditions within **Appendix A**.

## 6. Section 4.15 Considerations

(a)(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

Not applicable

(a)(i) the provisions of any environmental planning instrument

### **State Environmental Planning Policy (State and Regional Development) 2011**

The original Concept Approval DA-2017/00701 was identified as 'regional development' in accordance with Part 4 of the SEPP (State and Regional Development) 2011, as the proposal was listed within (the then) Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million (the total development value was estimated to be \$220 million across the four blocks). In addition, the Stage 1 DA- 2017/00700 has a Capital Investment Value of approximately \$80 million.

This current development application for changes to Building B has a Capital Investment Value of \$18 million. This forms a proportion of the original costing for the development of Block 1 (\$80 million). Despite this value being less than \$30 million, this application is referred to the Panel in accordance with Clause 21 of the SEPP under Part 4 'Regionally Significant Development' and is captured as 'regionally significant development', irrespective of its value, as the concept Application was previously captured under Schedule 7 of SEPP (State and Regional Development) and the EP&A Act and Regulations:

#### *21 Concept development applications*

*If—*

- (a) development specified in Schedule 7 is described in that Schedule by reference to a minimum capital investment value, other minimum size or other aspect of the development, and*
- (b) development the subject of a concept development application under Part 4 of the Act is development so specified, any part of the development that is the subject of a separate development application is development specified in Schedule 7 (whether or not that part of the development exceeds the minimum value or size or other aspect specified in that Schedule for the development).*

Clause 123BA of the EPA Regulations confirms that only section 4.55(1) and (1A) applications may be determined by a Council, with section 4.55(2) modifications required to be determined by the panel.

Hence, both this application and the section 4.55(2) for the modification of the Concept development application will both need to be determined by the JRPP.

### **State Environmental Planning Policy (Infrastructure) 2007**

The provisions of the Infrastructure SEPP are not applicable and therefore referral to the Roads and Maritime Services (RMS) is not required. It is noted that the hotel, restaurant, bar, gaming room do not trigger the referral criteria within Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to the RMS by Clause 104).

This is on the basis that Schedule 3 of the SEPP confirms that, where there is an enlargement or extension of an existing premises only the additional size or capacity should be considered for the purpose of determining whether referral to the RMS is required. This clarification to Schedule 3 was introduced in August 2018 and applies to development applications lodged but not determined after this date.

In considering whether referral to the RMS is required it is noted that hotel uses are not separately listed as a type of use requiring referral. Even in the event that the hotel rooms were considered by the RMS as a type of 'commercial premises', the hotel, which has a total floor area of 4,256m<sup>2</sup>, does not meet the 10,000m<sup>2</sup> capacity for a commercial premises on a site with access to any road.

It is further noted that the area of retail premises has increased by 158m<sup>2</sup> for the Stage 1 development, as a result of the inclusion of the restaurant and bar areas within this calculation. However, this increase also does not trigger the referral requirements. There is also no additional parking and a reduction in the number of residential apartments. Referral to the RMS is therefore not required for the Stage 1 development.

### **State Environmental Planning Policy 55 - Remediation of Land**

The Stage 1 DA-2017/00700 DA satisfied the requirements of SEPP 55 subject to conditions within the development consent. Site preparation works for the Stage 1, including any necessary remediation works, have been completed. This proposal does not involve any additional excavation and on this basis SEPP 55 is not applicable. Council's Senior Environmental Protection Officer provide the following comments:

*'In 2018 DA2017/00700 (Mixed use development incorporating retail premises, shop-top housing, car parking and associated works at 169 King Street Newcastle) was approved by JRPP. As the site was identified as being contaminated, remediation was required to render the site suitable. A Remediation Action Plan (RAP) prepared by Douglas Partners dated May 2017 was submitted to Council for review and approval. Given the large size of the site and range of contamination issues, a number of potential remediation options were identified by the RAP as being acceptable including offsite disposal of identified contamination as well as onsite containment and management following adequate further assessment and validation. A condition of consent was applied to DA 2017/0700 which restricted the remedial options to only include option 4 which required offsite disposal of contaminated material and did not include the provision for onsite management of contamination.'*

*The subject application (DA2019/01150 (Tourist and visitor accommodation)) lodged with Council applies to a part of 169 King St Newcastle. In order to confirm the approved Remediation Action Plan by Douglas Partners had been successfully implemented, the ESU requested a validation report be submitted demonstrating the site was suitable for the proposal.*

*The applicant submitted an email dated 12 March 2020 with the following extract from a Validation Report prepared EI Australia dated 8 May 2019:*

*"EI concludes that the remediation program was performed in accordance with the RAP (Douglas Partners 2017 e – [DA 2017/00700 Approved RAP prepared by Douglas and Partners]). The human health and environmental risks at the site are low, with groundwater and soils outside of the retained heritage building, suitable for the proposed use of the site for residential with minimal access to soil. The area comprising the Heritage Building is also considered suitable for the proposed residential with minimal opportunities for soil access development, subject to retention of the pavement overlying impacted lead and asbestos soils, and implementation of an Environmental Management Plan/Site Management Plan"*

*The application documentation provided indicates that the remediation approach for this application (the area comprising the Heritage Building) is onsite containment and long-term management.*

*In instances where onsite containment and long-term management of contamination exceeding the land use criteria is proposed, the ESU will generally recommend the involvement of an accredited Site Auditor. This is to confirm the appropriateness of the remedial strategy and to help*

*ensure that the required long-term site management plan adequately addresses long term risks and ongoing management requirements. This would generally take the form of requiring an Interim Audit Advice letter prior to determination indicating the suitability of the proposed land use subject to future remediation and validation works. Council has not obtained Interim Audit Advice to date however, in this instance given the human health and environmental risks at the site are low. On this basis the ESU will recommend a condition of consent that may be applied to any consent granted.'*

The recommended conditions relevant to the above mention comments refer to **Appendix A**.

### **State Environmental Planning Policy 65 – Design Quality of Residential Flat Development**

#### **Background: Approved Stage 1 DA-2017/700**

The approved Stage 1/Block 1 contained four apartment buildings to which SEPP 65 applied (Buildings A, B, C, and D). Clause 28 of SEPP 65 requires that a consent authority take into consideration the '*Apartment Design Guide*', prepared by the Department of Planning and Environment in 2015 of which Parts 3 and 4 contains key Design Criteria and Guidance to be complied with: (Siting the Development - Visual Privacy and Amenity). Assessment of this criteria was taken across the whole site/all four buildings and hence was "averaged" across the 228 dwellings.

It is noted that the approved Stage 1 DA sought some variations to some ADG criteria (overall deemed to be acceptable as discussed in the assessment report to the JRPP), and in summary included:

- Visual privacy/Building separation: shortfall of required building separation between Buildings A and B; Buildings A and C and Buildings C and D.
- Communal Open Space: deficient by 179m<sup>2</sup> (not meeting the 25% site area), noting no communal open space was provided in Building B.
- Solar and Daylight Access: Design Criteria 4A of the ADG requires that living rooms and private open spaces of at least 70% of apartments must receive a minimum of 2 hours direct sunlight between 9 am and 3 pm on June 21. 66.2% of apartments (ie. 149 of the 225 apartments) will achieve this standard. Building B achieved 100%.

#### **Background: s4.55(1A) Modification to DA-2017/700.01**

This increased the number of apartments by two (2) in Buildings C and D (from 225 to 227) and slightly reconfigured the apartment mix. A review of the Statement of Support for this application (SJB Planning, July 2018) indicated that "*the approved development remains largely unchanged with respect to the SEPP 65 principles and the objectives and design criteria of the ADG*" (p22). However, it further states (p24) that "*the communal open space on the podium level is to be reduced from 585m<sup>2</sup> to 545m<sup>2</sup> (i.e. 40m<sup>2</sup>) to accommodate required changes to the loading bay. This results in an overall reduction in the communal open space from 1,460m<sup>2</sup> to 1,420m<sup>2</sup>, which equates to 21.6%.*" The SoS indicated that the modifications did not give rise to overshadowing nor privacy impacts (as setbacks and building separation was unchanged). The applicant submitted additional information indicating the quantum change and, in the apartments, achieving the minimum solar and daylight access.

#### **Proposal: Impacts to Application of ADG**

The proposal removes 16 apartments from Building B and changes the use to hotel/commercial to which SEPP 65 and the ADG do not apply. No changes are proposed to Buildings A, C and D, with the exception of amendments to the windows on Apartment 7.01. The rooftop and southern additions to Building B and change of use (removal) from 16 apartments to hotel also impact on the overall compliance of ADG criteria across the whole site. A summary of the changes/impacts are:



#### Solar and Daylight Access:

- Apartment 7.01 within Building C achieves the minimum 2 hours solar access to the living areas through the north-facing windows. As such the removal of the window on the western elevation does not alter the quantum of solar access. Furthermore, this window services a hallway and is not connected to the living area. A new window is proposed on the southern elevation to maintain daylight to the hallway/study area.
- There will be some minor additional overshadowing to the private terraces of Apartments 7.06 and 7.07 on Level 7 of Building A (mostly landscape beds). The additional overshadowing occurs between 9am and 10am. From 10.30am there is no additional overshadowing of the terraces and they receive full sunlight.
- Contrary to the Statement of Environmental Effects (p49), the removal of 16 apartments from Block 1 is likely to increase the quantum of apartments on Block 1 that do not achieve compliance with solar and daylight access. The applicant confirmed the solar and daylight still achieves the minimum requirement.

#### Communal Open Space:

- The total area of communal open space reduces by 40m<sup>2</sup>. Further, there is some minor additional overshadowing to the communal open space of Building A at from 12pm onwards (resulting from the additions to Building B). This is negligible and the applicant advises that least of 50% of the communal open space receives two hours sunlight.

#### Building Separation:

- The southern addition to Building B alters building separation between Building B to Building A and Building B to Building C (discussed below) resulting in altered and additional non-compliances with building separation to that of the Stage 1 DA.

**Table 2: Variation to Separation Distances specified by Design Criteria 3F-1 of Apartment Design Guide**

<b>Building Interface</b>	<b>Separation Proposed</b>	<b>Separation Required by Design Criteria 3F-1</b>	<b>Applicant's Justification and Assessment/Discussion</b>
<u>Variation 1:</u> Northern section of Building A and southern infill addition to Building B  Refer Figure 6	5m above ground level  NB. Approved separation 7.7m (variation granted)	12m required up to Level 4; 18m required for Level 5.	As approved: Louvres on the northern wall of Building A up to Level 5 proposed to mitigate against any privacy impacts. There is no interface above 5 levels due to the 5 storey height of Building B.  Applicant's Justification: No window openings above ground level on southern facade of Building B mitigate privacy impacts. Hotel windows oriented east and west. No additional overshadowing or

			<p>reduction in ADG solar access to Building A. Does not result in unreasonable noise impacts to Building A or B (subject to recommendations of Acoustic report) 7.7m separation retained at ground level in accordance with intent of link</p> <p>Does not give rise to unreasonable heritage impacts</p> <p>Commensurate with surrounding closely settled buildings reflecting historic patterns</p> <p>Comment: There will be some visual impact from increased enclosure of public space and northern apartment of Building A. However, it is noted that the northern rooms are bedrooms and an ensuite. Living rooms and corner balconies are oriented to the east and west. An analysis of Building A outlook is provided in the Design Report (SJB p27) which demonstrates increased impacts are minimal as viewed from apartments. Satisfactory.</p>
<p><u>Variation 2</u></p> <p>Rooftop addition of Building B and Apartment 7.01 of Building C</p> <p>Refer Figure 7</p>	<p>0m at Level 7</p> <p>NB. Same as approved at Levels below</p>	18m	<p>Apartment 7.01 adjoined the rooftop, lift and plant in the approved design. The separation is the same as the floors below (as approved). The proposal alters the interface of this apartment with Building B (new level being hotel bar level).</p> <p>There are no windows on the eastern elevation of new level to Building B and the western (hall) window to Apartment 7.01 has been deleted. A</p>

			<p>curved cut-out to the eastern elevation is proposed to Building B, providing a setback to the Bedroom (secondary) window of the apartment. The recommended acoustic measures will be implemented to ameliorate noise impacts to Building C apartments. While above the level of the rooftop bar, it is considered that this apartment (and others below) will have increased noise impacts than that of the previously approved apartment use. However, this is less of a building separation issue and is more a land/building use matter. In this regard, implementation of the recommended acoustic measures is considered to be an acceptable outcome.</p>
<p>Variation 3 Eastern side of Building B to Building C Refer Figure 8</p>	<p>12.4m at Level 2</p> <p>NB. Approved at 8.95m</p>	<p>12m required up to Level 4;</p>	<p>This increases the separation distances between the apartments within Building C (2.07, 4.06, 5.05, and 6.05 (which are all primary living room windows) to the (now) hotel room windows. The approved Building B apartment windows facing these were bedroom windows.</p>
<p>Variation 3 Eastern side of Building B to Building C</p>	<p>8.95m at Level 3 and above</p>	<p>12m required up to Level 4; 18m required for Levels 5 to 8;</p>	<p>The indicative (prelongment) photomontage at Figure 24 indicates the hotel windows to be large. While the separation has increased, the hotel rooms are potentially higher use than the private apartment bedrooms and the windows are larger. There is likely to be privacy issues, noting the</p>

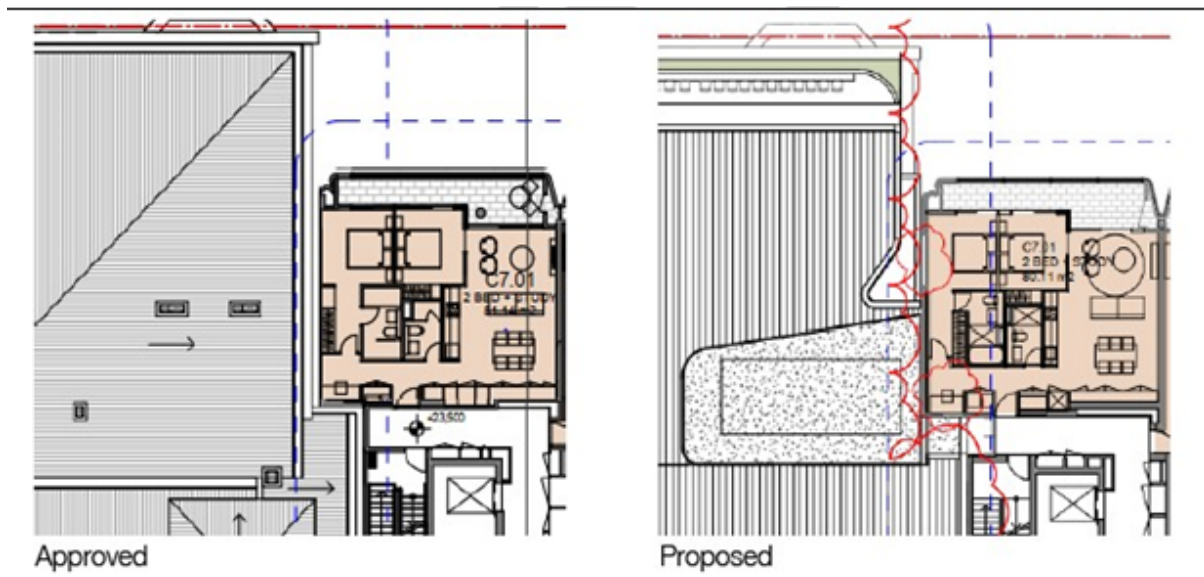
			<p>8m separation is still far less than the required 12m (and 18m for the upper level hotel room). It is therefore recommended that the Building C windows incorporate privacy screening. It is therefore recommended that the Building C windows incorporate privacy screening such as angled louvres directing the line of sight away from the hotel windows.</p>
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**Conclusion on building separation:** The proposed variations to building separation is considered acceptable subject to recommended acoustic amelioration measures (to Apartment 7.01 of Building C) and privacy screening to living room windows of apartments within Building C (2.07, 4.06, 5.05 and 6.05).

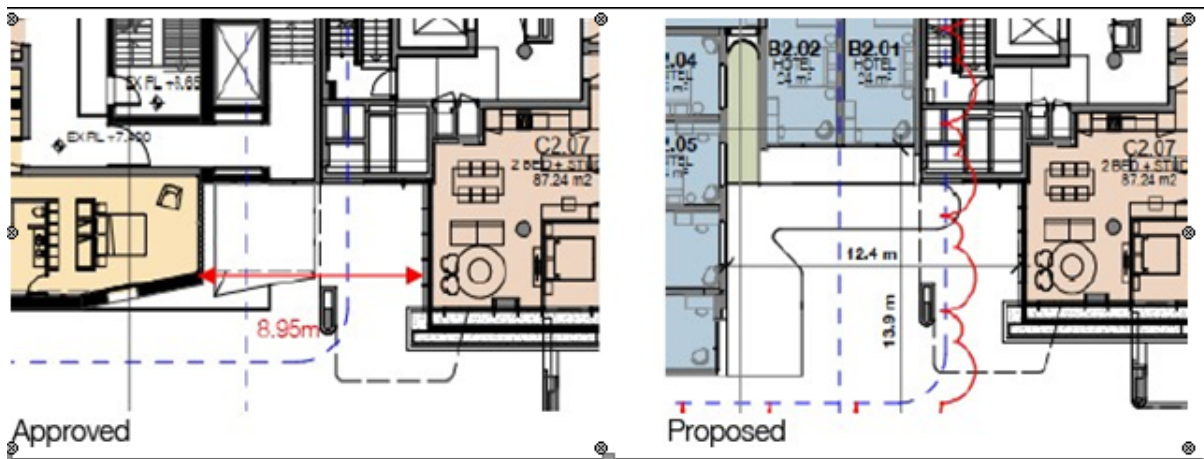
**Figure 6:** Building separation between Building B (top) and Building A (bottom), Level 2  
Left: Stage 1 as-approved DA; Right: as proposed  
(Source: Figure 26 of SEE, SJB Planning)



**Figure 7:** Building separation between Building B (at left) and Building C (adjoining at right), Apartment 7.01  
 Left: Stage 1 as-approved DA; Right: as proposed (Source: Fig 25 of SEE, SJB Planning)



**Figure 8:** Building separation between Building B (at left) and Building C (adjoining at right), near Level 2  
 Left: Stage 1 as-approved DA; Right: as proposed (Source: Fig 27 of SEE, SJB Planning)



**Figure 9:** Building separation between Building B (at left) and Building C (adjoining at right), near Level 3 and above

Left: Stage 1 as-approved DA; Right: as proposed (Source: Fig 28 of SEE, SJB Planning)



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

The hotel is not a 'BASIX affected development'.

### Newcastle Local Environmental Plan 2012

Clauses 2.1 to 2.3: Zoning and Land Use Table

The subject property is included within the B4 Mixed Use zone under the provisions of the *Newcastle Local Environmental Plan (NLEP) 2012*, as shown in **Figure 10**. The objectives of the B4 zone are:

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

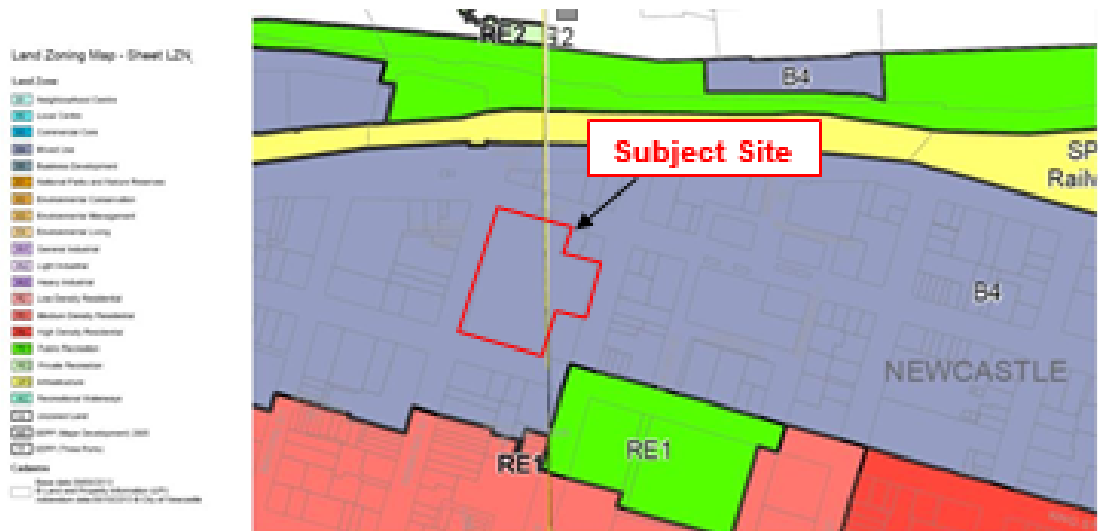
The proposal is defined as 'hotel or motel accommodation' which is permissible within the B4 Mixed Use zone (and the allowable uses within the parent Concept DA).

'Hotel or motel accommodation' is a type of 'tourist and visitor accommodation' and is defined as

*"a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—*  
*(a) comprises rooms or self-contained suites, and*  
*(b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,*  
*but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation."*

The proposed use accords with the zone objectives as it will contribute to the mix of uses within and viability of the City Centre, within an accessible location.

**Figure 10:** Extract of Zone Map showing location of site in B4 Mixed Use Zone - NLEP 2012



#### Clause 2.7: Demolition

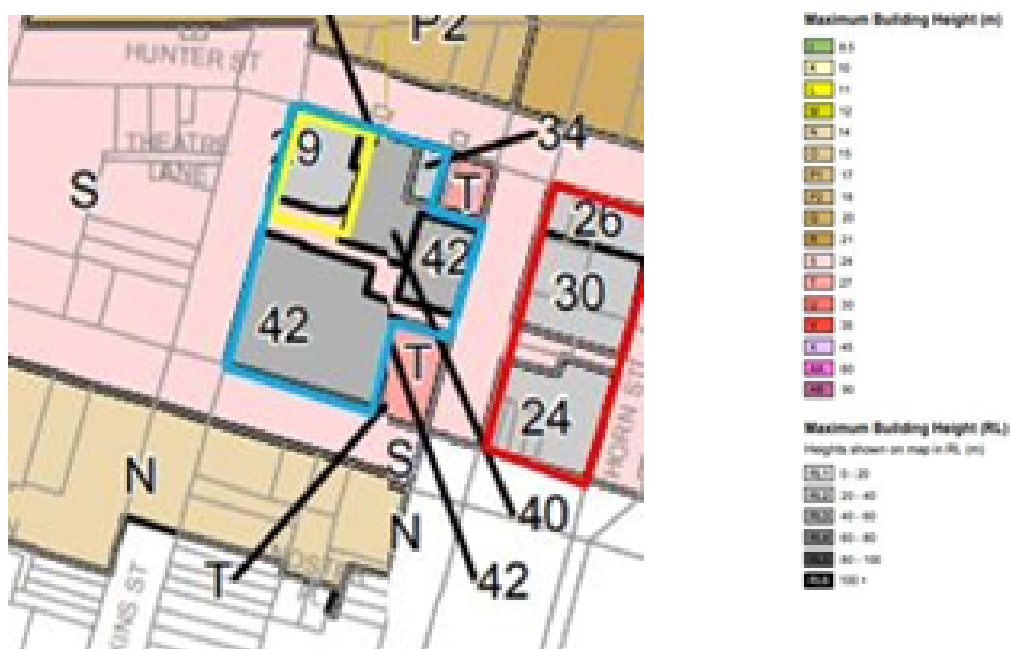
Development consent for demolition of some parts of the building not previously granted for demolition under the Stage 1 consent is sought under this clause (except for heritage buildings and facades proposed to be retained).

#### Clause 4.3: Height of Buildings

This clause limits building heights to that shown on the 'Height of Buildings' Map. The 'Height of Buildings' Map specifies a range of maximum permissible building heights within Block 1.

With respect to the site of subject development within Block 1, the applicable maximum heights are RL29 at north-eastern corner (Former DJ's building/Building B) and 24m (vertical height from ground level) to the immediate south, being the mid-block link and indicated in light pink 'S' on the LEP Height of Buildings Map (refer **Figure 11**).

**Figure 11:** Extract of Height of Buildings Map showing permissible heights applying to the subject site (HOB\_004G effective 21/6/2019 to date; and HOB\_004K effective 9/11/2018 to date).





In addition to the height controls within NLEP 2012 'Height of Buildings Map', pursuant to Clause 4.3, there are also height limits imposed within Condition 6 of the Development Consent for the Newcastle East Precinct DA-2017/00701.01 which has statutory effect. [Section 4.24 of the EPA Act 1979 (Status of staged development applications and consents) confirms that the "*while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.*"

Effectively, this requires future development applications for each stage of the development to remain consistent with the approved Concept Proposal (including height). There is a complex background to the building height controls for the precinct, in particular relating to Blocks 2 and 3 (explained in the previous report/s to the JRPP for the Stage 2/Block 2 proposals in March 2019).

This DA for the Block 1 (principally Building B and adjacent infill addition within walkway to the south) varies from the allowable heights within the Concept Proposal and so modification to the Concept Proposal is proposed and is discussed within the separate concurrent report.

However, the proposal complies with the Height of Buildings Map (and this clause) as the proposed roof top addition is at a maximum of RL 29 and the southern infill addition does not exceed 24m above ground level at that point of the site.

Clause 4.4: 'Floor Space Ratio (FSR)' & Clause 4.5 'Calculation of FSR and site area' Clause 4.4 limits the FSR of a development to that shown on the 'Floor Space Ratio' (FSR) Map. The FSR Map confirms that a maximum FSR of 4:1 is permissible on the site, as shown in **Figure 12**. Block 1 has a site area of 6,556m<sup>2</sup> and the Stage 1 approval enabled development with a GFA of 26,224m<sup>2</sup>, resulting in an FSR of 4:1 on the site. This current application proposes a GFA of 4,994m<sup>2</sup> for Building B and results in an increase in the total GFA for Block 1 to 27,466m<sup>2</sup> (an increase of 1242m<sup>2</sup>). Table 2 below provides a breakdown of the GFA as approved, compared to proposed (for Block 1 and Building B).

**Table 3: GFA Land Use Distribution of Proposal (Source: SJB Planning, SEE p 34)**

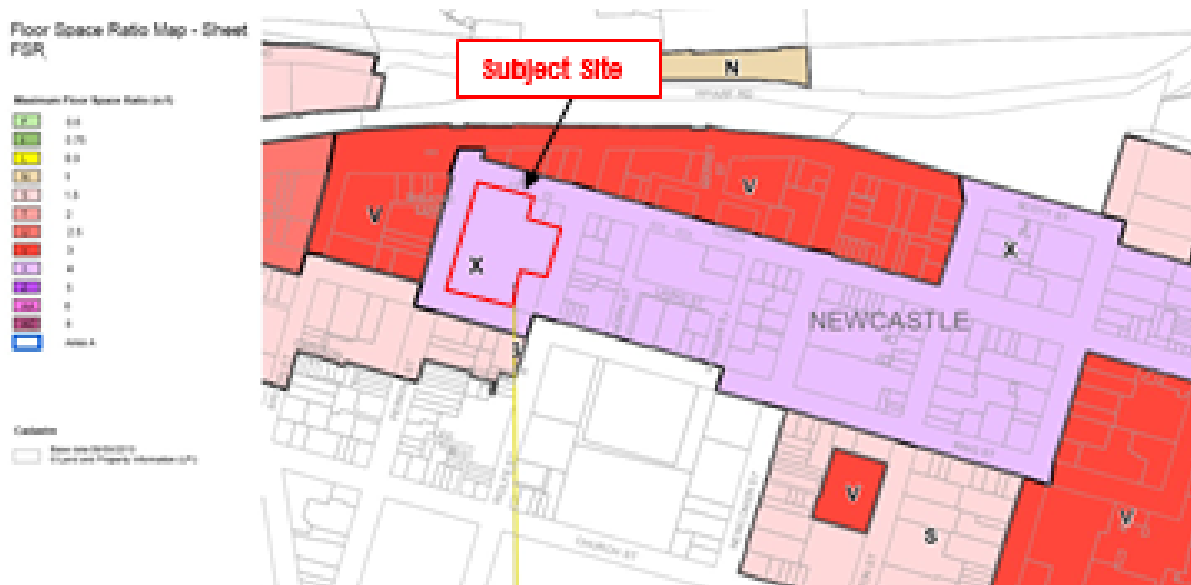
Use	Approved Stage 1		Proposed	
	Building B	Total Stage 1	Building B	Total Stage 1
Retail	580	3629	738 (+158)	3787
Residential GFA	3172	22,595	0	19,423 (-3172)
Dwellings	16	227 dwellings	0	211 dwellings
Hotel	0	0	4256	4256
Total GFA	3,752	26,224	4994 (+1242)	27,466 (+1242)

This results in an FSR of 4.19:1 which exceeds the allowable FSR on the 'Height of Buildings Map' (by 1242m<sup>2</sup>, equating to 5%). The applicant has submitted a Variation Statement pursuant to Clause 4.6 in support of the variation to Clause 4.4 'Floor Space Ratio' for the development application.



In addition to the FSR controls within NLEP, there are also FSR limits imposed within Condition 5 of the Development Consent for the Newcastle East Precinct DA-2017/00701.01, including 03.75:1 across the four-block Newcastle East precinct and 4:1 for Block 1. This DA for the Block 1 (principally Building B and adjacent infill addition within walkway to the south )results in development that varies from the allowable FSR within the Concept Proposal (across the wider precinct and for Block 1). Therefore, modification to the Concept Proposal is proposed and is the discussed within the separate concurrent report.

**Figure 12:** Extract of Floor Space Ratio Map - NLEP 2012 (pink shading “X” indicates a FSR of 4:1)



#### Clause 4.6 'Exemption to Development Standards'

A 'Clause 4.6 Exceptions to Development Standards Report' (**Appendix B**) has been prepared by SJB Planning, seeking a variation to the provisions of clause 4.4 (Floor Space Ratio) in relation to the development of Block 1 where it exceeds the portion of the site mapped. A maximum FSR of 4:1 is permitted and an FSR of 4.19:1 is proposed. The key discussion and justifications provided in the Statement of Environmental Effects (p57-58) and Clause 4.6 statement is summarised below. This written request is considered to satisfy subclauses (3) and (4).

*“Strict compliance with the control would be unreasonable and unnecessary given:*

- *The proposal satisfies the objectives of the B4 Mixed Use zone and the objectives of the FSR standard as highlighted above.*
- *The proposal complies with the building height standard and is consistent with the objectives of the standard as outlined above.*
- *The proposal does not adversely impact on the heritage significance of the site, conservation area or individual items as detailed in the HIS (accompanying the application)*
- *The variation to the standard does not contribute to adverse amenity impacts in terms of overshadowing, visual impacts or view loss.*
- *The variation to the standard does not contribute to unreasonable traffic generation or other environmental impacts.*
- *The scale of the proposed development is consistent with the desired scale of the surrounding development and streetscape, which is further reinforced by the compliance with the height standard.*
- *The proposed development is generally compliant with the controls, or the intent of the controls, contained in the Newcastle Development Control Plan 2012.*

- *The built form outcome responds to the heritage building and streetscape context. It has responded to the site specific outcomes of the approved Stage 1 Conservation Management Plan (CMP) prepared by City Plan Heritage, and provides the opportunity for the revitalisation and adaptive reuse of the significant heritage items and elements located on site.*
- *The proposal exhibits design excellence and satisfies the design excellence criteria contained within Clause 7.5 of the NLEP 2012.*

*The restoration, refurbishment and adaptive reuse of the heritage listed former David Jones building (Building B) and the opportunity for it to play a key role in the revitalisation and activation of the Newcastle East End precinct, has been key a driver for the proposed hotel and associated additions.*

*While the hotel use has a greater public benefit, it poses significant, site specific challenges for the adaptive reuse of the building. The functions of a hotel demand a different configuration and organisation of floor space. This includes a certain quantum of guest rooms, back-of house facilities and staff amenities. The roof-top bar provides a greater level of amenity that integral to the boutique hotel experience. The proposed additional floor space and variation to the FSR standard is a direct response to these particular circumstances. (Clause 4.6 p7-8)*

*In this case, the provision 5.10(10) provides for a degree of flexibility and arguably should be given greater weight than development standards which have not informed by a rigorous detailed design and conservation process. In this respect:*

- *The conservation and adaptive reuse of the heritage items would be facilitated by the granting of a consent;*
- *The development is consistent with the approved CMP prepared for the site and the development includes the conservation works included in the CMP; and*
- *The proposed development does not adversely impact on the heritage significance of the item or its setting and maintains and enhances the amenity of the surrounding area.*

*The proposed density and built form results in a compatible scale relationship to the existing and emerging character of the Newcastle East End.*

*Overall, the FSR of the proposal is considered reasonable and appropriate, despite the variation, given it:*

- *Respects and allows for the adaptive reuse of a heritage building for a hotel use, that will facilitate greater access by the public, in line with the historic uses;*
- *Maintains key view corridors to and from the Cathedral and harbour and does not dominate the views available from public places;*
- *Delivers a built form compatible with the desired future character of the Newcastle East End; and*
- *Protects the amenity of adjoining developments."*

The Clause 4.6 Variation statement includes in the conclusion:

*"A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses and would not result in a better urban design response to the site. In the context of the locality it would be unreasonable for strict compliance to be enforced."*

Comment and Conclusion:

The proposed hotel use is considered to be an appropriate and suitable use for this historic building that will enable increased enjoyment and use of an important historic building. While the applicant indicates a "quantum of guest rooms", the economic feasibility (in terms of increased floor area) has not been challenged as part of the assessment process.

The physical and functional impact of this increased floor area has, however been assessed. The key heritage comments provided by the heritage consultant at the pre-lodgement stage have been addressed, and the specialist UDGC have indicated their support for the design in terms of heritage and built form considerations. Provided the acoustic recommendations are implemented (including hours of operation), the rooftop bar is considered to be a positive use and celebrates the building and its views.

While the design of the southern infill addition was supported by the UDCG in general terms, it is considered that this structure will have a number of impacts to the amenity of that part of the laneway. While the covered walkway will provide protection from weather, the structure will further enclose the lane and in our opinion, is likely to provide a poorer pedestrian experience in terms of physical enclosure and obstructions by the columns. This addition also gives rise to deficient building separation and associated privacy issues between some apartment on Building C, however it is considered that these impacts can be ameliorated by screening such as window louvres. The impacts to views and overshadowing are minor and considered to be acceptable.

On balance, it is considered that the applicant has addressed the required criteria within Clause 4.6 and it is determined to be well-founded and can be supported.

It is also noted that Clause 5(10) of NLEP 2012 'Conservation incentives' states that: *"The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied (on certain matters)."* The assessment has identified that the heritage aspects of the development is acceptable, and it is noted that the development could/does meet the criteria of the clause. In this regard, arguably, the increased FSR exceedance on the heritage listed part of the site could be permitted pursuant to this Clause (and hence a Clause 4.6 variation is not required for this portion of the site). Notwithstanding this, Clause 4.6 has been satisfied.

A further consideration with respect to FSR under the LEP is the 'Design Excellence' provisions which are applicable to certain sites within the Newcastle City Centre (including this site). Clause 7.5(6) enables a consent authority to grant consent for a 10% bonus to the LEP Floor Space Ratio allowed by Clause 4.4, but only if the design of the building or alteration has been reviewed by a design review panel. The proposal has been reviewed by CN's Urban Design Consultative Group (UDCG), who operate under a charter, stating that they undertake the functions of a design review panel for the purposes of Subclause 7.5(6) of NLEP 2012. The proposal was presented to the UDCG on two separate occasions in accordance with the Design Excellence Strategy adopted for the site. In essence, for all intents and purposes, the proposal qualifies for the 10% FSR bonus. Notwithstanding this, the FSR exceedance to the NLEP 2012 Floor Space Ratio Map are subject to consideration under Clause 4.6 of NLEP 2012.

#### Clause 5.5: Development within the Coastal Zone

This clause requires the consent authority to consider certain matters and be satisfied that the proposed development will protect the coastal environment and public access to the coast. The site is separated from the coastal foreshore by a city block, two main roads and a railway corridor and hence will not impact on the existing public access to and environmental impacts on the foreshore. The objectives and provisions are considered to be met.

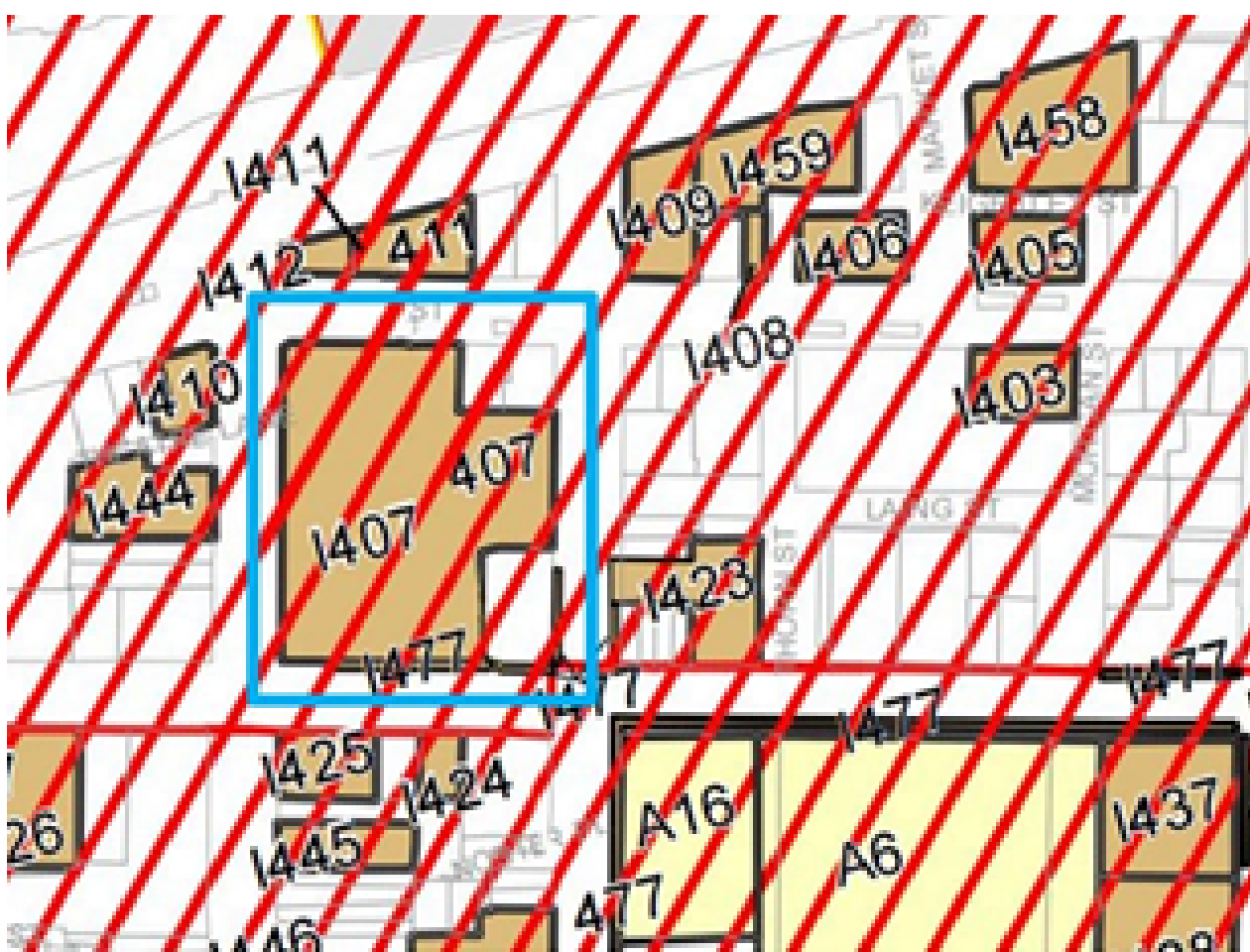
#### Clause 5.10 Heritage Conservation

The site is located within the Newcastle City Centre Heritage Conservation Area and is also listed as locally-significant Item 407 'Former David Jones (commercial building), comprising the majority of Block 1.

The Stage 1 DA approved works (including demolition works) to heritage buildings within Block 1, including Building B, adaptively re-using the heritage building for a mixed-use building comprising ground floor retail and 16 apartments. The approved works to Buildings A, C and D are under construction and will proceed as approved. Buildings C and D retain elements of the facades of the existing heritage-listed buildings on the site.

This DA seeks an alternative design to that approved for Building B, now intended to be used for a hotel. A Heritage Impact Assessment, prepared by City Plan Heritage, accompanies the development application. Further discussion of the manner in which Clause 5.10 of NLEP 2012 and relevant provisions of NDCP 2012 are met is contained in the Section 4.15(1)(b) assessment of this report.

**Figure 13:** Extract of Heritage Map - NLEP 2012. Indicating the subject site within the blue boundary and showing the location of other locally listed heritage items in close vicinity.



#### Clause 6.1 Acid Sulphate Soils

The north-western corner of the site is located within a Class 4 mapped area of acid sulphate soils (ASS), whilst the balance of the site is within a Class 5 mapped area. This matter was addressed in the Stage 1 development application and appropriate conditions imposed which will still apply to the site. It is noted that there is no excavation proposed within the building footprint of Building B.

#### Clause 6.5 Public Safety – Licensed Premises

This clause requires consideration of public safety prior to Council granting consent to a licensed premises. The Application seeks to include a “hotel or motel accommodation” (which can incorporate licensed premises under the *Liquor Act 2007*) being a bar, restaurant and gaming

room. The application was referred to the NSW Police and Licenced Premises Group. Matters of safety and social impact are also addressed later in this report in the section 4.15(1)(b) assessment.

#### Part 7: Additional Local Provisions - Newcastle City Centre

*Clause 7.5 Design Excellence (Newcastle City Centre)* is the only relevant Clause within this Part. Clause 7.5 applies to the erection of a new building or to significant alterations to an existing building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence.

Table 3 below addresses how this Clause is satisfied. It is considered that the development exhibits design excellence. Three architectural firms and a landscape architecture firm have collaborated to arrive at the submitted design through an alternative design excellence process agreed to by the Government Architect's Office, which included several meetings with Newcastle Council's Urban Design Consultative Group. Refer to Section 3 of this report.

<b>Table 4: Compliance with NLEP 2012 Clause 7.5 Design Excellence</b>	
<b>Clause 7.5 Provisions</b>	<b>Comment</b>
<b>(3) <i>In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:</i></b>	Each matter is also addressed in pages 63-67 of the SEE (SJB Planning)
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	Satisfied. Refer Section 4.15(b)(iii) of this report
<i>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	Satisfied. Refer Section 4.15(b)(v) of this report
<i>(c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,</i>	Satisfied. Refer Section 4.15(b)(i) of this report
<i>(d) how the development addresses the following matters:</i>	
<i>(i) heritage issues and streetscape constraints,</i>	Satisfied. Refer Section 4.15(b)(ii) of this report
<i>(ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i>	Satisfied. Refer SEPP 65 section of this report
<i>(iii) bulk, massing and modulation of buildings,</i>	Satisfied. Refer Section 4.15 (b)(iii) of this report
<i>(iv) street frontage heights,</i>	Satisfied. Refer Section 4.15 (b)(iii) of this report
<i>(v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i>	Satisfied. Refer Section 4.15 (b)(iv) of this report
<i>(vi) the achievement of the principles of ecologically sustainable development,</i>	Satisfied. Addressed in Stage 1 DA, adopts principles
<i>(vii) pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	Satisfied. Refer Section 4.15 (b)(v) of this report
<i>viii) the impact on, and any proposed improvements to, the public domain.</i>	Satisfied. Refer Section 4.15 (b)(v) of this report
<b>(4) <i>Development consent must not be granted to the following development to which this Plan applies unless an architectural design competition has been held in relation to the proposed development:</i></b>	
<i>(a) development for which an architectural design competition is</i>	N/A

<i>required as part of a concept plan approved by the Minister for a transitional Part 3A project,</i>	
<i>(b) development in respect of a building that is, or will be, higher than 48 metres in height,</i>	N/A - No building exceeds 48m in height
<i>(c) development having a capital value of more than \$5,000,000 on a site identified as a "Key Site" and shown edged heavy black and distinctively coloured on the Key Sites Map,</i>	Applies. Refer (5) below
<i>(d) development for which the applicant has chosen to have such a competition.</i>	N/A
<b>(5) Subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required.</b>	The application is accompanied by correspondence from the Office of Government Architect, as a delegate of the DG which grants exemption to the requirement for a design competition for the Stage 1 DA subject to the implementation of a design excellence process.
<b>(6) The consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 or a height of not more than 10% greater than that allowed by clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel.</b>	Satisfied. The DA seeks an increase to the maximum FSR of Block 1 by Clause 4.4 by up to 5%. Refer discussion under Clause 4.6. The design has been reviewed by the design review panel (UDCG).

**(a)(ii) the provisions of any draft environmental planning instrument**

Not applicable.

**(a)(iii) any development control plans**

**Newcastle Development Control Plan**

**2012**

*Newcastle Development Control Plan (NDCP) 2012* is the applicable Development Control Plan and the Sections listed below are relevant to this Development Application.

There are numerous controls within NDGP 2012 and this assessment addresses only the controls relevant to the development proposal and not for the wider Block 1 site (which have been addressed in the previous application for Block 1/Stage 1).

- 6.01 Newcastle City Centre
- 4.04 Safety and Security
- 7.02 Landscaping, Open Space and Visual Amenity
- 7.03 Traffic, Parking and Access
- 7.06 Stormwater
- 7.08 Waste Management
- 4.01 Flood Management
- 4.03 Mine Subsidence
- 4.04 Safety and Security
- 4.05 Social Impact
- 5.02 Land Contamination
- 5.05 Heritage Items
- 5.07 Heritage Conservation Areas
- 7.09 Outdoor Advertising and Signage
- 7.10 Street Awnings and Balconies

## **NDCP 2012 - Section 6.01 'Newcastle City Centre'**

A brief response to each of the relevant elements/chapters contained within Section 6.01 (Newcastle City Centre - Locality Specific Provisions) is provided below, with the other sections of the DCP discussed within the relevant heading under 'the likely impacts of the development' section later in this report.

### **Part 6.01.02 Character Areas - East End**

This section of the DCP contains the character statements and supporting principles for development within various precincts of the Newcastle City Centre. The subject site is within 'East End'. The principles for this precinct are to:

- 1. Hunter Street continues to be the main retail spine of the area, supported by a range of complimentary uses, including residential, commercial, entertainment and dining.*
- 2. Hunter Street is recognised and enhanced as a major pedestrian space and an informal meeting place.*
- 3. The historic fine grain character is maintained and enhanced.*
- 4. Significant views to and from Christ Church Cathedral are protected, including views from Market Street and Morgan Street. Views to Hunter River are protected and framed along Market Street, Watt Street and Newcomen Street.*
- 5. Vistas that terminate at significant heritage buildings are protected, such as Fort Scratchley.*
- 6. Distinctive early industrial, warehouse and retail buildings that contribute to the character of the area are retained and re-purposed, including prominent corner buildings.*
- 7. Existing laneways and pedestrian connections are enhanced.*
- 8. Heritage items and their setting are protected. New buildings respect the setting of heritage buildings.*
- 9. In-fill buildings, additions and alterations to respond to the height, massing and predominant horizontal and vertical proportions of existing buildings.*
- 10. Recreational opportunities are created by establishing public space and pedestrian connections from Scott Street to the Hunter River foreshore.*

Discussion of the ability to meet the objectives and desired future character for this precinct is contained in the following sections of this report which address land use, pedestrian use and connections, views, heritage and built form.

### **Section 6.01.04 Key Precincts - Hunter Street Mall**

This section of the DCP contains objectives and performance criteria specific to key precincts, one of which is the Hunter Street Mall. This section of the DCP prevails over Section 6.01.03.

The objectives for the Hunter Mall precinct are:

- 1. "Strengthen the sense of place and urban character of the east end as a boutique retail, entertainment and residential destination.*
- 2. Diversify the role of Hunter Street Mall precinct as a destination for many activities including retail, dining, entertainment, nightlife and events, additions to regular day-to-day services for local residents.*
- 3. Promote active street frontages.*
- 4. Protect heritage items and contributory buildings.*
- 5. Protect views to and from Christ Church Cathedral.*
- 6. Promote a permeable street network in Hunter Street Mall precinct with well-connected easily accessible streets and lanes.*
- 7. To create a space that is safe, comfortable and welcoming for pedestrians."*

#### B1 Pedestrian Amenity (refer also B1 Access Network of Section 6.01.03)

The approved Stage 1 incorporates a through site connection, extending from Perkins Street in the west to Wolfe Street in the east. This link extends between building A and B in the west and between Building D and the existing Telstra building in the east (at a width of 6.1m). The as-approved location of this link is consistent with the location of the through site link identified in Figure 6.01-29 of this chapter (reproduced in Figure 14 later in this report) and 'Acceptable Solution' 2(a) of the DCP. However, rather than a straight link, the laneways converge into a circular open court which is to be activated by adjacent retail outlets at ground level.

The current DA seeks to alter the configuration of the western part of the through link due to the proposed infill addition to the southern facade of the former David Jones building. At ground level there will be a cantilevered awning (with three large support columns), providing pedestrian access. Above this will be five levels to accommodate rooms for the hotel. The impacts to pedestrian amenity are discussed in detail in the section 4.15(1)(b) assessment of this report.

#### B2 - Significant Views

This section of the DCP requires the protection of significant views and vistas, with this issue discussed in detail in the section 4.15(1)(b)(i) assessment of this report.

#### B3 - Building Form

This clause requires that *"Building form integrates with existing heritage character and retains contributory buildings"* and that development be articulated to reflect the fine grain of the precinct and that existing contributory character buildings be retained and adaptively re-used. The proposal retains a heritage building and adaptively reuses the building for a hotel. A further discussion of compliance with clause B3 with respect to heritage issues is contained in the section 4.15(1)(b) assessment.

#### B4 - Hunter Street Mall

In accordance with this clause, the proposal reinforces Hunter Street Mall as a pedestrian and vehicular thoroughfare and provides active uses and a continuous awning (in addition to public domain works as per the Stage 1 DA requirements).

#### B5 - Servicing

This clause seeks to minimise conflict between pedestrian movement and servicing and to ensure that loading docks and their access points are not located on Hunter Street Mall. Servicing as per Stage 1 approval (loading dock accessed from King Street). This DA seeks potential drop off and short stay parking along Hunter Street in front of the proposal hotel.

### **Section 6.01.03 - General Controls**

#### A1 - Street Wall Heights

The required street wall height along Perkins and Hunter Streets is 22m, with any development above the street wall height is set back a minimum of 6m. The street wall height of new buildings may vary if the desired future character is to maintain the existing street wall height of neighbouring buildings, such as heritage streetscapes. The existing building has a street wall height of 22-25m (the higher being the corner element).

Variation is proposed to this control (exceeds street wall height and less than 6m) and is discussed in detail within the Section 4.15(1)(b) assessment of this report.

#### A2- Building Setbacks

This control specifies zero front setbacks, with a 6m setback above street wall height. The development proposes zero front setbacks but less than 6m above street wall height. Street wall heights and front setbacks to Hunter, King, Perkins and Wolfe Streets are discussed within the Section 4.15(1)(b) assessment of this report.



#### A3 - Building Separation

Building separation is addressed within the SEPP 65 section of this report.

#### A4 - Building Depth and Bulk

The proposal is an adaptive reuse of an existing building. The proposed infill southern addition has an (east west) building depth of 18 metres (complies).

#### A5 - Building Exteriors

This clause specifies requirements with respect to exterior finishes and detailing. Details of the colours and materials to be used are contained within the submitted architectural plans which restore/repair and compliment the heritage exteriors which is considered to be satisfactory.

#### A6 - Heritage Buildings

This clause provides requirements relating to heritage buildings and sight lines, which are discussed in detail in the following Section 4.15(1)(b) assessment.

#### A7 - Awnings

This clause specifies that continuous street awnings are to be provided to address pedestrian amenity. Continuous street frontage awnings are incorporated into the proposal along Hunter Street and Perkins Street. Removal of the existing awning and replacement with a new steel awning along Hunter and Perkins Street. New fabric blinds will be attached to the awning. The addition to the rear (south) of the building will cantilever over part of the new through site link, providing shelter for pedestrians.

#### A8 - Landscaping

The proposal incorporates landscaping within the hotel roof-top terrace; on the southern side of the building adjacent to the approved through-site link and a green wall. This landscaping complements the approved landscaping concept for the Stage 1 DA site.

#### B1 - Access Network

This clause requires the provision of improved and new pedestrian connections which was appropriately addressed by the Stage 1 application with the east-west link, which complies with the required 5m width and other requirements. However, the configuration of this laneway has been altered due to the proposed southern addition to Building B. The lower portion of the existing southern wall has been retained and the new addition cantilevers over the laneway creating a semi colonnade. While the width is retained at the ground level (7.7m), the columns of the building obstruct the 5m wide pedestrian connection required for privately owned land. While the addition provides a 5m building separation above ground level (and is open to the sky for this portion), the addition will increase the sense of enclosure and obstructs the visual corridor of the laneway. The impacts to the through link are discussed in detail in the following sections of the Section 4.15(1)(b) assessment.

#### B2- Views and Vistas

This clause provides requirements relating to views and vistas, which are discussed in detail in the following sections of the Section 4.15(1)(b) assessment.

#### B3- Active Street Frontages

Active street frontages will be provided to all major frontages of Building B (including the through-site link) in compliance with this requirement.

#### B4 - Addressing the Street

This clause provides detailed requirements regarding the siting and height of building entries, for which appears to be generally achieved.

#### B5- Public Artwork

A condition was imposed on the Stage 1 development for the provision of public art (still applicable).

#### B6 - Sun Access to Public Spaces

The proposal is located on the northern side of the block and will not impact Cathedral Park.

### **Section 94A Development Contributions Plan 2009**

Conditions were imposed on the Stage 1 DA consent requiring payment of a contribution (Condition C1) prior to the issue of a Construction Certificate.

The Stage 1 DA identified Building B ("Building 2") to have a CIV of \$25.22 million (Altus Group, 2017). A CIV of \$18,068,000 (Altus Group, 2019) is now identified as the proposed new development. The relevant condition for developer's contribution will reflect the change in CIV identified for the proposal and relevant Stage 1 DA, refer to **Appendix A**

**(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into**

Not applicable.

**(a)(iv) any matters prescribed by the regulations**

The proposal was reviewed with respect to the relevant EP&A Regulations and are considered satisfactory and/or are addressed elsewhere in this report.

**(a) (v) any coastal zone management plan (within the meaning of the *Coastal Management Plan Act 1979*).**

Not applicable.

**(b) the likely impacts of the development**

The key likely impacts of the development are summarised below, and includes relevant comments from Council's specialist officers, including a response to issues raised in submissions.

#### **i. View Analysis and Impacts:**

##### Background: View Impacts of Original Concept DA

As it was a key issue of the assessment of the original Concept DA-2015/10185 comprising the four East Newcastle blocks, a very detailed discussion on view impacts of the Newcastle City East development was provided in the previous report to the JRPP meeting of 28 April 2016. View impacts of the Stage 1 development application was also detailed in the assessment report to the JRPP (21 December 2017) including the important view corridors referenced in NDCP 2012, in particular to and from the Christ Church Cathedral.

##### Proposed Development (Impacts of Changes to Building B)

A detailed 'Visual Impact and Street View Analysis – Hotel Building Stage 1' accompanies the application which illustrates (by way of photomontages) the impact of the proposal from eleven (11) viewpoints. The Statement of Environmental Effects (SJB Planning, p86-93) discusses these impacts

In summary, the minor increases to Building B will be largely imperceptible in terms of impact on views from that already approved within Block 1. Hence, the proposal is considered to be acceptable as summarised below.

The views identified in the DCP that are relevant to this proposal are maintained:

- *Vistas towards the harbour:* from south of the site (Perkins Street to corner King Street): The additions largely sit within the approved Stage 1 massing. All other key view corridors to the harbour along the north-south streets will be unaffected by the proposal.

The significant heritage copper dome on the corner of Building B will remain a visible element in this view. The proposed additions obscure a small portion of the existing building.

- *Vistas terminating in built form/landmark*: From Stockton Ferry Wharf towards the city and Cathedral. The proposal does not impact on key views of the Cathedral from Griffith Park at Stockton and surrounding public spaces and streets within the city centre, such as Queens Wharf and Morgan Street.

Other views for consideration:

- *Views from Cathedral*: The proposed additions to Building B will be visible from the Cathedral Gardens, but sits below and alongside the approved Stage 1 buildings A, C and D and will not be a prominent element in these views. There will be some minor additional obstruction of the sky above the approved Stage 1 envelope of Building B, which is insignificant.
- *From immediate surrounding streetscapes*: The proposed additions will be visible in views along Hunter Street, Perkins Street and Wharf Road however generally sit within the existing building form and/or are minor elements in particular having regard to the larger built form within Block 1 (Buildings A, C and D). Some existing large trees screen the development from the west.
- *Impacts to Private Views*: of individual properties has not been undertaken however are likely to be similarly minor to that described above, and are considered to be reasonable given the inner city context of the development site, and being within the existing heights of NLEP 2012.

## **ii. European Heritage (Built and Historical Archaeology)**

Schedule 5, Part 1 of Newcastle Local Environmental Plan 2012 lists the entire site is located within the Newcastle City Centre Heritage Conservation Area and is also a locally- significant Item 407 'Former David Jones (commercial building)'. The subject site is not State listed. Several heritage items are located in the vicinity of the site.

The approved Stage 1 proposal involved the adaptive reuse of the heritage listed former David Jones building (Building B) for shop top housing, including demolition of some building elements. It also involved the retention of heritage facades on Wolfe and Hunter Streets with vertical additions (Buildings D and C) and demolition of the remaining structures.

A Building Conservation and Retention Strategy prepared by TKD (2015) was considered for the original Staged DA with respect to the heritage framework for the Newcastle East Precinct. The same Strategy has applied to all subsequent development applications within the precinct.

The approved Stage 1 DA was accompanied by the following listed documents (the key outcomes of each was summarised in the assessment report to the JRPP for the Stage 1 DA-2017-00701).

- Heritage Impact Assessment, prepared by City Plan, rev 02, dated 13.06.2017;
- Conservation Management Plan prepared by City Plan Rev 02 dated 16.6.2017;
- Historical Archaeological Assessment prepared by Umwelt dated June 2017.

This current DA applies to the proposed adaptive reuse of the former David Jones Building at the corner of Hunter and Perkins Streets (and associated additions) and is accompanied by a Heritage Impact Assessment, prepared by City Plan, rev 02, dated 2/10/2019 which are considered to satisfy the provisions of Clause 5.10 of NLEP 2012 'Heritage Conservation'.

The submitted documentation is considered to address Condition 14 of the Concept Development Consent DA-2017/00701.01. While a CMP was not submitted (as required by Condition 14(a), the HIS references the relevant parts of the previously submitted CMP for the Stage 1 DA.

The HIS identified the following relevant background information as an update to the previous JRPP report and lists the key aspects proposed to the heritage item:

*“Background (p8)*

*An exhaustive design process has been undertaken by the project team in relation to the current adaptive reuse of the former DJ's building involving specialist heritage consultants, architects and planners (CPH, NBRS, SJB Architects and SJB Planning). CPH has been retained as the principal heritage consultant with NBRS heritage consultants providing peer review from the preliminary design stage of the hotel scheme. The project team have also closely worked with the Council's Urban Design Consultative Group.*

*Although it was not required under the Stage 1 DA consent, City Plan Heritage prepared a Schedule of Conservation Works in January 2018 to guide the Stage 1 demolition works and subsequent detailed design and construction works. Partial demolition works within the former David Jones building have been undertaken in accordance with the SCW and under the supervision of Kerime Danis (CPH, Director - Heritage). Significant building fabric including 300sqm pressed metal ceiling panels, bricks and some timber elements were salvaged for reuse in the then approved mixed residential design scheme. Demolition and construction works are currently ongoing within other parts of Stage 1 except for the former David Jones building, which is subject to a new proposal for adaptive reuse as a hotel.*

*The proposal (p8)*

*The proposal includes alterations and additions to the former DJS building (Building B) and consequential amendments to basement layouts and other elements of the Stage 1 DA. It is noted that significant works to the former David Jones building (Building B) approved under the Stage 1 DA (DA/201/00700) including repairs, reconstruction and restoration works will be maintained under the proposed works.*

*The following is a summary of works proposed to the subject site in the revised plan:*

- Conversion of former David Jones corner building (Building B) and Perkins Street Warehouse building to accommodate use as a hotel with ground level retail;*
- Construction of additional storey extension above the building including rooftop bar;*
- Changes to floor levels to align with extant windows;*
- Demolition of southern wall, with the exception of the ground portion*
- Removal of existing stairs and lift core; and*
- Construction of a five-storey laneway extension attached to the southern elevation of the former D Mitchell & Co Warehouse building.”*

The HIS satisfactorily addresses each of the relevant provisions and controls within NLEP 2012 (Clause 5.10 Heritage Conservation), NDCP 2012 (Part 5.05 Heritage Items and 6.01 Newcastle City Centre A6) and the Conservation Management Plan (produced for the Stage 1 DA dated June 2017, City Plan Heritage).

Section 6 ‘Conclusions and Recommendations’ states:

*“In conclusion, it is considered by City Plan Heritage that the proposed works, involving the change of use and associated alterations and additions to the former David Jones building will result in a positive heritage outcome for the heritage significance of the site, the Newcastle City Centre HCA and nearby heritage items. The proposed works aim to reactivate the site while ensuring the retention of significant heritage fabric and the appreciation of the site's history.*

*The proposed changes to the site to accommodate use as a hotel respond directly to the heritage context of the area, using architectural elements and design features that relate to the former David Jones building. This helps to facilitate a continuity of design with a clear definition of the layered history of the site identifiable through the use of modern materials where appropriate.*

*The proposed southern addition to the laneway and the roof top additions are sympathetic to the architectural character and proportions of the building. In that the roof-top addition to the 1914 Scott's building is designed in a manner that respects its prominent corner location by appropriately setting back the additional level over the building and allowing sufficient curtilage around the clock tower. The plane glazed façade and flat roof of the new addition provides a backdrop and ensures that the accented parapet detailing of the 1914 Scott's building remains dominant.*

*The rooftop addition to the former D Mitchell & Co Warehouse building responds to the different architectural composition and characteristic of the building rather than the 1914 Scott's building. As such, the design of the new rooftop addition has been specifically tailored to compliment the vertical façade articulation of the building that exists below. The height, flat roof form and regularly placed fins of the new addition make reference to the overall floor level heights of the building following the same height as the new addition to the 1914 Scott's building, and the arched window fenestration, which also differs at each level.*

*The 0m setback of the new addition provided an opportunity to introduce a crown that terminates the building in a similar rhythmic façade treatment of the existing windows. Additionally, the addition uses form, material and colour to remain recessive to the significant façade while being easily identifiable as new work.*

*As detailed throughout this report, the design of the proposed additions has gone through a design process influenced by ongoing heritage advice of CPH and feedback from the UDCG, to best interpret the significant features of the site through design. The comments of the Council's heritage consultant, GML Heritage, have also been taken into consideration.*

*The proposed works also aim to reconstruct elements of the site previously lost or obscured through recent history, including openings, floor levels and configurations, fabric and architectural detailing. This will potentially assist in the future interpretation and appreciation of the site's significant layered history. In addition, the proposed change of use will provide an ongoing active use for the site with a broad and changing clientele. This will further enhance and assist in helping to expand the appreciation of the site to a wider audience while helping to ensure the necessary future conservation of the site.*

*The proposal demonstrates compliance with the existing controls regarding heritage conservation and is therefore recommended to Council for approval.”*

Assessment Comments: Council’s Manager Development and Building assessed the application with respect to heritage matters for the Stage 1 works Development Application (DA-2017/00700). In the absence of a specialist heritage officer within Council staff at the time of lodgement, Council engaged consultant GML Heritage who provided specialist heritage assessment for the Stage 2 development application (DA-2018/0359), which also involved listed heritage items of local significance (Masonic building and Lyrique Theatre).

GML Heritage was further engaged to provide independent assessment and feedback on the initial design for the alternative (hotel) use and additions to Building B at a pre-lodgement meeting in March 2019. The following comments were incorporated in formal pre-lodgement advice to the applicant which is considered to have been taken into consideration in the final submitted development application. Notably, the roof form of the roof addition has been further resolved, the southern ‘plug in’ has been lowered and curved form deleted, and justification for the southern wall on the basis of structural inadequacy has been submitted.

#### "Change of Use

*The proposed change of use from private apartments to a mixed-use boutique hotel is considered to be acceptable and appropriate for the building, in terms of heritage. Allowing members of the public to access the building, either through the restaurant/retail spaces on the ground floor, or by staying in the hotel, means that the building and site is appreciated and used by a wider range of people.*

#### Demolition of remaining internal fabric

- The demolition of the stair, which originates from the 1950s stairs, is considered to be acceptable. The stairs are not contemporaneous to the original development of the building and are not of a level of significance that required that they should be retained within a new hotel development.*
- The proposal to remove the floors of the former Mitchell & Co building and reinstate them at their original height is a positive outcome, as it will allow the original window openings to be meaningfully reinstated.*
- The proposal to remove the northern wall of the former Mitchell & Co building to allow for an addition will result in a moderate level of heritage impact. It is noted that this facade was not previously visible, and understood to be structurally unstable, however it is remaining original fabric. The Heritage Impact Statement (HIS) should provide detailed justification for this demolition and a structural report should be submitted.*

#### Roof Addition

*The proposed roof addition is acceptable in principle, subject to resolution of the roof form. The addition will not be highly visible from the public domain. The setback of the addition is non-compliant with the DCP controls and this should be addressed within the HIS. The design should be refined in terms of the roof form and material, the setback over the Mitchell & Co building, and the connections between the various roof elements and the adjoining buildings. The addition should be designed to have minimal visibility from the public domain.*

#### Southern Addition

*The 'plug-in' addition at the south of the building adjoining the laneway is not supported in its current form. The addition, with its curved roof form that extends higher than the existing building, competes with the corner orientation and landmark clock tower feature of the former Scott's Building. In addition, it reduces the width of the laneway. If the addition is considered to be acceptable on planning grounds, the height of the structure should be reduced such that it sits no higher than the upper cornice on the Mitchell & Co building.*

*The roof form should be changed to reflect the horizontality of the existing building and retain the clock tower as the dominant feature. The addition should be set back from the facade of the building to behind the return of the cornice."*

### **iii. Street Wall Heights and Setbacks above Heritage Facades**

Figure 6.01-29 (Hunter Street Mall Precinct Plan) contained in Section 6.01.04 of NDCP 2012 confirms the maximum street wall heights which are required within the Newcastle East precinct. This plan confirms that street wall heights of 22m are required (where Building B is located) to ensure that a minimum of two hours of sunlight is achieved between 9am and 3pm mid winter.

Section 6.01.03 of NDCP 2012 confirms that street wall heights are "an important element to ensure a consistent building scale in streets that have a mix of uses, heritage items and infill development". They provide a "sense of enclosure to the street and contribute to the city's character through street alignment with appropriate street-width to building height ratios." Clause A1.1 confirms that any development above street wall heights must have a minimum setback of 6m. Conditions 12 and 13 of the approved Concept DA Development Consent (2017/00701.01) also requires the development above street wall heights and heritage items must have a minimum

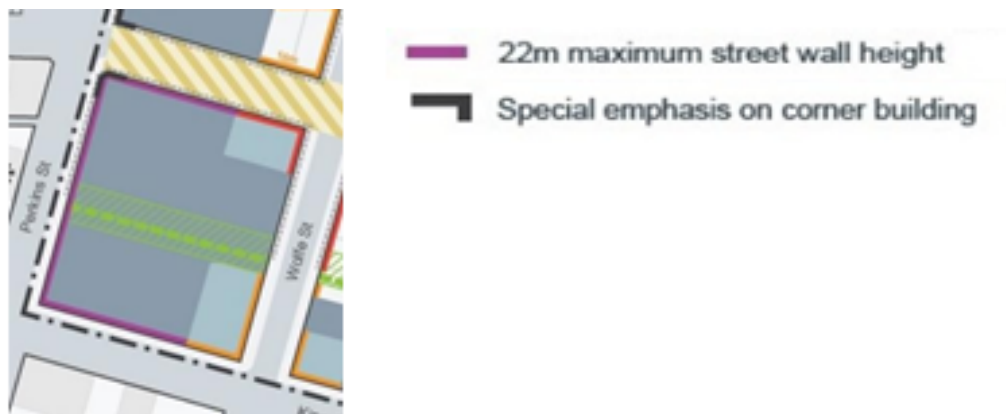
setback of 6m.

The DCP includes the following 'Acceptable Solutions':

- *The street wall height of new buildings may vary if the desired future character is to maintain the existing street wall height of neighbouring buildings, such as heritage streetscapes.*
- *Where it can be demonstrated that there will be no adverse impact in terms of overlooking, overshadowing, or streetscape appearance, a variation to the street wall height setback may be possible.*

Figure 14 indicates the required street wall heights for the development.

**Figure 14:** Required Street Wall Heights (Source: Figure 6.01-29 of NDCP 2012)



#### Proposed Street Wall Heights

Building B's existing facade ranges from 22m to 25m (the latter being the corner dome element). The approved Stage 1 DA did not have a rooftop addition to Building B and hence complied with the requirements (as it is an existing building).

The proposed street wall heights and setbacks above the heritage facades are outlined below, which do not comply with the required setbacks and/or street wall height requirements of the DCP and Conditions 12 and 13 of the Concept DA Development Consent:

- **Northern portion of roof-top addition** (ie. Hunter Street elevation) is setback 4m above the heritage building (former Scott's Ltd building (1914) element). This complies with the street wall height, but not the 6m upper level setback.
- **Southern portion of the roof-top addition** (ie. Perkins Street elevation of the D. Mitchell & Co. Warehouse building element), will have a street wall height of 25.75m to 26m and is setback 0.69m, behind the heritage facade. This does not comply with the street wall height/existing height or the 6m upper level setback.
- **The new in-fill addition to the rear** (south) of the building adjoining the new through-site link, has a street wall height of 22.5m (with zero setback).

Comparison with as-approved built form and as-proposed:

**Figure 15:** Comparison of approved (left) and proposed (right) street wall heights and heritage façade setbacks for Building B looking south-east from the corner of Hunter and Perkins Streets)  
(Source: SJB Planning, SEE, excerpt from Fig 46, p96)

**Figure 16:** Comparison of compliant setback above heritage facade (in blue, at left) and proposed addition (non-compliant, at right) for Building B as viewed from Wharf Road  
(Source: SJB Planning, SEE, excerpts from Fig 48 and 49, p98)



**Figure 17:** Perkins Street façade photomontage comparison: Left: as-approved Stage 1 DA; and Right: as-proposed  
(Source: Left: SJB Architects; Dwg P-A-4001/14 dated 19/5/17; Right: SJB Architects; Dwg P-A- 4001/22 dated 18/10/19)





The SEE accompanying the DA by SJB Planning (p96-97) justifies the proposed street wall heights and heritage setbacks of Building B as follows (NB. summary/extracts):

***“Heritage:*** *As detailed in the HIS (the proposed design) is an acceptable outcome and does not adversely impact on the heritage item or the conservation area as identified in its key findings.in relation to the proposed setbacks:*

- *The design development stage included options testing of the 6m and 4m setbacks above the heritage building to provide a comparison of the visibility of the new rooftop addition. There was marginal difference between the two setbacks in terms of visibility of the addition from various view corridors, including the Hunter Street and Perkins Street approaches, and from the Cathedral Park.*
- *The existing building comprises two building elements...(and)..the design and setbacks of the additions respond appropriately to each element:*
  - *The roof-top addition to the former Scott's Ltd building (1914) is designed in a manner that respects its prominent corner location. This is achieved with an appropriate 4m setback and allowing sufficient curtilage around the clock tower. The plane glazed façade and flat roof of the new addition provides a backdrop and ensures that the accented parapet detailing of the Scott's Ltd building remains dominant. This maintains its prominence as a corner building when viewed from Hunter and Perkins Street as illustrated in the View Impact and Street View Analysis.*
  - *The former D. Mitchell & Co. Warehouse building has a different architectural composition and character to the former Scott's Ltd building (1914). The design of the new rooftop addition has been specifically tailored to compliment the vertical façade articulation of the D Mitchell building. The height, flat roof form and regularly placed fins of the addition reference the floor levels, arched window fenestration and string courses of the existing façade. The glass-line of the addition is slightly setback from the façade, with the fins aligning with the top of the facade. The minimal setback of the additions to the facade provides an opportunity to introduce a crown that terminates the building with a rhythmic façade treatment similar to the existing windows. The height of this addition aligns with the addition to the former Scott's Ltd building (1914).*

***View Impacts:*** *...the variation...does not result in unreasonable impacts on view corridors or important street views. This includes the views where the building presents as a prominent corner building. (Comparative diagrams of compliant and as-proposed built form was provided at the prelodgement meeting and UDCG during the design development phase which) illustrated there was a marginal difference between the compliant 6m setback and proposed setbacks in terms of visibility of the additional building envelope to the former David Jones building from various view corridors including from Wharf Street, Hunter Street and Perkins Street approaches. The views from Wharf Street are provided in Figures 48-49) NB. Figure 16 in this assessment report*

***Design excellence:*** *The proposed street wall heights and setbacks above the heritage facades were the outcome of a design excellence process led by SJB Architects, City Plan Heritage Architects, SJB Planning with NBRS in a peer review role. The process involved the analysis and testing of the massing options for the additions to the building, which are described in the Design Report prepared by SJB Architects. This was an iterative process that included presentations to Council's Urban Design Consultative Group (UDCG) on two (2) separate occasions, as well as pre-DA consultations with Council officers. The design options were refined and amended in response feedback from the UDCG (refer to Design Report), as well as feedback from Council's heritage consultant and the pre-DA meeting.*

*The siting and built form of the additions was informed by careful consideration of architectural composition and significant elements of the heritage building. It was also informed by an analysis of the built form of the conservation area and adjacent approved*

*Stage 1 buildings, which are characterised by variable street wall heights and setbacks above heritage facades.”*

Assessment comments: The design excellence process considered street wall heights in detail, and while too lengthy to provide in this report, it is considered that significant attention to the street wall heights for Building B in particular were addressed, resulting in a suitable outcome. Further, the Newcastle Urban Design Consultative Group considered the proposed development and made the following comments with respect to the upper level setbacks and street wall heights:

Refer to Table 1 providing comments recent UDCG meeting.

In conclusion, the proposed reduced setback to the Scotts Building (corner) will result in a minimal visibility than the permitted built form. The lesser setback and higher street wall to the D Mitchell and Co Warehouse building on Perkins Street (and southern addition) will be more visible. However the proposed massing and built form has been well considered, will be in character with the immediate surrounds, will not have any adverse impacts, and is considered to be an appropriate outcome for the site, in particular having addressed heritage issues, and visual impacts.

#### **iv. Overshadowing**

Overshadowing impacts resulting from the proposed changes to Building B (compared to the approved Stage 1 DA) are limited to within Block 1 itself as listed below (midwinter):

- *9am -10am: There will be some minor additional overshadowing to the private terraces of apartments 7.06 and 7.07 on Level 7 of Building A. The additional overshadowing occurs between 9am and 10am. From 10.30am there is no additional overshadowing of the terraces and they receive full sunlight in excess of two (2) hours. Overshadowing generally confined to planters.*
- *11am: There will be a small amount of additional overshadowing to the Perkins Street footpath from the new awning.*
- *12pm-1pm: There will be a small amount of additional overshadowing to the communal open space of Building A from 12pm onwards (ie. until 3pm). This is negligible and at least of 50% of the communal open space receives two hours sunlight.*
- *2pm - 3pm: There will be a small amount of additional overshadowing to the through-site link. This will be confined to a small strip of the southern side of the laneway the base of Building A. Reduced area for sunlight to cafes/retail premises.*

On this basis it is considered that the level of sunlight access is acceptable, having regard to the comparative change between the level of overshadowing cast by the approved Stage 1 application and the proposed additions to Building B of adjacent buildings.

#### **v. Public Domain and Publicly Accessible Private Land (Through-site link)**

The proposal does not alter any approved aspects of public domain works along Hunter and Perkins Streets, which will be in accordance with the approved Stage 1 DA.

The proposal maintains the mid-block connection between Perkins and Wolfe Street, however configuration at the western (Perkins Street) end is altered as a result of the southern “infill” addition to Building B. The modifications to the laneway include:

- A cantilevered addition along part of the northern side of the laneway. This essentially creates an awning along the portion of the laneway adjoining Building B;
- A narrowing of the laneway at ground level between Building A and Building B by approximately 200mm. This is attributed detailed survey information confirming the location of the southern wall, which was previously obscured by the now demolished former David Jones car park. The width of the laneway will be 7.7m to glass-line of

Building A relative to the approved width of 7.9m; and

- A narrowing of the laneway above ground from 7.7m to 5m as a result of the rear addition Building B. As indicated in Figure 21 this 5m clearance is obstructed by three large supporting columns.

Condition 45 of the Concept DA-2017/00701.01 and several NDCP 2012 development controls relate to this through link (reproduced below).

Condition 45 of the Concept DA-2017/00701.01:

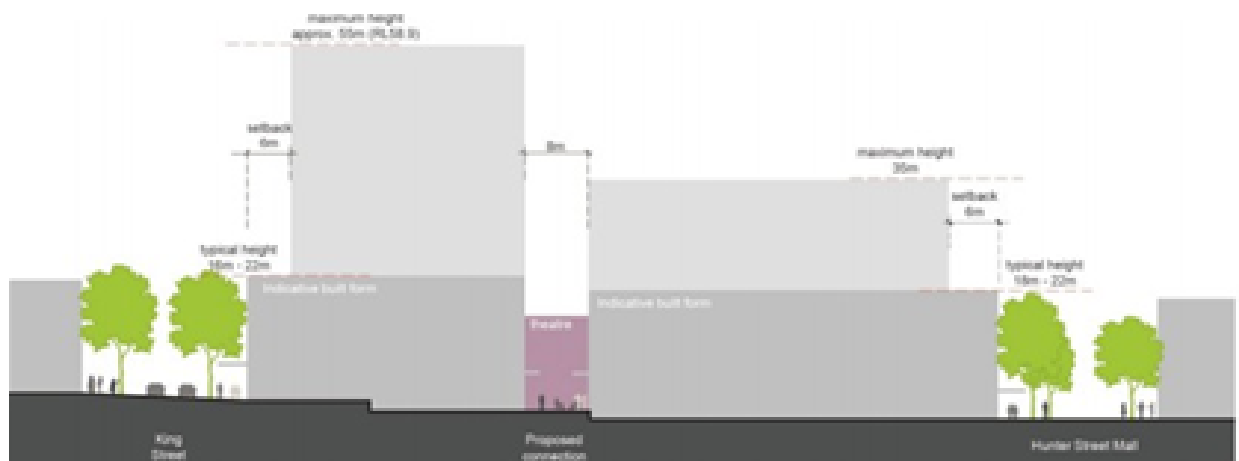
*Through-site connections on privately owned land shall be a minimum of 5m in width and shall be clear of obstructions, except for the pedestrian only link between Newcomen and Laing Streets, which shall be a minimum of 3m in width, clear of obstructions. Such through-site links shall be located as shown on the 'Privately Owned Public Access Plan' prepared by SJB Architects (Drawing No. DA-2902 Revision 02 dated 12.12.2018).*

NB. The concurrent development application to modify this consent seeks to alter the drawing number to reflect the current submitted design)

NDCP 2012: Section 6.01.04 Key Precincts - Hunter Street Mall: B1 Pedestrian Amenity (also B1 Access Network of Section 6.01.03)

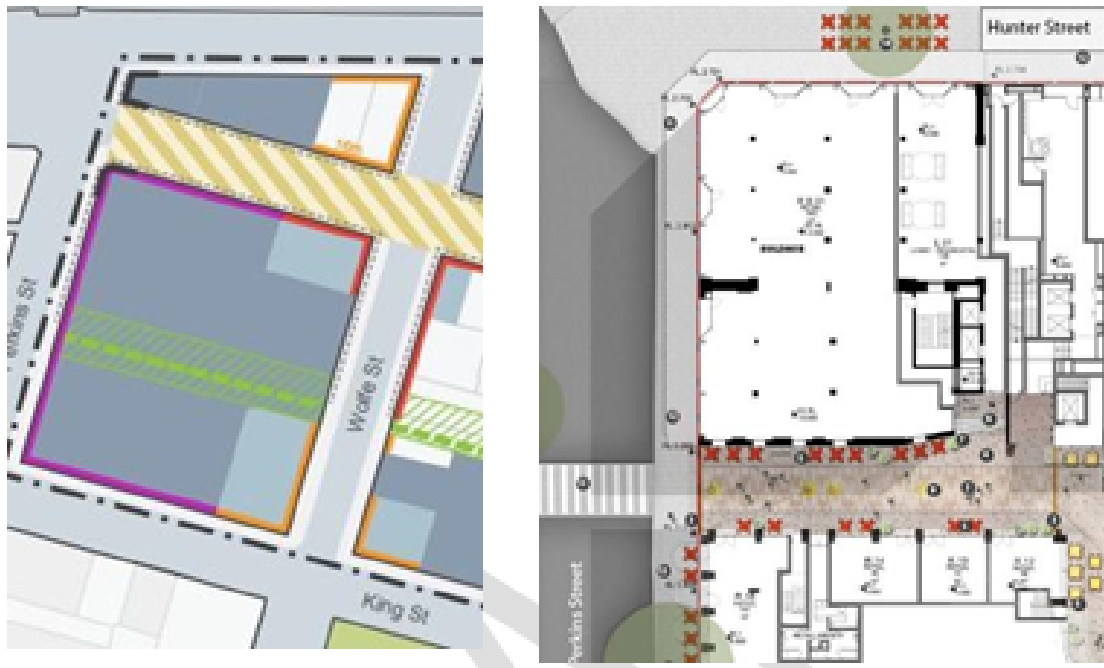
While not referenced in the DCP controls, it is noted that Figures 6.01-29 and 6.01-30 are directly relevant to the subject site, showing a section through the former David Jones Building and the subject proposed connection "terminated by the view of Victoria Theatre" (ie. on the western side of Perkins Streets) with Figures 6.01-30 requiring an 8 metre wide connection. It is acknowledged that the diagram also shows much higher buildings than that permitted by the NLEP Height of Buildings Map and Staged Concept approval probably reflecting an earlier version of the LEP that permitted these building heights.

**Figure 18:** Figure 6.01-30 of NDCP 2012 entitled 'Section through the former David Jones building, showing a proposed connection terminated by the view of Victoria Theatre'.



**Figure 19 (at left):** Extract of Figure 6.01-29 of NDCP 2012 'Hunter Street Precinct Plan' showing planned through link site (in green hatching).

**Figure 20: (at right)** Extract/detail of as-approved Stage 1 Landscape Concept Plan for the western portion of the link through the subject site (Dwg 17008\_DA-2 by Aspect Studio)



**Figure 21:** Extract of Precinct Plan Level 1 showing cantilevered building infill/covered pedestrian link (in blue shading) and column placement (in yellow). (SJB Architects Dwg P-A-0201 Rev 22)



The applicant states that the width of the laneway at ground level is “considered to satisfy condition 45 of the Stage 1 DA by maintaining a minimum 5m circulation width between the outdoor furniture (refer to Figure XX). While the distance between columns of the cantilevered addition are located within this 5m, outdoor seating along the southern side o the laneway can be positioned to achieve the clearance.”

The current DA seeks to alter the configuration of the western part of the through link due to the proposed infill addition to the southern façade of the former David Jones building. A ground level there will be a cantilevered awning (with three large support columns), providing pedestrian access. Above this will be five levels to accommodate rooms for the hotel.



**Figure 22:** Extract of as-approved Stage 1 DA photomontage of laneway as viewed from Perkins Street. Building B on the left and Building A to the right  
(Source: Detail from Photomontage 007 Dwg P-A-4007/14 (2017), SJB Architects)



**Figure 23:** Extract of proposed narrow infill extension to Building B (at left) forming a colonnade within the pedestrian link. Building A to the right  
(Source: detail of Photomontage 007 Dwg P-A-4008/22 (2019). SJB Architects)



**Figure 24:** Photomontage of within pedestrian link looking north-west toward southern infill extension to Building C and colonnade with Victoria Theatre Building, Perkins Street at left

*(Source: detail of Photomontage 'Victoria Way entrance' p28 of Design Report, SJB Architects)*

*NB. this design was presented at the second UDCR meeting in April 2019, however is similar to the final submitted DA design and is for indicative/illustrative purposes only*



The Statement of Environmental Effects accompanying the application (SJB Planning p38) states “the width of the laneway at ground level is considered to satisfy condition 45 of the Stage 1 DA by maintaining a minimum 5m circulation width between the outdoor furniture (refer to Figure 21). While the distance between columns of the cantilevered addition are located within this 5m, outdoor seating along the southern side of the laneway can be positioned to achieve the clearance.”

While pedestrian access will still be available, it is considered that the southern infill extension will further increase the sense of enclosure of this already confined publicly accessible area (as illustrated in the comparative as-approved and as-proposed photomontages (**Figures 22, 23 and 24** respectively). The increased number of hotel rooms (ten) that the infill extension provides is at the expense of the openness of the lane, which will arguably reduce the amenity for users of the lane, in particular patrons of the outdoor eating premises that appear to be intended for this location.

#### **vi. Social Impacts: Safety, Security and Crime Prevention**

**Background:** A Social Impact Assessment (SIA) Addendum 2017 and Social Impact Assessment 2015 was prepared by GHD and forms part of the approved documentation for the Concept DA. Additionally, GHD prepared a Strategic Social Plan (SSP) and Crime Risk assessment for the Stage 1 DA No. 2017/00700, which forms part of the approved documentation and will be implemented within Block 1 as part of those approved works.

**Current Hotel DA:** A further SIA Addendum (by GHD) accompanies the DA and reviews the social impacts identified by the SIA prepared in 2017 for the Stage 1 development (to address Condition 58 of the Concept DA). The SIA addendum identifies any additional social impacts that may arise from the proposed hotel and includes additional mitigation measures to address potential adverse social impact arising from the operation of the hotel. These mitigation measures include:

- Notifying nearby residents and sensitive community uses such as the two community centres that provide weekly Alcoholics Anonymous meetings, regarding the proposed use and timing of ongoing construction and operation activities;
- Consulting with NSW Police Local Area Command regarding planning and design of the hotel;
- Implement recommendations made in the Crime Risk Assessment, to reduce potential risk of crime through the design of the precinct (see comments below);
- Ensure relevant staff are aware of any patrons who have a barring order at either the hotel or Crown and Anchor facility; and
- Provide educational material on problem gambling and information about support services within the facility.

The 'East End Stage 1 Hotel Operational Management Plan' confirms that the hotel will have capacity for a total of 708 guests and patrons. This includes a maximum of:

- 160 patrons in the Ground Floor Restaurant;
- 120 patrons in the Ground Floor Hotel Bar;
- 20 patrons in the Ground Floor Cafe;
- 100 patrons in the Ground Floor Sports Bar/Gaming Lounge;
- 100 patrons in the Roof Terrace Bar shall be limited to 100 patrons;
- 208 guests in the hotel.

This Operational Management Plan confirms that the ongoing management measures which will be implemented to address safety and security include the following:

- In relation to the Ground Floor Restaurant, Ground Floor Hotel Bar, Ground Floor Sports Bar/Gaming Lounge, Gaming Lounge and Roof Terrace Bar - by monitored periodic head counts and whenever capacity is exceeded, entry will be confined to one doorway.
- Standard operational procedures for the responsible supply of alcohol will apply.
- With respect to the conduct of the gaming room, only adults will be permitted to enter; all staff working in this area will hold a current or interim responsible conduct of gaming certificate; and a register of certification will be held.
- Access to the Roof terrace is to be managed via the hotel guest lifts access control arrangements.
- The restaurant/bar areas will employ security guards on the premises from 10pm through until the close of the restaurant/bar from Thursday night through to Sunday night. Additional security personnel will be utilised during any special events and as required in response to patron numbers. During these times, security will manage patron entry/exit to the premises and lift lobby and monitor patron capacity.
- If patrons are required to queue in front of the restaurant on the footpath of Hunter or Perkins Streets, entry to the Hotel will be maintained by security and Hotel Operator staff. The patrons would be required to queue against the building boundary to provide unobstructed access for passing pedestrians. If required, additional security personnel will be utilised to manage the building entrances and queues and portable ropes/bollards may be used.
- Management will regularly monitor inside and outside the premises to prevent antisocial loitering and noise.
- CCTV surveillance cameras shall be strategically installed throughout the hotel premises with particular coverage of entrances; areas within the hotel generally accessible to the public (excluding toilets); areas within a 10m radius outside the entrances to the Hotel (including Hunter and Perkins Streets; parts of laneway; and in the basement).

City of Newcastle Licence Premises Reference Group (LPRG) have provide no concerns in relation to the proposal or submitted Operational Management Plan.



### **viii. Traffic, Parking & Access**

Traffic Impacts, vehicle access locations and parking arrangements were key matters considered during the assessment of the initial Newcastle East Stage 1 Development Application (DA2017/00700) and for the concurrent Concept Development Application (DA-2017/007001). Generous concessions were granted with respect to on-site parking for retail staff parking and visitors on the basis of the city centre location, proximity to transport and existing Council-owned carpark located at King Street. The approved parking provision for the development was based on the following:

- Residential parking to be provided in full compliance with section 7.03 Traffic, Parking and Access of NDCP 2012.
- Parking for residential visitors to be provided at the rate of 25% of the requirements of section 7.03, with the remaining 75% to be accommodated within the existing Council car park at the corner of King and Thorne streets and also on-street.
- Parking for commercial and retail staff to be provided at the rate of 50% of the requirements of section 7.03, with the remaining 50% to be accommodated within the existing Council car park at the corner of King and Thorne streets and also on-street.

The parking allocation for the development is reflected in conditions E20 and F3 of DA 2017/00700.01, being the most recent modification of the Stage 1 development. Such conditions require the provision of 273 carparking spaces for the proposed development.

The same approach to the provision of parking is proposed for the current development application and for the revised Concept DA-2017/701 (refer separate report for detail and associated conditions). It is noted that no additional parking is proposed to be provided on-site in conjunction with the current development application, with the proponent only proposing re-allocation of spaces based on the reduction in the number of residential apartments and the inclusion of the hotel use. This re-allocation of spaces is shown in Table 4 below:

<b>Table 5: Comparison of Approved and Proposed Stage 1 Parking</b>		
<b>Land Use</b>	<b>Spaces in Approved Stage 1 Consent</b>	<b>Spaces Proposed</b>
Hotel Parking	N/A	26
Resident Parking	198	178
Residential On-site Visitor Space	11	11
Retail/Commercial On-site Spaces for Staff/Visitors	31	26
Unallocated Spaces	33	32
<b>Total</b>	<b>273</b>	<b>273</b>

The key features of the parking, access and servicing for the proposed Stage 1 development, with the inclusion of the hotel use, are listed below:

- Car Parking: 273 parking spaces over two basement levels, with the applicant proposing that this will comprise 198 resident spaces (23 accessible), 11 residential visitor spaces, 31 retail spaces (staff) and 33 'unallocated' spaces.
- Bicycle Parking: 268 spaces
- Motorcycle spaces: 17 spaces
- Short term parking: A combined 5-15 minute parking/taxi-no parking zone on the southern side of Hunter Street across the front of the site will allow for shared hotel

- guest drop off / pickup operations.
- **Loading/Servicing:** Use of the approved dedicated loading bay which is located within the south eastern corner of the ground floor of Building A and is accessed from King Street.
- **Vehicular Access:** Use of the approved vehicle access to the car parking and loading area which is provided via two separate driveways from King Street.

The current application for the hotel use is accompanied by a Transport and Parking Assessment prepared by TTM (dated 24 October 2019). In summary, the TIA states the following with regards to car parking allocation (p16 & 21):

- “..... The NDCP section 6.01 for Newcastle City Centre describes performance criteria to ‘encourage new uses for heritage buildings’ that may include ‘innovative approaches to provide car parking where the provision of a basement or other car parking is not possible ..... (including) allowing heritage buildings to provide less car parking than is normally required for that use, or no car parking were not physically possible”.*
- “It is proposed that in keeping with the NDCP intent and the existing consent, that instead of applying the end DCP car parking rate for hotels at 0.5 spaces per room, that the RMS rate for the Guide to Traffic Generating Developments for 5-star hotels is used at 0.2 spaces per room.”*
- “Given the proposed hotel will be the first 5-star hotel in the Newcastle area and is likely to attract strong visitation, we propose applying an occupancy rate of 75% to RMS rate for hotel parking.”*
- “The proposed development is allocated 26 car parking spaces over total of 273 parking spaces spread across basements one and two. The allocated car parking spaces will be used by hotel guests, staff and for retail use. The allocation of parking spaces based on existing heritage building use and location is considered acceptable”.*

#### Parking Demand

Section 7.03 Traffic, Parking and Access of NDCP 2012 requires that car parking for the hotel be provided in accordance with Table 5 below. It is noted that the ‘hotel retail’ land use referenced in this table includes the proposed restaurants, bar and gaming lounge, with parking proposed to be provided at the rate of one space per 60m<sup>2</sup> gross floor area, as per section 7.03 Traffic, Parking and Access of the NDCP 2012. Further, 50% of the retail parking is proposed to be accommodated by the existing Council carpark, consistent with the approach adopted for the previous Stage 1 and Concept applications.

<b>Table 6: Parking as Required by Section 7.03 of NDCP 2012</b>			
<b>Land Use</b>	<b>Car Parking Rate</b>	<b>Unit</b>	<b>Required Car Parking Spaces</b>
Hotel	1 space per 2 staff	16 staff	8
	Minimum 0.5 space per unit; maximum 1 space per unit	104 rooms	52
Hotel retail	1 space per 60m <sup>2</sup> GFA	738m <sup>2</sup>	6
<b>Total</b>			<b>66</b>

However, rather than adopting the DCP parking rates, the applicant is seeking to provide car parking for the hotel rooms in accordance with the RMS Guide to Traffic Generating

Developments, which only requires provision of 0.2 spaces per room. The applicant submits that this is on the basis of:

- The heritage listing of the building whereby the NDCP suggests an innovative approach to carparking;
- The expectation that a significant number of hotel guests will be arriving by public transport, taxis and hotel vans/coaches.
- The provision of separate drop off areas for guests arriving by taxis and coaches/vans.

The application of the RMS standard of 0.2 spaces per hotel room, rather than the NDCP standard of 0.5 spaces per room will necessitate the provision of only 16 spaces for the 104 rooms, rather than 39 spaces (based on 75% occupancy). The applicant suggests that this 75% occupancy rate is based on the data from the Australian Accommodation Monitor 20187-18 which states that the average occupancy rate on the Hunter region is 68%, with the rate across NSW being just under 79.6%.

These assumptions will result in car parking for the Stage 1 development, including the hotel, being provided in accordance with Table 6 below.

<b>Table 7: Applicant's Suggested Parking Provision for Stage 1 DA Including Hotel Carparking</b>					
<b>Land Use</b>		<b>Unit</b>	<b>Car Parking Rate (RMS)</b>	<b>Car Parking Requirement</b>	<b>Car Parking Spaces Proposed</b>
Hotel Parking (75% occupancy)	Guests	104 rooms	0.2	16	26
	Staff	16 persons	0.5	8	
	Retail	738sq.m	1/60	7*	
	<b>Total</b>			<b>31</b>	
Resident Parking	1 bed	68 beds	0.6	41	178
	2 bed	126 beds	0.9	113	
	3 bed	17 beds	1.4	24	
	<b>Total</b>	<b>211 beds</b>		<b>178</b>	
Residential on-site visitor spaces (25%)		211 beds	1 for first 3 dwellings + 0.2 thereafter	11	11
Retail/Commercial spaces for staff (50%)		3,049 sq.m	1/60	26*	26
Unallocated parking spaces					32
<b>Total</b>				<b>246</b>	<b>273</b>

\*Rounded up to nearest whole number

Council's Development Officer (Engineering) has reviewed the applicant's suggested adoption of the RMS standard of 0.2 spaces per hotel room and the suggested occupancy rate of 75%. Whilst in agreement with the suggested occupancy rate,

*"the application of the lesser standard of 0.2 spaces per room is not supported as the Newcastle City Centre is not comparable with that of Sydney in terms of alternate transport options and the associated supporting networks despite the recent introduction of light rail. The use of a private motor vehicle over public transport remains the preferred option.*

*The argument for a parking concession based on the adaptive reuse of an historic building is not supported as staff and customers of the former David Jones building utilised adjacent multi-level parking station. This multi-level parking station is being demolished and rebuilt under Stage 1 and therefore should cater for the parking demands of the proposed hotel."*

Accordingly, Council's Development Engineer recommends that the NDCP standard of 0.5 spaces per room be applied. This will result in a requirement for 39 spaces for the 104 hotel rooms, when the suggested 75% occupancy rate is applied.

Table 6 above indicates that there will be a shortfall of 23 carparking spaces for the hotel rooms, as only 16 spaces are proposed for this use. It is recommended that this shortfall be provided by utilising 28 of the 32 'unallocated' spaces as referenced in Table 7 below. The recommended parking provision for the hotel is therefore as follows:

Table 8: Council's Recommended Parking Provision for Hotel					
Land Use		Unit	Car Parking Rate (NDCP)	Car Parking Requirement	Car Parking Spaces Proposed
Hotel Parking (75% occupancy)	Guests	104 rooms	0.5	39	54
	Staff	16 persons	0.5	8	
	Retail	738sq.m	1/60	7*	
	Total			54	
Resident Parking				178	178
Residential on-site visitor spaces (25%)				11	11
Retail/Commercial spaces for staff (50%)				26*	26
Unallocated parking spaces					4
Total				269	273

\*Rounded up to nearest whole number

In conclusion, the overall number of on-site car parking spaces meets (and exceeds) the previously agreed concessions (as also considered in the revised current Concept DA- 2017/00701), however, it is recommended that the NDCP standard of 0.5 spaces per hotel room be applied, with a 75% occupancy rate. Accordingly, it is recommended that conditions E20 and F3 of DA2017/00700.01 be amended to reflect the parking allocated as referenced in Table 8 above.

#### Motorcycle and Bicycle Parking

The number of motorcycle parking spaces which are proposed (and required) is unchanged with 17 spaces continuing to be provided, as motorcycle parking is based on the total number of carparking spaces provided. As the bicycle parking rate for residential is higher than that required for hotel rooms, the previously required 268 bicycle parking spaces also remains compliant. Such spaces will be provided in storage cages for residential units and bicycle racks for visitors.

#### Guest Dropoff and Pickup

The provision of a guest drop off and pick up area has been the subject of ongoing discussion between Council and IRIS, with Council providing to Iris its preferred public realm concept (being Concept Option 8, which includes indicative planned locations for street parking, bus and coach parking, loading zones and 5-15 minute/ Taxi-No parking zone in the road reserves of Hunter Street and Perkins Street surrounding the proposed hotel. The Hotel Operation Management Plan prepared by Iris confirms that this will include:

- A guest drop off and pick up zone .....adjacent the Hotel frontage along the southern side of Hunter Street (total 6 vehicular spaces, approximately 35m) subject to NCC approval.*
- The guest drop off and pick up zone is proposed as a combined 5-15-minute parking/Taxi-No parking zone. The No Parking portion is proposed to facilitate taxi drop off/pick up.*
- The 5-15 minute parking spaces are proposed to facilitate nonexclusive use for check in of guests arriving by private vehicle*
- The "No Parking" zone means that vehicles cannot park, but are able to drop off or pick up passengers or goods without leaving the vehicle.....and would facilitate taxis, private vehicle and shuttle bus pick up or drop off.*
- The final length of hotel pick-up / drop – off zone, number of vehicles to be*

*accommodated and nature of signage to be determined during Roads Act 1993 - S138 process and ultimately requiring the approval of the Newcastle City Traffic Committee prior to installation.*

- f) *NCC proposes a 'No Parking–Bus/Coach Accepted' zone in Hunter Street near the Crown & Anchor Hotel generally in accordance with NCC public realm concept Option 8. This zone can be utilised for a 22 seater bus for the hotel. Alternatively, nothing precludes buses from utilising the pick up/drop off area in Hunter Street.*

Council's Development Officer (Engineering) has advised that this concept arrangement is consistent with Council's outcome for the public domain.

#### Traffic Generation

CN's Development Officer (Engineering) in a referral dated 21.2.20 noted that the traffic consultant states in Section 4.2 – Hotel Development Impact that the traffic generated by the proposed hotel will not have an adverse impact on the local road network although did not provide any data to support this conclusion.

The following comments were also provided by Council's Development Officer (Engineering):

a) Road Network

*"Alterations to the configuration of the proposed private but public accessible east- west laneway resulting in a reduction in the approved 7.9m wide laneway (Stage 1) to a width of 5.0m. A 5.0m wide access roads is permitted under AS 2890.1 provided it operates as a one -way thoroughfare. Regulatory signage advising of one-way traffic movements in the laneway will be required to be installed by the developer."*

b) Site Access

*"The proposal does not alter vehicle access arrangements to the site proposed under Stage 1 with all access located off King Street to customer /resident parking and a designated loading service dock."*

*"In order to facilitate the hotel guest drop off / pickup operations (porte cochere) an appropriate condition of consent has been recommended for this application requiring short term parking across the Hunter Street frontage of the site."*

c) Servicing

*"All loading and service activity associated with the proposed hotel is to be undertaken in the approved loading dock under Stage 1 located off King Street. A Shared Loading Dock Management Plan is intended to be prepared to regulate access and operation of the loading dock facility".*

*"Garbage bins are proposed to be stored on-site in an appropriate enclosure and the service lift used to transport the bins to the loading dock area on collection day. No bins are to be presented to the street for kerbside collection. All bins are to serviced onsite in the designated loading dock area."*

A condition will be attached to any consent issued for the Stage 1 development requiring the preparation of this plan prior to the issue of the Construction Certificate.

d) Parking

*"All loading and service activity associated with the proposed hotel is to be undertaken in the approved loading dock under Stage 1 located off King Street. A Shared Loading Dock Management Plan is intended to be prepared to regulate access and operation of the loading dock facility".*

A condition will be attached to any consent issued for the Stage 1 development requiring the preparation of this plan prior to the issue of the Construction Certificate.

#### **ix. Acoustic Impacts Associated with Hotel Operations**

The 'East End Stage 1 Hotel Operational Management Plan' prepared by Iris Capital confirms that the hotel and reception will operate 24 hours per day, 7 days per week. The ground floor restaurant, ground floor hotel bar, ground floor sports bar/gaming lounge and roof terrace bar will trade between 10am and midnight Monday to Saturday and between 10am and 10pm Sunday.

The Stage 1 development application is accompanied by a DA Environmental Noise Impact Assessment prepared by Acoustic Logic. This report considers the potential noise impacts associated with the proposed hotel use which includes a rooftop bar, ground floor restaurants/bar and gaming lounge and plant service areas. The development application also seeks approval to relocate a western facing window in Apartment C.01 which is situated adjacent to the rooftop bar.

Acoustic Logic confirm that the nearest affected receivers are:

- Hotel rooms on Level 2 directly above the restaurant/bar;
- Hotel rooms on Level 5 directly underneath the roof top bar;
- Future residential building A located south of the project site;
- Future residential building C located east of the project site;
- Existing commercial building located immediately across Hunter St and Perkins St;
- Hotel rooms on Level 6 horizontally adjacent to the roof top bar.

The Noise Impact Assessment also considers potential external noise impacts, which are primarily traffic noise, on the proposed development. To assess this impact attended noise measurements were taken at two locations around the project site, being the corner of Hunter St and Perkins St (which represents the worst noise location) and at the corner of Perkins and King Streets which are impacted by bus noise.

The Environmental Noise Impact Assessment confirms that recommendations that the acoustic treatments detailed in Section 6 of the report be provided to satisfy the requirements below:

- Australian/New Zealand Standard, AS/NZS 2107. 2016 Acoustics  
"Recommended Design Sound Levels and Reverberation Times for Building Interiors".
- EPA Noise Policy for Industry
- NSW Office of Liquor and Games.
- Such measures include:
- Specified glazing thickness and acoustic seals; specified construction standards for light weight walls; roof/ceilings; façades, and for the mounting of speakers etc.;
- Specified construction standards for the entry doors, with such doors to remain closed during music activities, except for patrons moving in and out;
- Within the outdoor area of the ground floor restaurant/bar:
  - Number of patrons after 10pm shall be limited to ensure that the noise emission for neighbouring guest rooms satisfy the requirements of EPA NPfl.
  - No music or PA or audio systems is allowed within this area.
  - Indoor music noise limited 82 dB(A)Leq before midnight and 70 dB(A)Leq after midnight.
- The following shall be implemented for the rooftop bar:
  - Outdoor sittings along Hunter St shall be closed after 10pm but Perkins St outdoor sittings can be open till midnight.
  - No music or PA or audio systems is allowed within this area.
  - Smokers will be discouraged from remaining in the area longer than necessary than to have a cigarette.
  - Signage is to be provided advising patrons that the use of the smoking area is subject to their behaviour being appropriate to meet the noise parameters of OLG. Failure to behave appropriately will result in access to

- the area being denied.
- Partition wall to guest rooms shall be  $R_w + C_{tr} > 50$  + Discontinuous structure.
- Indoor music noise limited to 96 dB(A)Leq before midnight and 75 dB(A)Leq after midnight.

The following management measures are required to be implemented for all outdoor areas:

- Smokers will be discouraged from remaining in the area longer than necessary than to have a cigarette.
- Signage is to be provided advising patrons that the use of the smoking area is subject to their behaviour being appropriate to meet the noise parameters of OLG. Failure to behave appropriately will result in access to the area being denied.

The assessment also confirms that

*“Internal noise levels cannot be achieved with windows open. Hence it is required that an alternative outside air supply system be installed in accordance with AS 1668.2 requirements. Any mechanical ventilation system that is installed should be acoustically designed such that the acoustic performance of the recommended constructions is not reduced by any duct or pipe penetrating the wall/ceiling/roof. Noise emitted to the property boundaries by any ventilation system shall comply with Council requirements.”*

Council’s Senior Environmental Officer has reviewed the submitted acoustic report and is satisfied with the content and recommendations. The following comments provided:

*‘A theoretical acoustic assessment was carried out by Acoustic Logic dated September 2019 to support the proposal. The assessment has modelled the impacts from external traffic noise on the proposal and the likely noise emissions from the proposed restaurant/ bar and associated mechanical plant noise to ensure that the amenity of the surrounding sensitive receivers is not adversely affected. The acoustic assessment demonstrated that provided the recommendations in Section 6 (which set out the glazing and construction requirements and internal noise levels) are applied, internal noise levels will be compliant with relevant adopted NSW guidelines. This will be addressed by an appropriate condition of consent.*

*Section 6.6 addressed that the mechanical plant associated with the development has not been selected and thus no external noise emissions have been assessed as part of this assessment. The acoustic consultant however has recommended that a detailed assessment be carried out once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This will be addressed by an appropriate condition of consent.*

*The ESU will recommend a condition of consent to restrict the use of the outdoor area associated with the Rooftop Bar after 10:00pm seven days a week. Along with this a further condition is recommended that no music is played in the outdoor terrace associated with the Rooftop Terrace.’*

No other issues have been raised by NSW Police. No response was received formally. Representatives from NSW Police were included in LPRG meetings. The acoustic considerations are satisfactory.

With respect to potential construction noise, it is noted that the Construction Noise and Vibration Management Plan which was prepared for the previous Stage 1 development (DA2017/00700.01) remains relevant to the current application.

#### **ix. Construction Management**

One of the submissions from the Newcastle Inner City Residents Alliance (NICRA) raised significant concern regarding the impacts of construction of this large scale development, in particular the ongoing failure of regulation of site operations.

These impact from construction works was anticipated and identified within each of the assessment reports for development applications within the precinct to date, including in the Stage 1 DA report (2017) for Block 1 now under construction, as follows:

*"It is evident that construction impact on the community and businesses will be significant and ongoing and on this basis will need to be well managed by Council and the proponent. The concerns of the community are indeed valid and if construction impacts, particularly carparking, traffic movements and noise are not well handled, they have the potential to significantly impact on residential amenity and business viability."*

Conditions were imposed within the Stage 1 consent (No. 34-38) requiring a Construction Management Plan (CMP) and Construction Traffic Management Plan which form part of the Stage 1 approval.

Richard Crookes Construction who are currently undertaking the construction of the Stage 1 development, have prepared a Project Management Plan that accompanies the current DA which is intended to supplement the approved construction management plans.

Regulation of the construction impacts is a valid and serious concern. However this is a separate matter to the DA process.

#### **x. Waste Management**

The current development application proposed minor alterations to waste facilities, service area and the lift within the basement. A Waste Management Support report by Jacobs accompanies the development application for the operational phases of the development once constructed. This report confirms that:

- There will be no change to the waste generation rates or bin requirements for buildings A, C and D;
- No changes are proposed to the storage of commercial and retail waste other than the overflow room at Basement 1 (refer Drawing P-A-0213/22);
- The hotel will use the previously allocated Building B waste rooms for the separate storage of waste, prior to transfer to the loading dock for collection.

The hotel waste generation rates for the hotel have been based on the Newcastle Technical Manual for Waste Management, which recommends the following:

Garbage:

- 5L/bed/day
- 50L/100m<sup>2</sup> of bar area per day
- 10L/1.5m<sup>2</sup> of dining area per day

Recycling:

- 50L/100m<sup>2</sup> bar and dining areas

Jacobs estimate that a total of 12,190 litres of garbage will be generated per week; 2,731 litres of recycling; 1,149 litres of glass; and 8,467 litres of cardboard. Whilst the applicant's calculation of waste generation appears to be somewhat conservative, based on the floor area which is proposed to be utilised as bar and dining space, CN's Waste and Commercial Collections Manager has confirmed that the overall number of bins to be provided is considered to be adequate, with a total of 3 x 660L bins will be provided for hotel waste and 5 x 66L bins for recycling. Compaction of cardboard will occur within the separate retail waste room.



Access to the hotel garbage room will be provided via a new goods lift, with bins to be transferred to the loading dock for collection via a lift adjacent to the loading bay. CN's Development Officer (Engineering) notes that garbage bins are proposed to be stored on-site in an appropriate enclosure and the service lift used to transport the bins to the loading dock area on collection day. It is recommended that the following condition be attached to the Stage 1 consent:

*"No bins are to be presented to the street for kerbside collection. All bins are to be serviced onsite in the designated loading dock area."*

A total of 7 collections are proposed for garbage and recycling each week and 3 weekly collections which are proposed for glass and cardboard. There will be insufficient room to store all waste and recycling bins on the loading dock so there will need to be a clear schedule for the arrival and processing of waste and recycling vehicles. This will be addressed within a Shared Loading Dock Management, the submission of which will be a condition of Stage 1 consent.

The proposed arrangements are considered to be generally consistent with the waste collection arrangements supported for the approved Stage 1 development application and on this basis are acceptable.

A Site Waste Management and Minimisation Plan (SWMMP) has not been submitted for the demolition and construction phase of the development. This is a requirement of NDCP 2012 Section 7.08.01 Waste Management. To address this, should the application be approved, a condition will be imposed requiring the submission to Council of a detailed revised Construction Management Plan (incorporating a SWMMP) which includes the hotel use, with this document to be submitted for approval prior to the issue of a Construction Certificate for the Stage 1 development. This is consistent with the approach that was adopted for the approved Stage 1 development.

**xi. Signage**

No signage is proposed as part of this application, however the approved Stage 1 Signage Strategy is proposed to be amended in relation to Building B so that it integrates with the overall design of the buildings and will not dominate or detract from the architectural integrity of the buildings. The amendments largely apply to awning/under awning signage and at key entrances and are satisfactory.

**xii. Building Code of Australia and Accessibility**

A Building Code of Australia Assessment Report (City Plan Services) accompanies the development application. This report is applicable to Building B and supplements the Stage 1 DA BCA report (noting that no changes to other buildings on Block 1 are proposed).

An Accessibility Review Report (by ABE Consulting) also accompanies the application and provides an accessibility assessment of the proposed hotel within the context of the relevant parts of the BCA, in addition to The Disability (Access to Premises- Buildings) Standards 2010 for Building B.

**xiii. Flood and Stormwater Management**

A Stormwater Management Concept Plan - Building B (Northrop) accompanies the application which indicates that the approved stormwater strategy and design approach for Stage 1 DA will be maintained. The new roof structure will utilise the existing downpipes and downpipe connections where possible, and any new downpipes or floor sumps will connect to the back or kerb or directly to CN's existing stormwater management system.

**(c) the suitability of the site for development**

The detailed assessment of the Stage DA identified that Block 1 is suitable for a mixed use development that was consistent with planning instruments and strategies for the precinct. The Stage 1 development consent imposed certain conditions, many of which have been addressed prior to and during the construction of the site (currently underway).

The alternative adaptive re-use of the former David Jones building (Building B) for a hotel and proposed additions, are also considered suitable for the site.

**(d) any submissions made in accordance with this Act or the Regulations**

Section 4 of this report contains a summary of the issues raised within public submissions. A response to the concerns raised are contained throughout Sections 6 of the report, including, non-compliance with FSR, height and building envelopes; reduction in laneway width, impacts on surrounding properties including noise from rooftop bar, and construction impacts.

With respect to construction impacts, it is evident that construction impact on the community and businesses is valid, significant and ongoing and on this basis will need to be well managed by CN and the proponent.

The proposal was advertised between 04 November 2019 to 18 November 2019.

The inappropriateness of ongoing modifications is also a valid concern and is addressed in the concurrent separate report in relation to the further modification of the Concept Plan (DA-2017/00701.01).

**(e) the public interest**

The proposed adaptive re-use of the former David Jones building (Building B) for a hotel (replacing the approved 16-apartment mixed-use building, if approved, will allow for increased public access to this heritage building and assist in the additional revitalisation through a more active use for the site. Through a design excellence process, the built form will integrate existing heritage elements within the site and surrounds and will deliver the urban design outcomes contemplated by the strategy. While there are some potential impacts (principally acoustic from rooftop bar and licenced premises use), these can be ameliorated through the recommended measures. The ongoing construction impacts will also need to be better managed. On balance, it is considered that the overall economic and social benefits of this Stage 1 development are in the public interest.

## **7. Conclusion**

This development application relates to the former David Jones building, a heritage listed building. The application seeks an alternative adaptive reuse to that approved by the Stage 1 development consent – a hotel rather than a 16-unit shop top housing use. The proposal also differs from the previously approved scheme as it proposes: an additional level to accommodate a rooftop bar, an infill addition to the southern facade; further demolition works; and associated reconfiguration of basement functions (waste, parking allocation etc).

The proposal is considered to be beneficial as it will allow for increased public access to this heritage building and assist in the additional revitalisation through a more active use for the site. The design is a result of an accepted alternative design excellence process involving meetings with the UDCG who have deemed the design to be appropriate.

The proposed development is compliant with the (revised) Concept Plan submitted concurrently with the application, with the exception of the floor space ratio resulting from the increased gross floor area of Building B and some street wall heights and setbacks, the design is consistent with CN's Development Standards and Controls. The assessment of the application has identified some non compliances with the Apartment Design Guide to the adjacent apartment buildings. The southern infill addition will further visually enclose the pedestrian laneway, however will still function as a through-block link as identified in the planning controls for the City Centre. A 'Clause 4.6 Exceptions to Development Standards Report' has been prepared by SJB Planning, which satisfies the provisions of clause 4.6 of NLEP 2012, with variation to the floor space ratio is considered to be justified.

However, on balance, the development is considered to be an acceptable outcome for the site and it is recommended that the application be supported subject to conditions.

## 8. Recommendation

That the Joint Regional Planning Panel grant consent to DA2019/01150, subject to the conditions contained in **Appendix A**.

### APPENDICES

**Appendix A:** Contains recommended conditions of consent

**Appendix B:** Architectural Drawing package for the Precinct (Block 1) (SJB Architects) and documentation

**Appendix C:** Subsidence Advisory NSW Referral Response

**Appendix D:** Clause 4.6 Report – Floor Space Ratio (SJB)