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**URBIS**

# **SECTION 8.2 REVIEW: MA2023/00175**

Stage 3 and 4 East End, 121  
Hunter Street, Newcastle

**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

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Report Number	V5 – Revised 12 October 2024

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# 1. INTRODUCTION

## 1.1. PURPOSE OF THIS DOCUMENT

The purpose of this documents is to consolidate the various planning reports and information pertaining to East End Stage 3 and 4 (MA2023/00175) Section 8.2 of the *Environmental Planning & Assessment Act 1979* ('EP&A Act') a Review (RE2024/0002).

This document supersedes the following documents:

- Supplementary Planning Addendum – 4.55(2) Modification to DA 2017/00701 prepared by Urbis dated 09 September 2024.
- Section 8.2 Review: MA2023/00175 Report prepared by Urbis Ltd dated May 2024.
- Statement of Modification (Revised for 8.2 Review) prepared by Urbis Ltd dated May 2024.

This document was prepared at the request of City of Newcastle (CN) on 23 September 2024.

## 1.2. OVERVIEW

In accordance with Section 8.2 of the *Environmental Planning & Assessment Act 1979* ('EP&A Act') a Review is sought in relation to the determination of MA2023/00175 by the Hunter and Central Coast Regional Planning Panel ('the Panel') at 121 Hunter Street, Newcastle (known as Stage 3 and 4, East End).

This Review request addresses the 'Determination and Statement of Reasons' issued by The Panel on 15 May 2024. It is important to note that a Section 8.2 Review needs to be determined within 6 months of the date the modification application was determined, meaning no later than 15 November 2024.

**City of Newcastle (CN) support the proposal, as demonstrated by their recommendation for approval.**

In addition to the support from CN's Planning Officer, East End Stage 3 and 4 has received support from the follow individuals, agencies, and groups:

- Government Architect of NSW.
- Urban Design Review Panel (UDRP), specifically Dr Philip Pollard, Kerry Hunter, and Colin Brady.
- Design Integrity Panel (DIP), and previous the Design Excellence Competition Jury, specifically Paulo Macchia (Director, Design Governance – Government Architect NSW), Dr Philip Pollard (Director & Nominated Architect 5241 – AMENITY urban & natural environments) and Sandra Furtado (Director, Furtado Sullivan Architects).
- Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) as First Nations representatives. The proposal engaged heavily with First Nations persons to ensure connection with Country, which has received glowing endorsement from the First Nations community who assisted with evolving the scheme.
- CN's internal divisions including heritage, waste, development engineers, public space and city greening and environmental health teams.

As illustrated, East End Stage 3 and 4 has significant support and is in the public interest. **Section 1.3** steps out the design process to date to clearly highlight the rigour of assessment and design narrative behind the changes to the Concept DA.

## 1.3. DESIGN NARRATIVE

On the 02 January 2018, the Hunter and Central Coast Planning Panel granted consent for a Concept Development Application (DA2017/00701) across the site, for the following:

*Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed-use development comprising retail, commercial, public spaces, residential (563 apartments), associated car parking & site works.*

The concept application did not approve the precise quantum of floor space per land use the layout and mix of residential units and car parking spaces. Detailed design, including services, shall be contained within the

existing building footprint and envelope approved as part of the concept application (with the exception of the height bonuses under the Council's Design Excellence provisions).

The Concept Approval established key parameters for the Competitive Design Process and subsequent detailed design including building mass and height, this is discussed in further detail below.

Prior to Urbis' involvement, Iris sought a design excellence waiver from CN for Stage 3 and 4. A design waiver was given for Stage 1 and Stage 2; therefore, Iris sought a consistent approach. A request for a design waiver was submitted to CN on 18 January 2022. CN advised on 25 January 2022, that a design waiver would not be supported, and a design excellence competition was required.

On 02 March 2022 an Architectural Design Competition Brief that was fully compliant with the Concept DA was submitted to CN for endorsement by Hampton Property on behalf of Iris. CN, on 31 March 2022, confirmed that for CN to endorse the design excellence competition documentation specific matters must be addressed. Specifically, the primary reason for CN not supporting the Hampton Property Architectural Design Competition Brief was related to the public realm and public domain treatment including the delivery of the Harbour to Cathedral Park link.

On 4 May 2022 an Architectural Design Competition Brief that was fully compliant with the Concept DA was submitted to CN for endorsement by Urbis on behalf of Iris.

CN, on 24 May 2022, confirmed that for CN to endorse the design excellence competition documentation specific matters must be addressed. One of which was "Public realm and view corridors to and from Christ Church Cathedral," CN's comment is extracted below (the final wording of which is that which was approved in the brief by CN):

*The importance of a design response which prioritises the public realm and public domain treatment was discussed at length with the Proponent and Hamptons Property Services previously and remains a key requirement of CN. There remains insufficient focus on these elements in the Brief.*

*In particular, development between Thorn and Morgan Streets (Stage 3) is to provide an opening on the Market Street alignment to preserve views of Christ Church Cathedral in accordance with the locality specific provisions of Section 6.01 Newcastle City Centre of Newcastle Development Control Plan 2012 ('NDCP 2012'). The design response should consider the relocation of the minor portion of 'Block 3 - South' which under the approved Concept DA partially encroaches into the view corridor identified in Section 6.01.04 Key Precincts B. (Hunter Street Mall) of the NDCP 2012 (see extract of Figure 6.01-29). We note, the minor relocation results in minor view loss in the scheme of what is the public benefit.*

*Figure 6.01-29 provides the most clarity around the position and width of the view corridor intended under the NDCP 2012 and should be referenced specifically within the Brief. The blue hatched area identified as an 'important view corridor to Christ Church Cathedral' extends through the East End Stage 3 site and also the land to the south.*

*Furthermore, the importance of the visual and physical connection extending Laing Street east-west between Morgan and Newcomen Street is demonstrated in Figure 6.01 and should also be referenced specifically within the Brief. The green area, identified as a 'proposed new open pedestrian link (preferred location)', extends through the East End Stage 4 site and completes the series of through-block links which facilitate long distance visual cues across all four stages of the East End development.*

*The locality specific Hunter Street Mall Precinct requirements of the NDCP 2012 need to be addressed in 'Table 4 – General Planning Requirements.'*

Post the Architectural Design Competition, six Design Integrity Panel (DIP) meetings occurred. At the conclusion of the Design Integrity Process, the DIP endorsed the lodgement of the DA to CN. The Letter of Advice and Endorsement from the DIP dated 10 March 2023 confirms the proposal has *demonstrated alignment with the Concept DA and the re-distribution of the massing out of the central view corridor towards other parts of Stage 3 and Stage 4.*

**In summary, Iris submitted a Design Excellence Competition Brief that was compliant with the approved Concept Approval. CN advised they would not endorse a compliant Design Excellence Competition Brief. This is fundamental to the reason why the concept is proposed to be modified. The modification to the Concept DA has arisen from a desire by both CN and Iris to drive a stronger public benefit outcome.**

## 1.4. ENGAGEMENT WITH PANEL

### 1.4.1. Original determining Planning Panel

The Applicant team have met with the original determining Panel on two (2) separate occasions; 02 August 2023 and 11 March 2024 (the latter being the Public meeting, prior to determination).

On 02 August 2023, an initial briefing meeting with the Panel for Stage 3 and 4 East End DA and modification to Concept DA occurred. The Panel confirmed: *“Given the complexities of these applications the Panel will hold a further assessment briefing with the Council in due course.”*

The briefing with the Panel was during the early stages of the assessment process. Additional information was requested regarding substantially the same test, public submissions, view impacts - private views and public corridors, interaction between Concept DA s.4.55 application and the concurrently lodged development application for stages 3 and 4 (DA2023/00419) by the Panel. This information was submitted to CN and deemed sufficient and supportable.

CN had a final briefing with the Panel for Stage 3 and 4 DA and modification to Concept DA on 11 December 2023. The Applicant and project team were not invited to be present at this subsequent briefing despite a request to be present.

Based upon the publicly available minutes, the Panel did not raise significant concerns that would indicate that modification was not supportable.

**CN provided a recommendation for approval and on 11 March 2023 the Applicant team attended a Panel meeting for the modification to the Concept DA with the Panel. The Panel deferred the modification to the Concept DA,** stating:

*“The Panel agreed to defer the determination of the application to seek further information in relation to visual impacts of the proposed modification. In addition, clarification on the required car parking for Stage 3 and 4 is to be provided, including amendments to Condition 19 which is required having regard to the demolition of the council car park.”*

The Panel requested further information from the Applicant in relation to public and private views, and further information from CN in relation to the car parking. The Applicant sent a letter seeking clarification from the Panel on the information requested, as some of the points were open to interpretation or overlapped with information already provided. The letter outlined the Applicant's proposed methodology and queries within the letter. The Panel advised that no further clarification could be provided.

Despite not receiving clarification from the Panel, the Applicant team lodged a substantial response to the issues raised within the Panel's Notice of Deferral, based upon the understood matter of concern. This included a robust and consolidated View Impact and View Sharing Report prepared by Urbis, specifically Jane Maze-Riley who is a Land and Environment Court view impact expert.

**CN provided a Supplementary Assessment Report to the Panel. The Supplementary Assessment Report again recommended the modification for approval. The Panel met to review and discuss the modification application. The Applicant team were not invited to be present. The Panel issued an electronic Notice of Determination for refusal for the modification application.**

It was understood that the additional view impact information provided by Urbis, and the car parking information provided by CN would satisfy the remaining queries the Panel and enable the modification application to be approved. Despite, the comprehensive response, the modification application was refused for the reasons outlined below in **Section 1.5**.

### 1.4.2. Section 8.2 Planning Panel

A kick off briefing occurred with CN and the Planning Panel on 8 August 2024. Post this briefing, CN issued a Request for Additional Information to close out some of the matters raised. This has been responded to by the Applicant.

A site visit occurred with CN and the Section 8.2 Panel on 02 September 2023. At this time, two key questions were posed by the Panel to the Applicant (as summarised by Mills Oakley):

- In circumstances where the Chief Judge's decision in *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 ('**Realize Architecture**') did not make any findings in relation

to “the consent authorities reasons for the grant of the original consent”, which are required to be taken into consideration by the HCCRPP when assessing the Concept Modification pursuant to s.4.55(3) of the Environmental Planning and Assessment Act 1979 (**‘EPA Act’**):

- where are the consent authorities’ reasons for the grant of the original consent to be ascertained from; and
  - once ascertained, what weight is to be placed on those reasons, if any, when considering the ‘*substantially the same*’ test pursuant to s.4.55(2)(a) or when undertaking a merit assessment of the Concept Modification pursuant to s.4.55(3) (and s.4.15(1)).
- When undertaking a merit assessment of the Concept Modification pursuant to s.4.55(3) (and s.4.15(1)) of the *EPA Act*, what work do cls.4.6 ‘Exceptions to development standards’ and 7.5 ‘Design excellence’ in the *Newcastle Local Environmental Plan 2012* (**‘NLEP 2012’**) have to do, noting the HCCRPP has not been asked to assess or determine the related ‘Stage 3 and 4’ detailed development application no. DA2023/00419 (**‘Stage 3 and 4 Detailed DA’**) as part of the Review Application, which is the driver for the building envelope changes proposed by the Concept Modification.

Additional information pertaining to these questions was provided to CN on 09 September 2024.

## 1.5. REASONS FOR REFUSAL

In summary, this review demonstrates that the modification application can be approved and responds positively to the original reasons for refusal as:

- ***In response to Reason for Refusal 1:*** A robust justification (provided to CN and forming part of CNs report to the Panel) as to why the development as proposed to be modified is considered ‘substantially the same development’ for which consent was originally granted forms part of this response and has been previously provided. CN outlined in their Council Assessment Report that “*The proposed modification is considered to satisfy the ‘substantially the same development test’ required by s.4.55 of the EP&A Act.*” This robust justification was also reviewed by the Applicant’s legal representative (Mills Oakley).

To add greater rigor to the assessment, Urbis have reviewed a recent Land and Environment Court judgement (*Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 143) which shows that a balanced approach is required when answering the test of substantially the same, which Urbis strongly believe is aligned with the modification application.

- ***In response to Reason for Refusal 2:*** Urbis have provided a detailed View Sharing and Visual Impact Assessment. CN’s Supplementary Report details their agreeance that the cumulative impacts on public and private views are acceptable from a view impact and view sharing perspective.
- ***In response to Reason for Refusal 3:*** A detailed assessment and examination of the parking situation in East End has been provided, supported by a parking survey.
- ***In response to Reason for Refusal 4:*** A more detailed analysis of the public benefits of the proposal forms part of this response, including a response to the public concerns raised in the 11 March Panel meeting, this demonstrates that the modification is within the public interest. Furthermore, the modification to the Concept DA has arisen from a desire by both CN and Iris to drive a stronger public benefit outcome. A poorer public benefit outcome would arise from compliance with the Concept DA, as the view lines to the Christ Church Cathedral would be compromised.

The reasons for refusal have been addressed, and in our opinion, the modification application warrants approval by the Panel.

As identified by the NSW Premier recently, housing is the biggest cost of living pressure facing New South Wales residents. Demolition has been completed on-site (under a separate approval) with contractors currently on-site, therefore the site is ‘shovel ready’ and has the potential to assist in providing quality housing within New South Wales in respond to the housing crisis.

In our strong view the proposed Review, and our response to the 4 key reasons for refusal in this report, provide a clear pathway for the Panel to approve the application and deliver much needed housing for the local area. **CN is commended for their willingness to work together to deliver this regionally significant development that will contribute 195 apartments in a well-connected area aligned with the NSW Government’s directives to increase housing supply.**



## 1.6. STRUCTURE OF REPORT

The report structure is as follows:

Table 1 Structure of Report

Section	Heading	Detail of Section
Section 1	Introduction	Overview of the subject application including details of engagement with the Panel, Reasons for Refusal and overview of supporting documents.
Section 2	Project Timeline up to Refusal	A summary of the project history and timeline to date.
Section 3	Design Narrative and Process	A summary of the design process including commentary on the public domain outcome City of Newcastle are looking to achieve.
Section 4	Subject Site	Overview of the subject site in context to the Concept DA.
Section 5	Summary of Reasons for Refusal	High level summary of the Reasons for Refusal.
Section 6	Proposed Modification	Summary of the proposal modifications including changes to conditions of consent.
Section 7	Section 4.55 (2) Assessment	Assessment of the matters of consideration as described in Section 4.55 of the EP&A Act.
Section 8	Section 4.15 Assessment	Assessment of the matters of consideration as described in Section 4.15 of <i>the EP&amp;A Act</i> .
Section 9	Response to Reasons for Refusal	Consideration and response of the Reasons for Refusal and how the application has addressed and responded to each matter.
Section 10	Section 8.2 and 8.3 Assessment	Assessment of the matters of consideration as described in Section 8.2 and 8.3 of <i>the EP&amp;A Act</i> .
Section 11	Conclusion	A summary of the key points.

## 1.7. SUPPORTING DOCUMENTS

This report should be read in conjunction with associated appendices.

Table 2 Supporting Documents

Appendix	Details	Consultant
A	Approved Demolition and Retention Plan	SJB
B	Concept Plans	SJB
C	Addendum to Traffic and Parking Studies	CPJ
D	Response to Submissions	Urbis
E	View Impact Assessment	Urbis
F	View Impact Assessment and View Loss Assessment	Urbis
G	Addendum to View Impact Assessment – View A and B	Urbis
H	Heritage Impact Statement	City Plan
I	Amended Addendum to Heritage Impact Statement	City Plan
J	Design Report for 92 King Street	SJB
K	Heritage Design Response Study	SJB
L	Legal Advice regarding Substantially the Same	Mills Oakley
M	Legal Advice for HCCRPP	Mills Oakley
N	Legal Advice on CN carpark site and clause 7.5	Mills Oakley
O	Shadow Diagrams	SJB
P	Designing with Country Endorsement Report and Letter	Dhira
Q	Design Statement	SJB
R	Landscape Development Application Design Report	COLA

## 2. PROJECT TIMELINE UP TO REFUSAL

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

A concurrent Detailed Development Application (DA) was submitted to CN, and seeks development consent for the design, construction, and use of the mixed-use development. This DA is yet to be determined and does not form part of this Review. The DA cannot be recommended from approval by CN until the modification has been approved.

The below provides an abridged overview of East End's history and a timeline to date of the project ongoing to assist the new Panel get up to speed with the site and the context.

Table 3 East End project timeline

Date	Action
<b>Concept Application</b>	
<b>02 January 2018</b> <b>(All stages)</b>	Hunter and Central Coast Planning Panel granted consent for a Concept Development Application (DA2017/00701) across the site, for: <i>Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed-use development comprising retail, commercial, public spaces, residential (563 apartments), associated car parking &amp; site works.</i>  This Concept DA replaced the previous Concept DA – ref: DA2015/10182.
<b>Stage 3 and 4 (Pre-Lodgement)</b>	
<b>20 May 2022</b> <b>(Stage 3 and Stage 4)</b>	Meeting between City of Newcastle (CN) and Urbis to discuss the Design Competition Brief and Strategy for Stage 3 and 4. This was preceded by months of discussion with a previous planner.
<b>06 July 2022</b>	GANSW and CN endorsed the Design Competition Brief and commencement of the Competition.
<b>08 July 2022</b>	Commencement of Design Excellence Competition.  Note: CN observed throughout the Design Excellence Competition.
<b>30 August 2022</b>	Conclusion of Design Excellence Competition.  Note: The Competition Jury comprised the following people –  <i>Paulo Macchia (Chair and GANSW Representative) – Director, Design Governance – Government Architect NSW</i>  <i>Dr Philip Pollard (City of Newcastle Representative) – Director &amp; Nominated Architect 5241 – AMENITY urban &amp; natural environments.</i>  <i>Sandra Furtado (Proponent Representative) – Director, Furtado Sullivan Architects</i>
<b>14 October 2022</b>	Design Integrity Panel #1
<b>26 October 2022</b>	Design Integrity Panel #2
<b>14 November 2022</b>	Design Integrity Panel #3

Date	Action
09 December 2022	Design Integrity Panel #4
20 January 2023	Design Integrity Panel #5
24 February 2023	Design Integrity Panel #6  At DIP # 6, DIP supported the lodgement of the DA and modification to the concept plan.
<b>Stage 3 and 4 Post Lodgement</b>	
12 May 2023	Lodgement of Stage 3 and 4 East End Detailed DA and Modification to approved Concept DA (DA2017/00701).
5 July 2023	Meeting with UDRP and project team to discuss Stage 3 and 4 Detailed DA design and Modification to Concept DA.  The UDRP gave the modification a 'green light,' stating: <i>"The UDRP support the proposal in its current form. The panel advises that this is a well-considered and presented scheme and that the architectural, urban design and landscape is of a high standard."</i>
2 August 2023	Initial briefing meeting with the Panel for Stage 3 and 4 East End DA and modification to Concept DA.  The Panel confirmed: <i>"Given the complexities of these applications the Panel will hold a further assessment briefing with the Council in due course."</i>  The briefing with the Panel was during the early stages of the assessment process. Additional information was requested regarding substantially the same test, public submissions, view impacts - private views and public corridors, interaction between Concept DA s.4.55 application and the concurrently lodged development application for stages 3 and 4 (DA2023/00419) by the Panel. This information was submitted to CN and deemed sufficient and supportable.
11 December 2023	CN had a final briefing with the Panel for Stage 3 and 4 DA and modification to Concept DA. The Applicant and project team were not invited to be present at this subsequent briefing despite a request to be present.  Based upon the publicly available minutes, the Panel did not raise significant concerns that would indicate that modification was not supportable.
11 March 2024	The Applicant team attended a Panel meeting for the modification to the Concept DA with the Panel. During this meeting the community was provided an opportunity to speak, and the Applicant provided a response.  The community raised the following matters: <ul style="list-style-type: none"> <li>▪ Whether the modification is substantially the same development</li> <li>▪ Height and inconsistency with the planning controls</li> <li>▪ Proposal is an overdevelopment</li> </ul>

Date	Action
	<ul style="list-style-type: none"> <li>▪ Impacts on character, streetscape, and heritage</li> <li>▪ Visual impact, views, overshadowing and heritage</li> <li>▪ Impacts on Christ Church Cathedral view corridors</li> <li>▪ Acoustic impacts</li> <li>▪ Tree removal</li> </ul> <p>The above matters raised by the community were determined to be adequately considered by CN.</p>
19 March 2024	<p>The Panel deferred the modification to the Concept DA, stating:</p> <p><i>“The Panel agreed to defer the determination of the application to seek further information in relation to visual impacts of the proposed modification. In addition, clarification on the required car parking for Stage 3 and 4 is to be provided, including amendments to Condition 19 which is required having regard to the demolition of the council car park.”</i></p> <p>The Panel requested further information from the Applicant in relation to public and private views, and further information from CN in relation to the car parking.</p>
20 March 2024	<p>The Applicant sent a letter seeking clarification from the Panel on the information requested, as some of the points were open to interpretation or overlapped with information already provided. The letter outlined the Applicant’s proposed methodology and queries within the letter.</p>
25 March 2024	<p>Senior Case Manager, Leanne Harris provided a response from the Panel to the Applicant stating:</p> <p><i>“Thank you for your letter. Please note that in accordance with the Panel’s Operational Procedures the Panel cannot accept submissions directly nor can they interact with you as an applicant outside of a Panel briefing or meeting.</i></p> <p><i>Notwithstanding and given the Panel’s deferral of this matter the Panel Chair has indicated that the suggested approach appears to respond to the matters raised in the Panel’s record of deferral.</i></p> <p><i>Please note the Panel cannot comment further as it cannot foreshadow or fetter a future determination process which it is responsible for.”</i></p>
26 March 2024	<p>Urbis on behalf of the Applicant reached out to Senior Case Manager, Leanne Harris to explain the points of clarification and reiterate the Panel’s letter contained points which were open to interpretation and some which overlapped with information already provided to the Panel.</p>
26 March 2024	<p>Senior Case Manager, Leanne Harris provided the following response from the Panel to the Applicant:</p> <p><i>“I have been advised that the Panel cannot respond further and that you should use the questions and comments from the Panel and the submitters comments from the recording of the public meeting as the only guidance the</i></p>

Date	Action
	<i>Panel can provide. I trust you can appreciate the Panel's position as the Consent Authority is very limited in this process."</i>
<b>18 April 2024</b>	Despite not receiving clarification from the Panel, the Applicant team lodged a substantial response to the issues raised within the Panel's Notice of Deferral, based upon the understood matter of concern.
<b>6 May 2024</b>	CN provided a Supplementary Assessment Report to the Panel. The Supplementary Assessment Report again recommend the modification for approval.
<b>13 May 2024</b>	<p>The Panel met to review and discuss the modification application. CN was invited to this meeting, however, was not involved in the deliberations that followed the meeting.</p> <p>The Applicant and project team were not invited to be present at this subsequent determination meeting despite a request to be present.</p>
<b>15 May 2024</b>	The Panel issued an <b>electronic</b> Notice of Determination for refusal for the modification application. The Applicant was not given the opportunity to speak to the Panel prior to this decision being made. CN were advised at the same time of the refusal, and not privy to the details of the deliberation. The Applicant's request to discuss the decision was also rejected.

Iris Capital have gone above and beyond throughout the lifespan of this modification and have the support of CN, the Government Architect of NSW, the Design Integrity Panel, Urban Design Review Panel and First Nations representatives (Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC). Furthermore, Iris has the support of the broader community considering the significant public benefit the project will deliver, the success of Stage 1 and the rejuvenation of the Hunter Street Mall precinct and CBD centre.

Iris have been through the rigorous Design Excellence Competition Process as well as six (6) Design Integrity Panels and a review by the Urban Design Review Panel. Iris have responded to all RFIs requested by CN and the Panel in a timely manner and have made a conscious effort to follow all planning protocols throughout the rigorous assessment process of this application.

## 3. DESIGN RATIONALE AND PROCESS

### 3.1. CONCEPT DA (DA2017/00701)

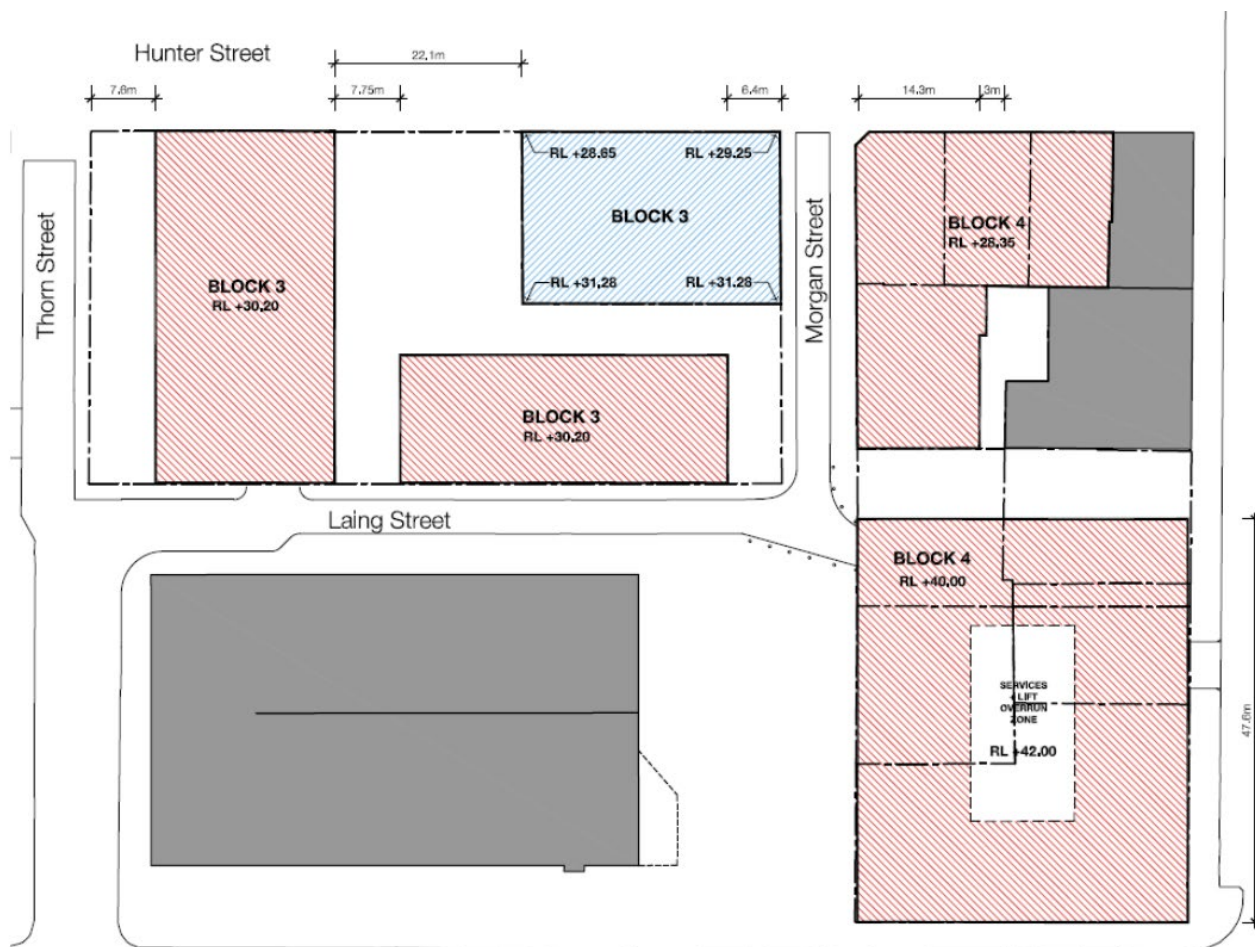
The applicant holds a valid Concept DA (D/2017/00701) that was approved in 2018.

On the 02 January 2018, the Hunter and Central Coast Planning Panel granted consent for a Concept Development Application (DA2017/00701) across the site, for the following:

*Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed-use development comprising retail, commercial, public spaces, residential (563 apartments), associated car parking & site works.*

The following figures below illustrate the approved concept building envelopes under D/2027/00701. The Concept Approval established key parameters for the Competitive Design Process and subsequent detailed design including building mass and height.

Figure 1 Approved Building Envelope Floor Plan (DA D2017/00701)



Source: SJB



Figure 2 Approved Building Envelopes (D/2017/00701)



Source: SJB

**The approved Concept DA envelopes have not incorporated the potential for an additional 10% in building height provided under the design excellence provisions in the NLEP. This additional building height may be granted by the consent authority as part of the competitive design process.**

Considering this, the allowable heights with the 10% bonus provision are outlined below:

- Building 3 West: RL + 33m
- Municipal Building: RL + 22m
- Building 3 East: RL + 33m
- Building 4 North: RL + 31.9m
- Building 4 South: RL + 46.2m

It is noted that some inconsistencies exist between the approved building heights in the Concept DA and the height of buildings map in NLEP, these were recognised in the Design Competition.

## 3.2. DESIGN COMPETITION AND DESIGN INTEGRITY

An Architectural Design Competition was undertaken in July to August 2022. At the conclusion of the Competition, the Selection Panel determined that the scheme by SJB in partnership with Durbach Block Jaggers and Curious Practice as the winner of the Competitive Design Process as it best met the objectives of the Competition Brief and was most capable of achieving design excellence.

The proponent invited four Architectural firms to undertake competitive process in accordance with clause 7.5 of the NLEP and the GANSW draft Design Excellence Competition Guidelines (**GANSW draft Guidelines**).

The Jury assessed each scheme against the brief to select the highest quality architectural and urban design approach for the development. Following consideration of the four schemes, SJB in partnership with DBJ and Curious Practice was the winning scheme noting it demonstrated an appropriate response design, planning, and commercial objectives of the Brief. In the opinion of the Jury, this scheme is the most capable of achieving design excellence.

Post the Design Competition, the Design Team went through 6 Design Integrity Panel sessions. After a rigorous assessment and refinement process, the DIP determined they were comfortable with the height exceedance of Building 3 South subject to further view impact assessment, required for DA stage. The DA is



accompanied by a Visual Impact Assessment prepared by Urbis. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme can achieve design excellence.

### 3.3. CN DESIRED PUBLIC DOMAIN OUTCOME

The Applicant holds a valid Concept DA that was approved in 2018, which has generally determined the proposed bulk and scale. The Applicant initially submitted a Design Competition Brief to CN which complied with Concept DA. Subsequently, CN advised of their desired public domain vision and requested the Applicant amend the Design Competition Brief to encourage competitors to explore variations to the approved Concept DA.

Given the DCP is in place, any future development on CN's site must also deliver the through site link. At present, there are no publicly available plans for CN's site but in any event the approved Concept DA would have an impact on overshadowing of this site.

CN desired public domain outcome for the site, is reflected in the Newcastle DCP 2012 and in Figure 3 below. The applicant holds a valid Concept DA that was approved in 2018, refer to Figure 4 approved building envelopes. The blue hatched area is an 'important view corridor to Christ Church Cathedral'. The Newcastle DCP 2012 states the future character as:

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

CN see the Harbour to Cathedral Park (previously called the Stairway to Heaven) concept as the pathway to achieve the desired future vision.

The Harbour to Cathedral Park was first imagined by EJE Architecture in 2006 but related to a different site and some different sites. The concept was delivered by a group of Novocastrian architects and proposed to link Cathedral Park to the south of the site to Newcastle Harbour to the north of the site. The concept would result in view lines from the Harbour foreshore and Hunter Street Mall to Cathedral Park and the northern transept of the cathedral.

The desired public outcome is currently restricted by a component of the western end of Building 3 South. For context, Building 3 South was placed and approved in the current location with CN's endorsements to obscure the existing CN carpark to the south of the site. This context for CN has changed since the approval of the Concept DA following demolition of the car park building, and car park site is vacant with exploration of redevelopment opportunities being explored by CN.

To facilitate the delivery of this important public domain benefit, competitors in the design competition were encouraged to carefully examine the current approved building envelope configuration in Block 3 and present creative and sensitively designed responses that provide an alternative massing arrangement in the precinct.

Other than the publicly stated intention to restore circa 230 spaces lost when the car park building was demolished, CN has made no disclose of its intention for the site.

The key moves identified by the Design Team to facilitate this outcome were:

- The concept DA proposes 3 buildings in Stage 3 of commensurate height, size, type and yield. This includes building a substantial addition on the Municipal Building. This proposal retains the Municipal Building without an addition over. This allows the Municipal Building to be a hinge for Stage 3 and Stage 4 along Hunter Street. The built form surrounding the Municipal building creates a Square.
- Stage 3 West twists to hold the corner of Hunter Street and Thorn Street, increase setback to Stage 2, create views to harbour for apartments, and most importantly creates a visual corridor to the Christ Church Cathedral. The Christ Church Cathedral axis is created by pulling back Stage 3 South. The view corridor is further re-enforced by subtly tapering Stage 3 South (reducing its footprint as it becomes taller) and twisting Stage 3 West.
- Stage 3 South pulls in from the west to align with Municipal Building, establish view corridor to the cathedral and form a new public space.

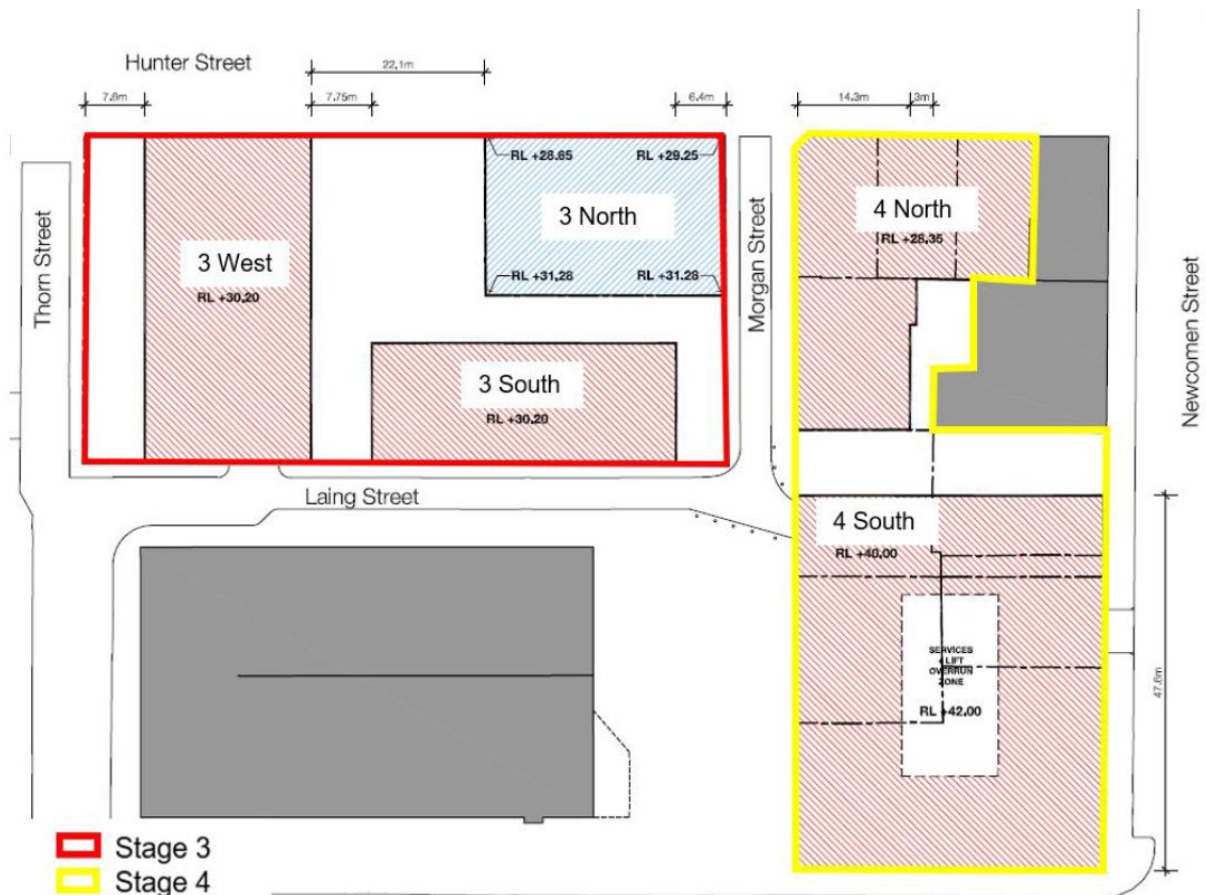
In responding positively to the opportunity to unlock the public domain improvements in Stage 3, the design response achieves an equivalency in the provision of ADG compliance, views, aspect, and residential amenity from the distributed massed. The redistributed mass a makes a positive contribution toward the desired built form, consistent with the established centres hierarchy. It also results in a better daylight access to both the public domain.

Figure 3 Hunter Street Mall Precinct



Source: Newcastle DCP 2012

Figure 4 Approved building envelopes and names (Concept DA – Building Footprints)



Source: SJB (and modified by Urbis)

The proposal comprises of five separate buildings across 2 street blocks. The Concept DA refers to the street blocks as Stage 3 and Stage 4. The building names and designers are:

- Building 3 West named “Gibbs and Moore” designed by SJB;
- Building 3 North named “Civic” designed by DBJ;
- Building 3 South named “Bluebell” designed by DBJ;
- Building 4 North named “Portline” designed by Curious Practice;
- Building 4 South named “Kingston” designed by SJB; and
- Laing Lane Café designed by Curious Practice.

**Figure 5** illustrates the site arrangement plan notating the location of the above buildings.

Figure 5 Building Allocation Plan



Source: SJB

## 4. THE SITE TO WHICH THIS REVIEW RELATES

The site is comprised of two separate blocks of land known as Stage 3 and Stage 4. The site addresses are 105-137 Hunter Street, 3 Morgan Street, 22 Newcomen Street and 66-74 King Street, Newcastle and are legally described as:

- Lot 32, DP 864001 (137 Hunter Street) – Block 3
- Lot 31, DP 864001 (121 Hunter Street) – Block 3
- Lot A, DP 388647 (111 Hunter Street) – Block 4
- Lot B, DP 388647 (109 Hunter Street) – Block 4
- Lot 1, DP 77846 (105 Hunter Street) – Block 4
- Lot 100, DP 1098095 (3 Morgan Street) – Block 4
- Lot 1, DP 331535 (22 Newcomen Street) – Block 4
- Lot 2, DP 331535 (3 Morgan Street, Newcastle) – Block 4
- Lot 98, DP 1098034 (3 Morgan Street) – Block 4
- Lot 96, DP 1098068 (3 Morgan Street) – Block 4
- Lot 1, DP 723967 (3 Morgan Street) – Block 4
- Lot 1, DP 819134 (66-74 King Street) – Block 4

Altogether, Stage 3 and Stage 4 parcels of land have an area of 6,450m<sup>2</sup>. This DA relates to Stage 3 and Stage 4 (Stage 3 is on Block 3 and Stage 4 is on Block 4), refer to Figure 6 and 7.

### Stage 3 – Hunter Street

Stage 3 site is approximately 3,365m<sup>2</sup> and has frontages of approximately 81m to Hunter Street to the north, 81m to Laing Street to the south, 42m to Morgan Street to the east and 42m Thorn Street to the west. The site originally accommodated an older style brick, two storey commercial building, which has recently been demolished. The rear of the site has a direct interface with a vacant site, which previously accommodated a five-storey car park owned by City of Newcastle. The car park has since been demolished as it was no longer in use and City of Newcastle are exploring opportunities for redevelopment.

Part of the site is a local heritage item, namely a Municipal Building (No. I403) located at 121 Hunter Street. Directly opposite is a locally listed heritage item, Former Hotel Hunter (No. I405) located at 152-160 Hunter Street and diagonally north-west from the site, another Municipal Building (No. I406) located at 164-170 Hunter Street.

Located south of the site is a state heritage item, known as Christ Church Cathedral, Cemetery and Cathedral Park (No. I562), situated at 52A Church Street.

### Stage 4 – Newcomen Street

Stage 4 is approximately 3,085m<sup>2</sup> and has frontages of approximately 30m to Hunter Street to the north, 55m of Newcomen Street to the east, of 40m of King Street to the south and 42m of Morgan Street to the west. The site accommodated multiple mixed-use buildings, exhibiting ground floor retail uses along the Hunter Street frontage with residential use becoming more prominent on the Newcomen Street frontage. The direct middle of the site accommodated a small hardstand car park, with three commercial buildings surrounding (visible via king street frontage), all of these buildings have recently been demolished.

Both Stage 3 and Stage 4 are located within the Newcastle City Centre Heritage Conservation Area.

The site is located within the City of Newcastle's 'East End Precinct' which is characterised by hilly topography and a mix of uses focusing on the retail spine of Hunter Street Mall.



Figure 6 Aerial photograph of the site



Source: Urbis

Figure 7 East End Precinct



Source: SJB sourced from the DA Tracker

## 5. THE ORIGINAL APPLICATION AND REASONS FOR REFUSAL

The Stage 3 and 4 East End Modification was lodged 12 May 2023 by Urbis on behalf of East End Stage 3 Pty Ltd and East End stage 4 Pty Ltd for a Modification to Concept DA (DA2017/00701) for staged development comprising of retail, commercial, residential and shop top housing at 121 Hunter Street, Newcastle.

It is important to note that that the modification application was preceded by an Architectural Design Excellence Competition and underwent 6 x Design Integrity Panels and 2 x Urban Design Review Panel. The application was deemed as achieving 'design excellence' by the Design Integrity Panel and the Urban Design Review Panel.

While the application underwent a very detailed assessment over a lengthy period, including a briefing with the Panel and Applicant in August 2023 (but none subsequent, despite requests from the applicant), a Panel Meeting, and final Panel meeting with Council, CN concluded their assessment with a **recommendation for approval**. However, the Panel did not agree with Council, stating:

*Council's assessment and analysis did not robustly test the cumulative impacts on private and public views. The Panel's position was that even moderate view loss may be considered unreasonable where the impacts on views arise because of non-compliance of the proposed modification application. The Panel considered that there was insufficient information to support the application and refusal was warranted.*

On 15 May 2024 the Hunter and Central Coast Regional Planning Panel determined unanimously to refuse the modification for the following 4 reasons:

- 1. The consent authority is not satisfied that the modification application is substantially the same development as the concept approval pursuant to Section 4.55 (2)(a) of the Environmental Planning and Assessment Act 1979.*
- 2. The modification application will have unacceptable cumulative impacts on both the public and private views and is therefore unacceptable pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979.*
- 3. The development will create unacceptable impacts given the deficiency in car parking and is therefore acceptable pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979.*
- 4. The development is not in the public interest having regard to impacts on views and the deficiency of car parking spaces pursuant to Section 4.15(1)(e) Environmental Planning and Assessment Act 1979.*

Following the determination the Applicant has spent further time working through each of the above reasons to ensure that the Panel has all information to make a favourable determination, these reasons have been explicitly addressed in this Report.

## 6. PROPOSED MODIFICATION

The objective of the proposed modification is to ensure the Detailed DA is consistent with the Concept DA. This modification does not seek approval for any built form, internal floor layout or detailed external façade design, which are subject to a separate Detailed DA lodged concurrently with this modification application.

The proposed modification seeks amendments to the building envelopes approved under D/2017/00701 (as amended).

### 6.1. OVERVIEW OF MODIFICATION

The proposed modifications to the Concept DA building envelope were known at the time of the competition Design Process. The winning scheme by SJB, Durbach Block Jaggers and Curious Practice re-distributed building massing out of the central view corridor towards other parts of Stage 3 and Stage 4 and toward the Christ Church Cathedral.

Following the competition of the Design Excellence Competition, the winning architects have progressed the detailed design to address the Selection Panel feedback. This has resulted in some refinements to the proposed scheme for which consent is now sought under a concurrent Detailed Development Application. To enable the approval of the Detailed DA, amendments are required to the Concept DA envelope. The amendments are consistent with what was envisaged by the winning scheme at the time of the Competitive Design Process.

Specifically, the proposed modifications include:

- Re-distribution of building massing out of the central view corridor towards other parts of Stage 3 and Stage 4 and toward the Christ Church Cathedral. This amendment will ensure the proposal remains in accordance with the NDCP 2012 and aligns with CN's vision of the view corridor.
- Realignment of Market Square as per the Design Excellence Competition scheme. Market Square is aligned with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral.
- Amendment to the height of building envelope as a result of the redistributed mass and addition 10% design excellence provision, as per below:
  - Building 3 West: RL + 34.40
  - Municipal Building: RL+20.43
  - Building 3 South: RL + 45.65
  - Building 4 North: RL + 36.92
  - Building 4 South: RL + 51.70
- Amendment to the floor space ratio as a result of the redistributed mass and addition 10% design excellence provision, as per below:
  - Stage 3: 3.24:1
  - Stage 4: 4.35:1
  - Total: 3.90:1

Note: the Newcastle Local Environmental Plan 2012 (NLEP) prescribed an FSR of 4:1 (excluding design excellence bonuses).

The proposed modifications are discussed in greater detail in the following subheadings.



## 6.2. REDISTRIBUTION OF MASSING FROM VIEW CORRIDOR

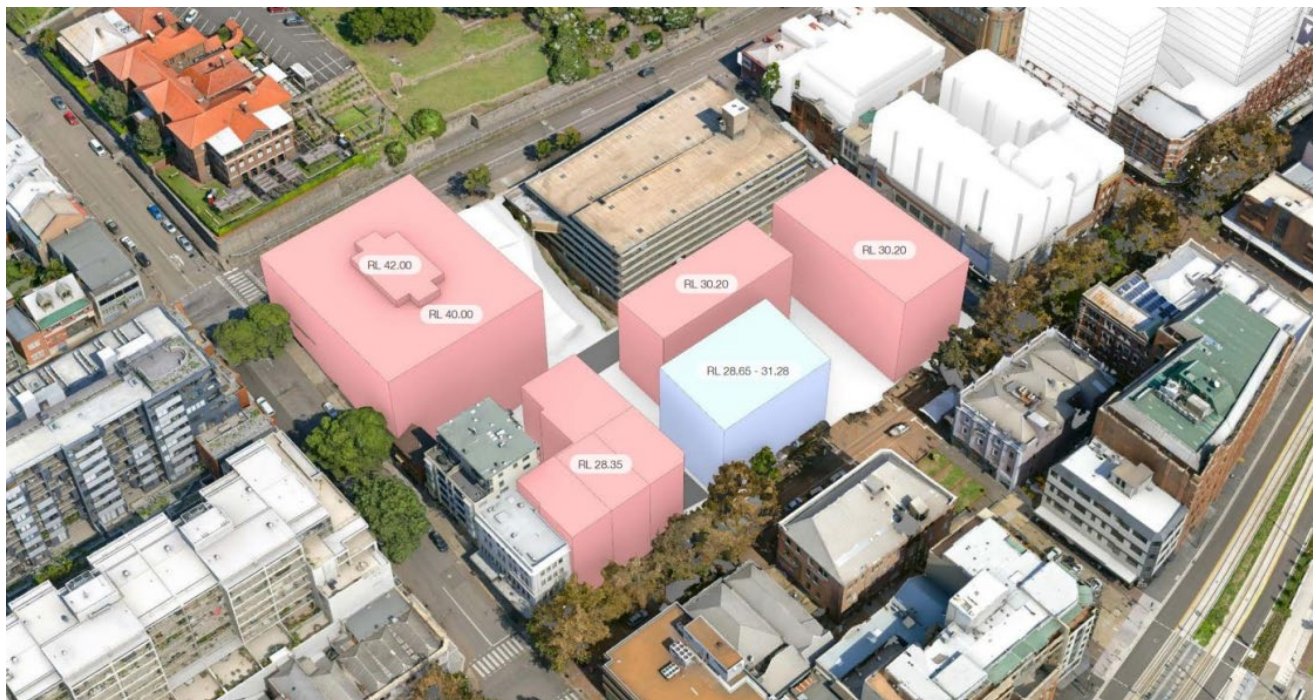
Through a series of modifications, the Design Team have redistributed the approved built form massing to accommodate the view corridor along Market Street to Christ Church Cathedral, aligned with CN's desired public domain outcome. These changes allow the built form to embrace the geography of place while delivering more residential dwellings with views to the harbour. The proposal delivers a significantly improved public benefit in the form of the ground plane.

The key changes to the approved massing are outlined below:

- The concept DA proposes 3 buildings in Stage 3 of commensurate height, size, type and yield. This includes building a substantial addition on the Municipal Building. This proposal retains the Municipal Building without an addition over. This allows the Municipal Building to be a hinge for Stage 3 and Stage 4 along Hunter Street. The built form surrounding the Municipal building creates a Square.
- Stage 3 West twists to hold the corner of Hunter Street and Thorn Street, increase setback to Stage 2, create views to harbour for apartments, and most importantly creates a visual corridor to the Christ Church Cathedral. The Christ Church Cathedral axis is created by pulling back Stage 3 South. The view corridor is further re-enforced by subtly tapering Stage 3 South (reducing its footprint as it becomes taller) and twisting Stage 3 West.
- Stage 3 South pulls in from the west to align with Municipal Building, establish view corridor to the cathedral and form a new public space.
- Stage 4 North pulls in from the south and carves out the middle to create an urban courtyard. This improves the relationship with existing residential development and Stage 4 South improving amenity.
- Stage 4 South pushes and pulls to establish relationships with the Newcomen Street context, adjacent developments and corner of King and Newcomen Street.

These modifications to the Concept DA massing have resulted in changes to the distribution of height and floor space, these matters are explored in the below subheadings. A comparison between the approved building envelopes and the proposed envelopes for Stage 3 and 4 is illustrated below.

Figure 8 Approved Building Envelopes



Source: SJB

**The approved Concept DA envelopes have not incorporated the potential for an additional 10% in building height provided under the design excellence provisions in the NLEP. This additional building height may be granted by the consent authority as part of the competitive design process.**

Figure 9 Proposed Building Envelopes



Source: SJB

## 6.2.1. Height Amendment

The modifications to the Concept DA massing have resulted changes to the distribution of height from the view corridor.

In addition, the Concept DA did not accommodate for the additional 10% allowance under clause 7.5 of the Newcastle Local Environmental Plan 2012 (**NLEP 2012**). This additional building height may be granted by the consent authority as part of the competitive design process.

It is anticipated the proposal will achieve design excellence, as determined by the consent authority, given the comprehensive Architectural Design Competition and extensive design development.

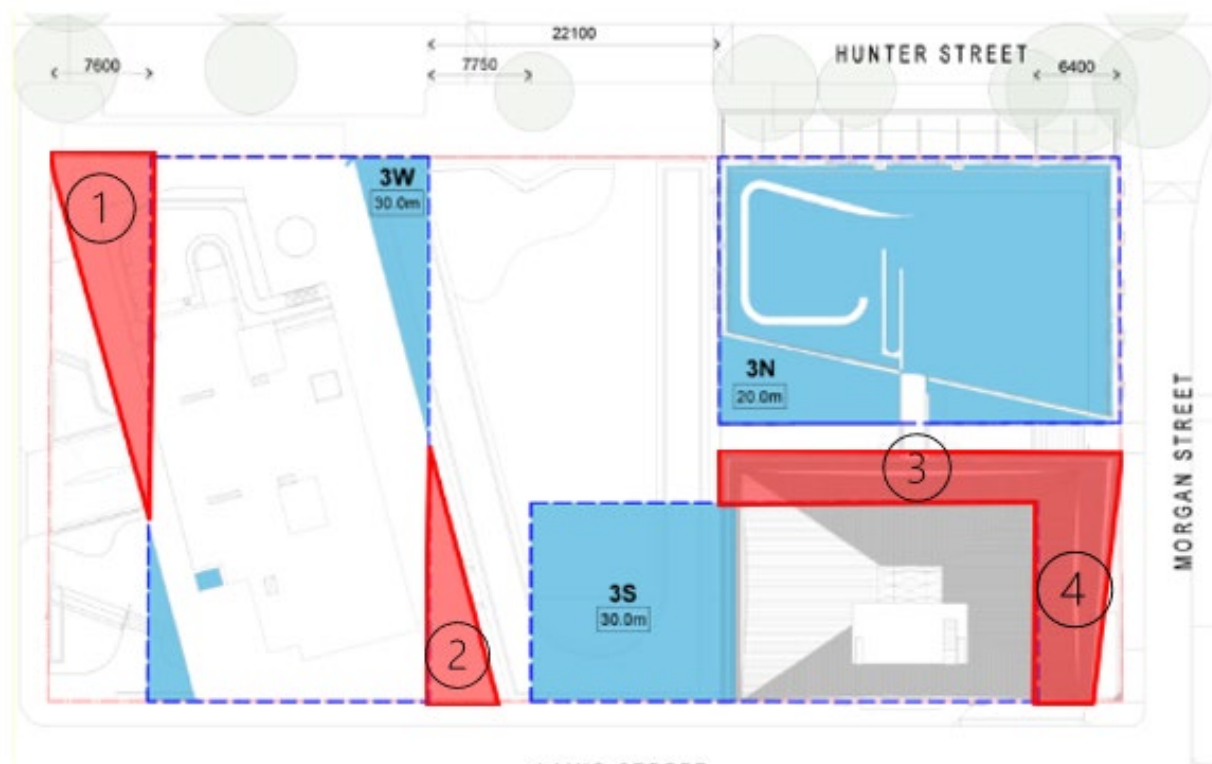
Table 4 Summary of Building Height

Building	Concept DA RL	LEP Height RL	LEP Height RL + 10%	Proposed Height RL	Variation in metres	Variation in %
Building 3 West	RL + 30.20	RL + 30	RL + 33	RL + 34.30	1.30 metres	3.94%
Municipal Building	RL + 28.65 and RL + 31.28	RL + 20	RL + 22	RL + 20.43	1.57 metres Decrease from the LEP height standard and Concept DA.	-7.136% Decrease from the LEP height standard and Concept DA.

Building	Concept DA RL	LEP Height RL	LEP Height RL + 10%	Proposed Height RL	Variation in metres	Variation in %
Building 3 South	RL + 30.20	RL + 30	RL + 33	RL + 45.65	12.65	38.33%
Building 4 North	RL + 28.35	RL + 29	RL + 31.9	RL + 36.92	5.02 metres	15.74%
Building 4 South	RL + 42	RL + 42	RL + 46.2	RL + 51.70	5.50 metres	11.9%

As a result of CN requiring the re massing of the Concept DA to deliver their desired public domain outcome, built form sits outside of the LEP height RL polygons specifically for Building 3 West and Building 3 South. The areas outside of the EP height RL polygons are identified below in red.

Figure 10 Areas outside of the LEP height RL polygons identified in red



Source: SJB (modified by Urbis)

Table 5 Numeric Overview of Various Height Controls (outside of LEP height RL polygons)

#	Building	LEP Height	LEP Height + 10%	Proposed Height	Variation in metres	Variation in %
1 Ground Level: RL 3.85	Building 3 West (north west corner)	24 metres	26.4 metres	30.45 metres (RL 34.30)	4.05 metres	15.34%
2 Ground Level RL 6.420	Building 3 West (south east corner)	24 metres	26.4 metres	27.88 metres (RL 34.300)	1.48 metres	5.6%
3 Ground Level RL 6.493	Building 3 South	24 metres	26.4 metres	39.157 metres (RL 45.65)	12.757 metres	48.157%
4 Ground RL 7.806	Building 3 South	24 metres	26.4 metres	37.844 metres (RL 45.65)	11.44 metres	43.35%

### 6.2.2. Concept DA FSR (as modified)

The approved Concept DA permits a maximum floor space ratio (FSR) on the total site of 3.83:1. The allocation of FSR across the site shall generally be '3.3:1' for Stage 3 and '4.0:1' for Stage 4. It is noted that some inconsistencies exist between the Concept DA and the NLEP 2012.

A maximum FSR of 4:1 is applicable to the site under clause 4.4 of NLEP 2012. As demonstrated within the architectural plans prepared by SJB, DBJ and Curious Practice which accompany this application, the proposal has an overall FSR of 3.90:1.

The design excellence bonus on Stage 3 and 4 is to be taken as height. The design excellence bonus on Stage 1 and 2 was taken as FSR/GFA. East End will comply with the NLEP 2012. This modification seeks to amend the staged breakdown to reflect additional floor space in Stage 4 and a reduced floor space in Stage 3.

Table 6 Summary of FSR

	DA2017/00701	DA2017/00701.03 (latest approval)	Proposed Modification	Variation (%) to original approval	Variation (%) to latest approval
<b>Gross Floor Area</b>					
Stage 1	26,244m <sup>2</sup>	27,466m <sup>2</sup>	27,466m <sup>2</sup>	4.7%	2.38%
Stage 2	11,709m <sup>2</sup>	12,954m <sup>2</sup>	12,954m <sup>2</sup>	10.7%	0%
Stage 3	11,034m <sup>2</sup>	11,034m <sup>2</sup>	10,916m <sup>2</sup>	-1.07%	-1.07%
Stage 4	12,163m <sup>2</sup>	12,163m <sup>2</sup>	13,414m <sup>2</sup>	10.29%	10.29%



	<b>DA2017/00701</b>	<b>DA2017/00701.03 (latest approval)</b>	<b>Proposed Modification</b>	<b>Variation (%) to original approval</b>	<b>Variation (%) to latest approval</b>
<b>Total</b>	<b>61,150m<sup>2</sup></b>	<b>63,617m<sup>2</sup></b>	<b>64,750m<sup>2</sup></b>	<b>5.89%</b>	<b>1.78%</b>
<b>Floor Space Ratio</b>					
Stage 1	4.0:1	4.19:1	4.19:1	4.75%	0%
Stage 2	3.2:1	3.55:1	3.55:1	10.94%	0%
Stage 3	3.3:1	3.3:1	3.24:1	-1.82%	-1.82%
Stage 4	4.0:1	4.0:1	4.35:1	8.75%	8.75%
<b>Total</b>	<b>3.68:1</b>	<b>3.83:1</b>	<b>3.90:1</b>	<b>5.98%</b>	<b>1.82%</b>

The realignment of the building envelopes to ensure mass is not situated across the main view corridor will improve the overall public domain and achieve CN's vision within the NDCP 2012. Market Square forms part of Stage 3 and provides further opportunities for activation and improved views north and south to the Harbour and Cathedral respectively. Market Square is aligned with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral.

The proposed modification will still deliver the vision and objectives established at DA2017/00701. In fact, the modification proposed to improve compliance with the vision and objectives established in the Newcastle DCP 2023 by re massing to deliver the Harbour to Cathedral Park link and view corridor. This link was never contemplated to be delivered when the Concept DA consent was issued. If it had been, it is expected that the Concept DA consent would have reacted with changes to the concept massing similar or same as that sought in the modification before CN for assessment today.

While the applicant was seeking to proceed with a design response for Stages 3 & 4 which was aligned with the original Concept Approval, the demolition of Council's public car park and changed circumstances since this approval required a different approach to the Concept DAs original massing strategy to unlock the public domain outcome espoused within Council's DCP.

The redistribution of building height can be summarised as follows:

- Relocating the massing to enable the Harbour to Cathedral Park link, as required by CN.
- Removal of any built form above the heritage Municipal Building allowing it to present as it was constructed (i.e. a reduction in building height from the Concept Approval).
- The permitted 10% design excellence height bonus that was not envisaged under the Concept DA.

Considering the above, the below steps out the GFA that was required to be re massed.

In the Concept DA, Building 3 South extended across the corridor by approximately 190m<sup>2</sup> per level of GFA. Over 8 levels, that is a minor 1,520 m<sup>2</sup>.

In the Concept DA, Building 3 North has an approved height of an average height of RL + 31 across the site (the height at the parapet northeast corner is RL + 20.25) was approved, which would allow for 3 extra levels above the existing Municipal Building. The current non-rectilinear design has a GFA per floor of 444 m<sup>2</sup> and applying a 20% enlargement factor this results in a loss of circa 1,599m<sup>2</sup> from the additional 3 floors that need to be accommodated elsewhere.

Total GFA relocated to other parts of the development to accommodate the requested Harbour to Cathedral Park and allow the heritage Municipal Building to stand proud absent any additions above is 3,119 m<sup>2</sup> (1,520m<sup>2</sup> + 1,599m<sup>2</sup>).

The GFA above the 10% bonus in height achieved from the DA comp scheme can be summarised as follows:

- Building 3 West – 717m<sup>2</sup>
- Building 3 South – 355m<sup>2</sup>
- Building 4 North – 299m<sup>2</sup>
- Building 4 South – 711m<sup>2</sup>
- Total – 2,082m<sup>2</sup>. This is GFA additional to the Concept DA, but within the bounds of the LEP.

The following levels are over and above the 10% bonus

- Building 3 South – L8 + L9 + L10 + L10Mezz – 1,035m<sup>2</sup>
- Building 4 North – L8 – 57m<sup>2</sup>
- Building 4 South – L9 – 399 m<sup>2</sup>
- Total – 1,491m<sup>2</sup>. This GFA is included in the Concept DA, it is re-massing of the corridor bulk (1,520m<sup>2</sup>) and the allowable height above the Municipal Building (1,599m<sup>2</sup>). Only 1,491m<sup>2</sup> has been re-massed.

The total GFA that sits over the LEP height limit + 10% being the new base line is 1,491m<sup>2</sup> (sum of GFA # above) and this represents 98% of GFA that has been moved from the corridor to accommodate CN's desired public domain outcome that was contemplated in the design competition has been redistributed to achieve outcomes that make massed amenity no worse than what the Applicant had approved pursuant to the Concept DA. This is a concept and concession that was articulated in the Architectural Design Competition Brief and endorsed by both CN and the Government Architect. Relocating the GFA has always been contemplated as an outcome of the design competition.

**Overall, the majority of the GFA that has been relocated is due to accommodating and opening the corridor. Excluding the competition bonus height, 6.1% of the GFA that has led to the additional height can be directly linked to the re-massing to open the view corridor that CN required and acknowledged in the Brief. GFA (and FSR) across the entire development and across Stage 3 and 4 remains under the LEP control with the design bonus.**

## 6.3. CARPARKING

The Concept DA conditioned that a minimum of 616 on-site car parking spaces are required for East End.

Table 7 Parking Requirements for stages 1 to 4

Stage	Parking
Stage 1	<ul style="list-style-type: none"> <li>▪ 42 hotel (38 guest + 8 staff)</li> <li>▪ 178 resident (inclusive 18 accessible)</li> <li>▪ 26 commercial/retail</li> </ul>
	<b>Total: 273 spaces</b>
Stage 2	<ul style="list-style-type: none"> <li>▪ 138 residential (inclusive 14 accessible)</li> <li>▪ 10 commercial / retail</li> <li>▪ 3 spaces for 176 Hunter Street</li> <li>▪ 7 residential visitor</li> </ul>
	<b>Total: 158 spaces</b>
Stage 3	<ul style="list-style-type: none"> <li>▪ 1 car wash bay</li> <li>▪ 2 residential common property EV parking spaces</li> </ul>

Stage	Parking
	<ul style="list-style-type: none"> <li>101 residential (inclusive 14 accessible and 10 EV charging spaces)</li> <li>6 residential visitor</li> <li>17 commercial / retail (inclusive 3 common EV parking spaces)</li> <li>10 commercial/retail from Stage 1</li> <li>11 commercial/ retail from stage 2</li> <li>11 residential visitor from Stage 1</li> <li>5 hotel from Stage 1</li> <li>4 commercial / retail from Stage 4</li> </ul>
	<b>Total:</b> 168 spaces
Stage 4	<ul style="list-style-type: none"> <li>1 car wash bay</li> <li>2 residential common property EV parking spaces</li> <li>121 residential (inclusive 11 accessible and 10 EV charging spaces)</li> <li>7 residential visitor 5 commercial / retail</li> </ul>
	<b>Total:</b> 136 spaces
Overall	<p>The total parking provision across all four stages equates to 735 spaces.</p> <p>* Inclusive of 21 space commercial / retail re-allocation</p>

## 6.4. PUBLIC DOMAIN

The public domain arrangement as outlined in the following documents is proposed to be amended to accommodate the rearrangement of Stage 3:

- 'Indicative Public Domain Strategy' (Aspect Studios);
- 'Hunter Street Plan' prepared for Newcastle City Council, (Aspect Studios) (as adopted); and
- 'City of Newcastle's Technical Manual City Centre Public Domain' (September 2014)

A new 1,125m<sup>2</sup> public open space "Market Square" located in Stage 3, oriented in a north-south direction to connect the Harbour visually and physically to Christ Church Cathedral.

The square will accommodate commercial, and community uses that can spill out into the public realm and will be bordered by tree canopy cover. The landscaped elements contained within this central plaza include themed grasses and civic-scaled tree species which respond to the character and embellish the site with elements supported by First Nations community members.

The modified public domain arrangement delivers a significant public benefit. It will improve ground plane activation and permeability through the site. The planning of this space is in keeping with the sites historic and originally intended use. Market Square is left open to possibility and will be able to adapt to the community needs including community markets, food festivals, open air cinema, small concerts and the list goes on.

Market Square provides an accessible path from Hunter Street through to Laing Street. The square has a maximum 1:40 grade ramp throughout with accessible entry into retail tenancies. A stair and ramp are provided at the south of Market Square to provide an accessible connection to Laing Street.

A comparison between the 'Indicative Public Domain Strategy' and the proposed landscape and public domain arrangement for Stage 3 and 4 is illustrated below.

Figure 11 Aspect Studio Public Domain following Concept DA



Source: Aspect



Figure 12 Proposed Public Domain



Source: COLA Studio

## 6.5. AMENDED CONDITIONS

This section of the report outlines the proposed replacement and/or rewording of the conditions imposed by Council in accordance with the modifications outlined in Section 4 of this Statement of Modification. The changes sought are shown with ~~strikethrough~~ text (deletions) and **red** text (additions).

### 6.5.1. Condition 1 – Plans and Documentation

*The development shall be undertaken substantially in accordance with the details and specifications set out below, except where modified by any condition of this consent.*

Drawing Number	Rev.	Drawing Name	Date
DA-0001	03	Contents	19.09.2019
DA-0101	03	Location Plan	19.09.2019
DA-0102	03	Site Analysis Plan	19.09.2019
DA-0103	03	Block Plan	19.09.2019
<del>DA-0201</del>	<del>03</del>	<del>Floor Plan Level 01</del>	<del>19.09.2019</del>

Drawing Number	Rev.	Drawing Name	Date
<b>DA-0201</b>	<b>05</b>	<b>Floor Plans Level 01</b>	<b>23.02.2024</b>
<del>DA-0202</del>	<del>03</del>	<del>Floor Plan Level 02</del>	<del>19.09.2019</del>
<b>DA-0202</b>	<b>05</b>	<b>Floor Plan Level 02</b>	<b>23.02.2024</b>
<del>DA-0203</del>	<del>03</del>	<del>Floor Plan Level 03</del>	<del>19.09.2019</del>
<b>DA-0203</b>	<b>05</b>	<b>Floor Plan Level 03</b>	<b>23.02.2024</b>
<del>DA-0204</del>	<del>03</del>	<del>Floor Plan Level 04</del>	<del>19.09.2019</del>
<b>DA-0204</b>	<b>05</b>	<b>Floor Plans Level 04</b>	<b>23.02.2024</b>
<del>DA-0205</del>	<del>03</del>	<del>Floor Plan Level 05</del>	<del>19.09.2019</del>
<b>DA-0205</b>	<b>05</b>	<b>Floor Plans Level 05</b>	<b>23.02.2024</b>
<del>DA-0206</del>	<del>03</del>	<del>Floor Plan Typical</del>	<del>19.09.2019</del>
<b>DA-0206</b>	<b>05</b>	<b>Floor Plans Level - Typical</b>	<b>23.02.2024</b>
<del>DA-0501</del>	<del>03</del>	<del>Building Envelope Elevation North &amp; East</del>	<del>19.09.2019</del>
<b>DA-0501</b>	<b>07</b>	<b>Building Envelope Elevation North &amp; East</b>	<b>123.02.2024</b>
<del>DA-0502</del>	<del>03</del>	<del>Building Envelope Elevation South &amp; West</del>	<del>19.09.2019</del>
<b>DA-5502</b>	<b>07</b>	<b>Building Envelope Elevation South &amp; West</b>	<b>23.02.2024</b>
DA-0503	03	Building Envelope Elevation Wolfe St East & West	19.09.2019
<del>DA-0504</del>	<del>03</del>	<del>Building Envelope South &amp; West</del>	<del>19.09.2019</del>
<del>DA-0601</del>	<del>03</del>	<del>Section C &amp; D</del>	<del>19.09.2019</del>
<b>DA-0601</b>	<b>06</b>	<b>Section C &amp; D</b>	<b>23.02.2024</b>
DA0602	03	Section E & F	19.09.2019
DA-0603	03	Section H	19.09.2019
<del>DA-0604</del>	<del>03</del>	<del>Section J</del>	<del>19.09.2019</del>
<b>DA-0604</b>	<b>05</b>	<b>Section J</b>	<b>23.02.2024</b>
<del>DA-2901</del>	<del>03</del>	<del>Envelope Plan</del>	<del>19.09.2019</del>
<b>DA-2901</b>	<b>05</b>	<b>Envelope Plan</b>	<b>23.02.2024</b>
<del>DA-2902</del>	<del>03</del>	<del>Privately Owned Public Access</del>	<del>19.09.2019</del>
<b>DA-2902</b>	<b>04</b>	<b>Privately Owned Public Access</b>	<b>23.02.2024</b>
DA-2903	03	Indicative Staging Plan	19.09.2019
<del>DA-2904</del>	<del>03</del>	<del>FSR Plan</del>	<del>19.09.2019</del>

Drawing Number	Rev.	Drawing Name	Date
DA-2904	06	FSR Plan	01.10.2024

### Reason for Modification

To reflect the re-distribution of building massing out of the central view corridor, to align with City of Newcastle's vision and DCP. The Amended Concept Building Envelope Plans have been prepared by SJB in partnership with DBJ and Curious Practice and are submitted with this application.

## 6.5.2. Condition 4 – Floor Area

*This consent permits a maximum gross floor area of ~~63,617m<sup>2</sup>~~ **64,750m<sup>2</sup>** over all stages, calculated in accordance with the definition of gross floor area contained in Newcastle Local Environmental Plan 2012. Of the total gross floor area, not less than 8100m<sup>2</sup> shall comprise retail space and not less than 1160m<sup>2</sup> shall comprise business/office space which is generally apportioned to each stage as identified in the approved documentation and as depicted on Floor Plans (Job No. 5614) numbered DA-0200 (Basement 01), DA-0201 (Level 1), DA-0202 (Level 2), DA-0203 (Level 3), DA-0204 (Level 4), DA-0205 (Level 5), DA-0206 (Level Typical), Revision 03 dated 19.09.2019, prepared by SJB Architects.*

*Allocation of gross floor area across the site shall generally be:*

*Block 1: 27,466m<sup>2</sup>*

*Block 2: 12,954m<sup>2</sup>*

*Block 3: ~~11,034m<sup>2</sup>~~ **10,916m<sup>2</sup>***

*Block 4: ~~12,163m<sup>2</sup>~~ **13,414m<sup>2</sup>***

### Reason for Modification

The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the "Harbour to Cathedral Park" to Building 3 South (DBJ) providing a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012.

The mass of the Building 3 South was redistributed during the Architectural Design Competition to achieve a balance of maintaining the Applicants apartment amenity and CN's desired outcome of the Harbour to Cathedral link. The redistributed mass achieves a balance of preserving the approved massing amenity from the Concept DA (as modified) and achieving CN's desired outcome.

The approved Concept DA (as modified) permits a maximum floor space ratio (FSR) on the total site of 3.83:1. The allocation of FSR across the site shall generally be 3.3:1 for Stage 3 and 4.0:1 for Stage 4. It is noted that some inconsistencies exist between the Concept DA and the NLEP 2012.

A maximum FSR of 4:1 is applicable to the site under clause 4.4 of NLEP 2012. As demonstrated within the architectural plans prepared by SJB, DBJ and Curious Practice which accompany this application, the proposal has an overall FSR of 3.90:1.

East End will comply with the NLEP 2012. This modification seeks to amend the staged breakdown to reflect additional floor space in Stage 4 and a reduced floor space in Stage 3. The detailed DA for Stage 3 and 4 are submitted together and have an FSR of entity of East End equates to 3.90:1 therefore complying with the NLEP 2012.

## 6.5.3. Condition 5 – FSR

*This consent permits a maximum floor space ratio on the total site of ~~3.83:1~~ **3.90:1**, with the maximum floor space ratio for each stage to be in accordance with the 'FSR Plan' prepared by SJB Architects (Job No. 5614, Drawing No. DA-2904, Revision 03, dated 19.09.2019) and is generally apportioned to each stage as identified in the approved documentation and is summarised below:*

*Stage 1: 4.19:1*

*Stage 2: 3.55:1*

### Stage 3: 3.24:1

### Stage 4A: 4.35:1

#### Reason for Modification

As outlined above, the approved Concept DA (as modified) permits a maximum floor space ratio (FSR) on the total site of 3.83:1. The allocation of FSR across the site shall generally be 3.3:1 for Stage 3 and 4.0:1 for Stage 4. It is noted that some inconsistencies exist between the Concept DA and the NLEP 2012.

A maximum FSR of 4:1 is applicable to the site under clause 4.4 of NLEP 2012. As demonstrated within the architectural plans prepared by SJB, DBJ and Curious Practice which accompany this application, the proposal has an overall FSR of 3.90:1.

East End will comply with the NLEP 2012. This modification seeks to amend the staged breakdown to reflect additional floor space in Stage 4 and a reduced floor space in Stage 3. The detailed DA for Stage 3 and 4 are submitted together and have an FSR of entirety of East End equates to 3.90:1 therefore comply with the NLEP 2012.

## 6.5.4. Condition 6 – Building Height

*This consent permits maximum building heights as shown and referenced as 'Staged DA Building Envelope' on the Building Envelope Plans prepared by SJB Architects (Job No. 5614, dated 19.09.2019) including:*

~~a) Drawing No. DA-0501, Revision 03, Elevation North and East;~~

**a) Drawing No. DA-0501, Revision 07, Building Envelope Elevation North & East**

~~b) Drawing No. DA-0502, Revision 03, Elevation South and West;~~

**b) Drawing No. 0501, Revision 07, Building Envelope Elevation South & West**

c) Drawing No. DA-0503, Revision 03, Elevation Wolfe Street East + West;

~~d) Drawing No. DA-0504, Revision 03, Elevation South and West~~

**d) Drawing No. DA-504, Revision 05, Building Envelope South & West**

d) DA-0601 (Section C&D Rev 06 23/2/24)

e) DA-0604 (Section J Rev 05 23/2/24),

f) DA-0503, Revision 03 19/9/2019, Elevation Wolfe Street East + West;

g) DA-0504, Revision 03 19/9/2019, Elevation South and West

#### New Condition 6A:

**6A This consent permits maximum building height of +24.50m RL for the 'Laing Lane Café' site as marked in red and yellow highlight on the plans by SJB Architects (Job No. 5614, dated 23/2/24) DA2901 (Envelope Plan Rev 05 23/2/24)**

#### Reason for Modification

Under clause 7.5(6) of the NLEP development that exhibit design excellence are eligible for an additional 10% height. Subclause (6) reads:

*(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.*

This development has undergone an Architectural Design Competition where four competitors put forward their designs in accordance with a robust Design Excellence Brief and Strategy. The SJB in collaboration with DBJ and Curious Practice scheme was recommended by the Jury as the winning scheme in the competitive design process. The applicant has sort to ensure the highest level of design excellence for this highly strategic site by providing a variety of design responses to respond positively to the opportunity. The scheme has also been reviewed by the established DIP.

The approved Concept DA (as modified) envelopes have not incorporated the potential for an additional 10% in building height provided under the design excellence provisions in the NLEP. This additional building height may be granted by the consent authority as part of the competitive design process.

In addition to the 10% provision, the reasons for the additional building height are outlined below:

- The Applicant holds a valid Concept DA that was approved in 2018, which has generally determined the proposed bulk and scale. The Applicant initially submitted a Design Competition Brief to CN which complied with Concept DA. Subsequently, CN advised of their desired public domain vision and requested the Applicant amend the Design Competition Brief to retain the amenity of apartments under the Concept DA and encourage competitors to explore variations to the approved Concept DA.
- The redistribution of the approved GFA enhances the characteristic of Newcastle's silhouette and does not deliver a 'flat top' planning envelope. The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the Concept DA scheme.
- The scheme has been through six Design Integrity Panel (DIP) sessions with Paulo Macchia (GANSW), Dr Philip Pollard and Sandra Furtado. During DIP Session 1 the following observations regarding the height exceedance were made:
  - *The DIP commented that removing a storey from Building 3 South does not improve the urban design outcome of the proposal based upon the information presented.*
  - *The DIP supports the Competition Scheme height exceedance and arrangement based on the illustrated views from Hunter Street, and Newcomen Street provided. However, the visual impacts need to be further explored via a robust a view assessment.*
- After a rigorous assessment and refinement process, the DIP are comfortable with the height exceedance of Building 3 South subject to further view impact assessment, required for DA stage. The DA is accompanied by a Visual Impact Assessment prepared by Urbis. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme can achieve design excellence.
- The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the "Harbour to Cathedral Park" to Building 3 South (DBJ) providing a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a small component of the western end of Building 3 South. For context, Building 3 South was placed and approved in the current location with CN's endorsements to obscure the existing CN carpark to the south of the site. This context for CN has changed since the approval of the Concept DA, and demolition of the car park is now complete with exploration of redevelopment opportunities being explored by CN.
- The additional height is supportable from a visual impact perspective due to the limited impacts from a public and private view perspective. The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view.

## 6.5.5. Condition 10 – Built Form

Delete:

**~~Elevations submitted with Blocks 2, 3 and 4 shall confirm the provision of minimum 4m floor to ceiling heights at ground floor level, and minimum 3.3m at first floor level for all new buildings.~~**

### Reason for modification

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

The proposal complies with the relevant Building Code of Australia provisions and the reduction will not impact the functioning of the proposed buildings.



## 6.5.6. Condition 18 – Overall Onsite Car Parking

*On-site car parking is to be provided for a minimum of ~~616~~ 735 vehicles across the four (4) stages of the development and shall be generally in accordance with the details indicated on the submitted plans and documentation, except as otherwise provided by the conditions of consent.*

### Reason for Modification

Stage 3 and 4 propose 304 car parking spaces.

The off-street car parking rates applicable to the proposed development are specified in the Newcastle DCP 2023, Section 7.03 Traffic, Parking and Access document (as amended at City of Newcastle's Ordinary Council Meeting held on 27 September 2022),

Condition 19, as outlined below, specifies that the number of car parking spaces shall be provided within each stage in accordance with the requirements of section 7.03 of Newcastle DCP 2012 or the applicable standard at the date of DA lodgement for each stage. The Traffic and Parking Report attached to the Detailed DA outlines the calculation of parking for the new development.

## 6.5.7. Condition 19 – Car Parking Allocation

*The number of car parking spaces shall be provided within each stage in accordance the requirements of Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for each stage. The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition:*

- a) 100% of car spaces required for residents are to be provided on site;*
- b) A minimum of 25% of the required number of residential visitor parking spaces shall be provided for residential visitor parking in each of the car parks for each Block contained in Stages 1-4 inclusive. These spaces are not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents. Spaces cannot be allocated or deferred to different Blocks/stages unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 75% is to be accommodated ~~by the existing Council carpark at the Corner of King and Thorn Streets and~~ on-street parking.*
- c) Stages 1 to 4 of the development shall each provide on-site car parking for the parking for commercial and retail staff at the rate of 50% required by Council's DCP for commercial and retail use unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 50% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on- street parking.*
- d) 37 carparking spaces are to be provided for the hotel located within Stage 1 of the development, comprising 29 guest and 8 staff spaces which may otherwise be reduced if justified or approved through a separate development consent or modification after a minimum of two (2) years operations.*
- e) an additional 10 parking spaces and 11 residential visitor parking spaces are to be included in Stage 3, in addition to compliance with Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for this stage. This additional 10 parking spaces are not to be allocated to residential uses and the allocation is to be approved by Council. This term applies unless otherwise justified or approved through separate development consent that demonstrates it is not warranted based on traffic and parking analysis of Stage 1 including specific information from a minimum of two (2) years hotel operations.*

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

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

The concept application for Stages 1 to 4 (DA2017/00701.03), approved a parking deficit of 159 spaces (85 residential visitor and 74 commercial /retail). At the time of the approval, it was accepted that the additional

parking demand associated with this development could be met by available parking located within the King Street multi-level car park. Condition No. 19 (b) & (c) currently reflects this requirement.

As the King Street car park has since been demolished, the parking survey has established short and long-term parking vacancies for both on-street and within existing off-street public car parks to cater for the 113-space parking deficit.

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

### 6.5.8. Condition 42 – Public Domain

***A public right of carriageway is to be created over the publicly accessible private land, as detailed within the plans by SJB Architects dated 23/2/24 (Job No 5614 Dwg NO DA-2902 Rev 04) and inclusive of an associated public lift located between Newcomen and Laing Streets. A detailed survey plan is to be submitted with an accompanying Subdivision Certificate Application for Council certification and such plan is to be registered with the NSW Government Land Registry Service (LRS) prior to issue of any Occupation Certificate or Subdivision Certificate, whichever occurs first.***

#### **42A Section 88B Instrument**

***Before the issue of the first occupation certificate for the development (i.e., whether for part or whole of a building), a notation is to be made on a survey plan and accompanying instrument under Section 88B of the Conveyancing Act 1919 setting out the terms of the required public right of carriageway to be created over the publicly accessible private land, and inclusive of an associated public lift located between Newcomen and Laing Streets, and such is to be lodged with the Newcastle City Council for certification and be subsequently registered with NSW Land Registry Services.***

***Note: The instrument is to provide that the required public right of carriageway to be created over the publicly accessible private land is unable to be released, varied or modified without the concurrence of Newcastle City Council***

#### **Reason for Modification**

The public domain plans need to be updated to reflect the redistributed building mass specifically for Stage 3 which amends the configuration of 'Market Square.'

The proposal includes the creation of a new urban plaza 'Market Square' and will improve ground plane activation and permeability through the site. The planning of this space is in keeping with the sites historic and originally intended use. Market Square is left open to possibility and will be able to adapt to the community needs including community markets, food festivals, open air cinema, small concerts and the list goes on.

The configuration of 'Market Square' has been amended to align with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral.

### 6.5.9. Condition 43 – Public Domain

*The development application for each stage must address the **relevant** principles and design requirements of the following documents:*

- a) 'Indicative Public Domain Strategy' (Aspect Studios);*
- b) 'Hunter Street Plan' prepared for Newcastle City Council, (Aspect Studios) (as adopted); ~~and~~*
- c) 'City of Newcastle's Technical Manual City Centre Public Domain' (September 2014); **and***
- d) 'Newcastle East End Stage 3-4 Landscape Development Application Design Report' (Cola Studio April 2023).***

#### **Reason for Modification**

The public domain plans need to be updated to reflect the redistributed building mass specifically for Stage 3 which amends the configuration of 'Market Square.'

The proposal includes the creation of a new urban plaza 'Market Square' and will improve ground plane activation and permeability through the site. The planning of this space is in keeping with the sites historic and originally intended use. Market Square is left open to possibility and will be able to adapt to the community needs including community markets, food festivals, open air cinema, small concerts and the list goes on.

The configuration of 'Market Square' has been amended to align with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral.

The Indicative Public Domain Strategy prepared by Aspect Studios is now outdated for Stage 3 and 4, and is superseded by Cola Studio's design report from April 2023.

## **6.5.10. Condition 44 – Public Domain**

***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, and inclusive of an associated public lift located between Newcomen and Laing Streets and is permitted to have Laing Street Café in the location shown on 'Floor Plan – Level 04' prepared by SJB Architects (Drawing No. DA-2904 Revision 04 dated 23.02.2024). The through-site links shall be located as shown on aforementioned plans. All through site connection links, and inclusive of an associated public lift located between Newcomen and Laing Streets, must have public right of carriageway to be created over the publicly accessible private land and this be registered on title with NSW Land Registry Services.***

### **Reason for Modification**

The public domain plans need to be updated to reflect the reconfiguration of the Stage 4 through-site link between Newcomen and Laing Streets.

The separation between Stage 4 South and North extends Laing Street providing a secondary fine-grain connection. This area is proposed to be activated by the small cafe building addressing Newcomen Street that acts as a marker, refer to Figure 13.

Disabled accessible lift access is proposed to mitigate the steep change on level and softens the 5-storey expanse of blank wall created by the removal of Blackall House.



Figure 13 Laing Lane Café



Source: Curious Practice

## 7. SECTION 4.55 (2) APPLICATION

The application has been assessed in accordance with the relevant requirements of section 4.55(2) of the EP&A Act as set out below. Council may modify a development consent under the provisions of Section 4.55(2) of the Act if satisfied that the development remains ‘substantially the same’ as originally approved.

This section is set out as follows:

- **Section 7.1:** Consideration of the JRPP original ‘Determination and Statement of Reasons.’
- **Section 7.2:** Substantially the Same Development

For completeness, **Table 8** has been prepared to demonstrate to the HCCRPP that a robust assessment of section 4.55 of the EP&A Act.

Table 8 Commentary against the provisions of section 4.55(2) to (4)

Provisions of section 4.55	Comment plus where has this been addressed?
<p>(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—</p> <p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The proposed changes are such that the modification application submitted (and subsequent section 8.2 review) is considered to constitute substantially the same development as the originally approved development.</p> <p>A detailed assessment was completed by Urbis to demonstrate the modification is “substantially the same development as the originally approved development” in the lodged section 8.2 Review: MA2023/00175 Report dated May 2024 (now superseded by this Report). <b>In addition, this has been considered in Section 7.2 of this Report.</b></p> <p>Section 4.55(2)(a) has been addressed and the consent authority can be satisfied.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>City of Newcastle have consulted with the relevant public authorities and approval bodies including Subsidence Advisory NSW, Heritage NSW and Water NSW.</p> <p>Section 4.55(2)(b) has been addressed and the consent authority can be satisfied.</p>
<p>(c) it has notified the application in accordance with—</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>City of Newcastle has notified the modification application and 8.2 review appropriately.</p> <p>The standard notification period, as per the Community Participation Plan, was completed between 20 June 2024 and 04 July 2024. The following provides an accurate summary of the valid submissions during the notification period:</p> <ul style="list-style-type: none"> <li>▪ A total of 241 submissions were received during the standard notification period and</li> </ul>

Provisions of section 4.55	Comment plus where has this been addressed?
	<p>outside of the standard notification period as of 18 July 2023.</p> <ul style="list-style-type: none"> <li>134 submissions were received in support of the development, equating to 55.6% in favour of the development.</li> <li>107 submissions were received objecting to the development, equating to 44.4% in favour of the development. Of the objections, three (3) were received from Newcastle Club, Newcastle Inner City Residents Alliance, and Newcastle East Residents Group Inc (one submission each).</li> </ul> <p>In addition to the formal City of Newcastle notification period, members of the Newcastle local community has used "Straw Poll" to record their position on RE2024/00002. The results of which can be viewed here: <a href="https://strawpoll.com/poy9kR4M8gJ/results">https://strawpoll.com/poy9kR4M8gJ/results</a>. 378 votes in support of the proposal have been recorded and 4 votes against the development, equating to 99% in favour of the development.</p> <p>The section 4.55 (2) that is subject to this review, received a total of 24 submissions when it was publicly notified between 13 June to 18 July 2023. Of the 24 submissions, Newcastle Club, Newcastle Inner City Residents Alliance and Newcastle East Residents Group Inc objected. It is noted that 3 submissions were received in support of the application under the Detailed DA which was placed on exhibition concurrently.</p> <p>A comprehensive Response to Submissions was prepared by Urbis and lodged with City of Newcastle via the Planning Portal on 20 August 2024 regarding RE2024/00002. This consolidated Response to Submissions is appended at <b>Appendix D</b>.</p> <p>Section 4.55(2)(c) has been addressed and the consent authority can be satisfied.</p>
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	As above, section 4.55(2)(d) has been addressed and the consent authority can be satisfied.

Provisions of section 4.55	Comment plus where has this been addressed?
Subsections (1) and (1A) do not apply to such a modification.	
(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	An assessment against each matter specified in section 4.15(1) of the EP&A Act has been completed in Section 7.1 of this Report.  In addition, section 4.15(1) has been addressed throughout this Report.
(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.	Noted.

## 7.1. CONSIDERATION OF THE JRPP ORIGINAL 'DETERMINATION AND STATEMENT OF REASONS'

DA2017/00701 was approved by the Joint Regional Planning Panel (JRPP), now the HCCRPP on the 21 December 2017. The JRPP prepared a document titled 'Determination and Statement of Reasons,' which includes a subheading titled 'Reasons for The Decision'

As outlined by Mills Oakley, section.4.55(3) of the EP&A Act is not a mandatory provision for the purposes of applying the 'substantially the same' test in section 4.55(2)(a). Rather, **a consent authority is only bound to take into consideration "the consent authorities' reasons for the grant of the original consent" when considering such of the matters referred to in s.4.15(1) as are of relevance to the development subject of a modification application.**

The obligation for a consent authority to 'take into consideration' is of a similar character to that which has been found to be imposed by a statutory obligation to 'have regard to' identified matters. Therefore, whilst the reasons must be considered, they are not determinative.

For completeness, **Table 9** has been prepared to demonstrate how these 'Statement of Reasons' have been considered by the Applicant.

Table 9 Consideration of 'Statement of Reasons'

Panel Consideration and Decision	Comment
The Panel generally agreed with the environmental assessment and balance of considerations within the Council staff assessment report and having regard to the assessment report for the previous concept proposal (2015HCC027).	2015HCC027 (DA2015/10182) has been surrendered and is therefore not a matter for consideration. DA2017/00701 is the relevant Concept DA to consider.
The Panel considered the comprehensive documentation submitted in support of the concept plan and the previous concept plan approved by the JRPP in 2016. The Panel also had regard to the design excellence process that has been	In addition to the comprehensive review of massing with the Council's Urban Design Consultative Committee previously as part of the original

Panel Consideration and Decision	Comment
<p>undertaken and the involvement and comments of the Council's Urban Design Consultative Committee in the design development and assessment.</p>	<p>Concept DA, Stage 3 and 4 has undergone an Architectural Design Competition.</p> <p>The Architectural Design Competition where four competitors put forward their designs in accordance with a robust Design Excellence Brief and Strategy. SJB in collaboration with Durbach Block Jaggers and Curious Practice Architecture (the Design Team) scheme was recommended by the Jury as the winning scheme in the competitive design process.</p> <p>The vision was to develop a mixed-use precinct which achieves design excellence through its high-quality built form, high amenity dwellings and has an overall positive public domain benefit. The competitive process was the second competition undertaken within the Newcastle LGA.</p> <p>Post the Architectural Design Competition, the proposal went through six (6) Design Integrity Panel meetings and two (2) Urban Design Review Panel meetings. The Applicant continued to engage in a collaborative consultation process with GANSW and CN, including with Dr Philip Pollard.</p> <p>Of importance, the previous Urban Design Consultative Committee and the now Urban Design Review Panel comprised of some consistent members include Dr Philip Pollard and Colin Brady.</p> <p>The design development and assessment has been comprehensive. Whilst the proposal seeks to amend the concept plan, because of a change in strategic direction from CN, the proposal continues to achieve design excellence.</p>
<p>The Panel was also satisfied the minor modification to the height controls permitted by the approved Clause 4.6 variation will not result in unreasonable amenity impacts, within and external to the site.</p> <p>The Panel was satisfied that the applicant's written request to vary Clause 4.3 Height of Buildings pursuant to Clause 4.6 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) adequately addresses the requirements of Cl. 4.6(3) of the NLEP 2012.</p> <p>The Panel was also satisfied that the proposed development is consistent with the objectives of the development standard, the objectives of the B4</p>	<p>The Applicant has submitted a Clause 4.6 Variation Statement to vary Clause 4.3 Height of Buildings of the NLEP 2012 as part of the concurrent Detailed DA for Stage 3 and 4.</p> <p>As supported by the legal opinion from Mills Oakley accompanying this Planning Addendum:</p> <p><i>"cl.4.6 in the NLEP 2012 does not have any work to do when undertaking a merit assessment of the Concept Modification pursuant to s.4.55(3) of the EPA Act, which requires the HCCRPP to take into consideration such of the matters referred to in section s.4.15(1) that are of relevance to the development the subject of the Concept</i></p>

Panel Consideration and Decision	Comment
<p>zone, and is in the public interest. The Panel determined to uphold the Clause 4.6 request to vary the development standard.</p>	<p><i>Modification. Rather, the height proposed in the Concept Modification Application is to be assessed on its merits (e.g. by taking into consideration the objectives of the height of buildings development standard in cl.4.3 of the NLEP 2012). <b>The Courts have confirmed that clause 4.6 does not apply to modification applications at all.</b></i></p> <p>Considering the merits of the Concept DA Modification, the variation to the height control is reasonable and will result in minimal amenity impacts, within and external to the site. Section 3 of this Planning Addendum discretely addresses the objectives of Clause 4.3 of the NLEP 2012 – which is aligned with the planning reasoning provided in the Applicant’s Clause 4.6 Variation Statement to vary Clause 4.3 Height of Buildings of the NLEP 2012 submitted as part of the concurrent Detailed DA for Stage 3 and 4.</p> <p>This Planning Report addressed the merits of the variation and clearly demonstrates consistency with the objectives of the development standard, the objectives of the zone, and public interest.</p>
<p>The Panel noted the proposal has appropriately considered heritage issues, both within and external to the site, and is satisfied with the proposed retention and re-use of heritage buildings and facades as proposed, and that the proposal has adequately considered and addressed the relationship between the proposal and surrounding heritage items.</p>	<p>The modification to the Concept DA, result in an improved heritage response. It is important to consider both First Nation’s history and European Heritage.</p> <p><b>First Nations:</b></p> <p>The project is underpinned by Country. Through several community consultations with Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) the Design Team have developed a series of segments to assist the development to be a more culturally inclusive space for the local First Nations Community, and all. The landscape design was also led by COLA Studio, a First Nation landscape consultant.</p> <p>The following elements were incorporated into the design response:</p> <ul style="list-style-type: none"> <li>Material choice on Building 3W which frames the first floor with a midden-like shell colour to connect the ground plane to Country principles of ‘shoreline’ and ‘river and rock pool’.</li> </ul>



Panel Consideration and Decision	Comment
	<ul style="list-style-type: none"> <li>▪ A Connecting with Country Strategy has been developed for Building 4N which reveals the midden story through material selection. The midden story was heard through First Nations engagement when preparing the Connecting with Country Strategy whereby community members encouraged the use of midden-like materials to integrate history and culture into the project.</li> <li>▪ Building 4S will incorporate elements of the midden story in the through-site link to extend Connecting with Country elements into private lobbies and landscaped courtyard.</li> <li>▪ Awning between Building 3W and 3N in Stage 3 corridor plaza proposed to tell First Nation story of soffit.</li> <li>▪ Landscape handstand and plants have First Nations and Country flavour in terms of species selected.</li> <li>▪ The use of a Country Wall on Building 4S, including midden and artefacts will be designed in collaboration with an artist and community members to express the country story and potentially reincorporate First Nations archaeological elements removed from Country in Stage 1 and 2.</li> </ul> <p>Dhiira has endorsed the scheme stating that <i>“the final submission will include and be reflective of community, their voice is now in design. This project not only created new ways of participating for our people, economic outcomes for the project team through ideation, a chance to imagine and shape the future of the city. The outcomes produced broadly through the design process are incredible conceptualisations of a place that was, this tells a story to all people who will be drawn and access this space and preserve this opportunity to engage for future generations in Newcastle.”</i></p> <p><b>European Heritage:</b></p> <p>The proposed modification including the redistributed scale and mass of the Concept DA envelopes will have marginal change in a positive way due to the opportunity of creating the 'Harbour to Cathedral' visual corridor and link that was not available in the Concept DA. The Concept DA was</p>

Panel Consideration and Decision	Comment
	<p>completely blocking the views to the Cathedral from the Harbour along Market Street.</p> <p>The adaptive reuse of the Municipal Building will help preserve heritage within the Newcastle's city centre while also enabling the opportunity to diversify the building's purpose. The proposal also respects surrounding heritage items and is conscious of their significance. Removal of the mass from the top of the Municipal Building results in a positive heritage response, as it gives the building space to be appreciated.</p> <p>The Heritage Impact Statement dated April 2023 (<b>Appendix H</b>) and Addendum to Heritage Impact Statement (<b>Appendix I</b>) dated September 2024 prepared by City Plan confirms that the proposal has appropriately considered heritage issues, specifically both within and external to the site.</p>
<p>The Panel had regard to matters raised by the community and noted that there was general support for the wider proposal and that detailed matters of design, including street wall heights will be matters to be addressed through future detailed development applications for future stages.</p> <p>The Panel is satisfied that the concerns of the community have been addressed through conditions of consent, including management of the demolition and construction phases of the development, and that the assessment undertaken (and recommended conditions) has addressed the consistency of the proposal with the objectives of the planning controls applying to the site.</p>	<p><b>Community Sentiment:</b></p> <p>The Concept DA and concurrent Detailed DA continues to have strong support from members of the public, Government Architect of NSW, Urban Design Review Panel (UDRP – specifically Dr Philip Pollard, Kerry Hunter, Kristy Cianci and Colin Brady), Design Integrity Panel (DIP), and previous the Design Excellence Competition Jury, Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) as First Nations representatives, City of Newcastle (CN)'s internal divisions including heritage, waste, development engineers, public space and city greening and environmental in addition to the planning assessment team.</p> <p><b>Street Wall Heights:</b></p> <p>As acknowledged by the previous Planning Panel, "street wall heights will be matters to be addressed through future detailed development applications for future stages."</p> <p>The proposal does not comply with the street wall heights as set out within the NDCP 2023; the street wall heights have been deeply considered. During the design excellence competition and subsequent design integrity panels, the Panel were in agreement that the proposed street frontage heights of the proposal were appropriate to the site and surrounding development. The proposed built</p>

Panel Consideration and Decision	Comment
	<p>form has been through a rigorous design process and was agreed by the Panel, has potential to achieve design excellence, despite being non-compliant with street wall heights.</p> <p><b>Conditions of Consent:</b></p> <p>The Planning Panel can be satisfied that the concerns of the community continue to be addressed through the imposed conditions of consent.</p>
<p>The Panel was satisfied that the proposed street wall heights were reasonable and particularly noted that the variation to the street wall heights for Building A (reference to Stage 1), which departs from base DCP requirements, has been based on more fine-grained design developments and meets the objectives of those requirements. The Panel also noted that the street wall heights for future stages (ie 2-4) will be determined through detailed design and assessment as part of future development applications for those stages.</p>	<p>As above, the proposal does not comply with the street wall heights as set out within the NDCP 2023; the street wall heights have been deeply considered. During the design excellence competition and subsequent design integrity panels, the Panel were in agreeance that the proposed street frontage heights of the proposal were appropriate to the site and surrounding development. The proposed built form has been through a rigorous design process and was agreed by the Panel, has potential to achieve design excellence, despite being non-compliant with street wall heights.</p>
<p>The Panel noted to proposed building heights in the application are similar to already approved building heights in the approved concept approval (2015HCC027), with some redistribution of heights, resulting in some minor increases in part, and reduction in other areas.</p> <p>The Panel noted the assessment that was undertaken for the additional building height, and was satisfied that the additional height is minor, and will not adversely impact on surrounding properties, the overall appearance of the development or views through the site.</p>	<p>The proposed variation to the height standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient planning grounds to justify this variation. In summary, these circumstances can be summarised as follows:</p> <ul style="list-style-type: none"> <li>▪ The proposed height variation will assist in delivering a better heritage and conservation outcome for the Municipal Building. The Concept DA and LEP controls allow for additional built form to be constructed on top of the Municipal Building. The Municipal Building has been retained 'freestanding' and unencumbered of additional storeys. This is because of the redistribution of building mass. Given this key move, the building mass above the Municipal Building was distributed and contributed to the height variation. The heritage benefit outweighs the impacts associated with the additional height of Stage 3.</li> <li>▪ The proposed height variation allows for a significantly improved public domain experience, enhanced public views, and</li> </ul>

Panel Consideration and Decision	Comment
	<p>pedestrian experience by the redistribution of massing. The Concept DA and LEP controls allowed for a smaller 'Market Square.' In conjunction, with unlocking the view corridor, the reconfiguration improves the public domain experience and improves solar access to the City of Newcastle site to the south which will also be required to contribute to the Harbour to Cathedral link. All proposed public spaces will be owned and maintained by private owners in perpetuate to ensure appropriate management with no cost to rate payers.</p> <ul style="list-style-type: none"> <li>▪ The re-massing of the Stage 3 unlocks the view corridor between the Harbour and the Cathedral, which was not envisaged in the Concept DA. The Concept DA and LEP controls allowed building mass across the view corridor. This building mass has been located atop of the proposed building to deliver CN's desired public domain outcome and preserves the high amenity enjoyed by the Applicant that was inherent in the approved building mass scheme.</li> <li>▪ The proposed variation does not result in any unreasonable impacts to surrounding private and adjacent properties. The additional building height (above the Concept DA) will not result in unreasonable impacts to public spaces adjacent residential developments. Most overshadowing falls within the approved concept DA massing with only small increments of shadow falling outside of the approved envelopes. The private view sharing impacts a minor for Segenhoe Apartments, the Herald Apartments and Newcomen Apartments. The view impact for the Newcastle Club as a whole is moderate, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable. It is noted that the Newcastle Club is a commercial building rather than a residential dwelling.</li> </ul> <p>Overall, the additional height as a result of the re massing of the Concept DA is considered justifiable from an environmental planning perspective as it delivers a significant public benefit.</p>

Panel Consideration and Decision	Comment
<p>The Panel noted the traffic assessment and modelling undertaken for the proposal, and the review of these by both the Council and RMS. The Panel is satisfied that consideration has been given to the potential impacts of construction car parking and that a future construction management plan will be required which will address the use of satellite parking locations and on-site storage facilities to limit the impacts of future construction traffic on surrounding areas. The Panel also noted the recommended condition which recognises that carparking provision for future stages (ie Stages 2-4) would need to be addressed in detail as part of future development applications.</p>	<p>No change is proposed, vehicular access for Stage 3 is from Thorn Street and Laing Street as per the Concept DA. The road network is unchanged, the site is still bound by Hunter, Laing, Morgan, King and Newcomen streets.</p> <p>The traffic impacts of the overall proposal were considered as part of the original Concept DA and are acceptable and an expected strategic planning outcome for the area.</p> <p>The modification of the Concept DA does not change the intensification in respect to traffic generation, in fact less traffic generation considering less apartments are contemplated by the Concept DA.</p>

## 7.2. SUBSTANTIALLY THE SAME DEVELOPMENT

### 7.2.1. Qualitative and Quantitative Assessment

In both **quantitative** and **qualitative** terms, the proposed development as modified will remain substantially the same as the development for which consent was originally granted. In our opinion, for the reasons outlined above, the Panel can be satisfied that the development as modified is substantially the same.

Furthermore, CN outlined in their Council Assessment Report that “The proposed changes are such that the modification application submitted is considered to constitute substantially the same development as the originally approved development.”

In our opinion and the opinion of CN, the proposal will remain the same ‘essentially’ or ‘materially’, being a mixed use precinct. The extent of works that have previously been accepted in the abovementioned Court cases as substantially the same include:

- Changes to the facades and external appearance;
- Changes to the envelope and profile of the development;
- Increases in floor space;
- Increases in height (in metres);
- Increases in number of storeys;
- Additional basement levels; and
- Increases in number of dwellings.

It is acknowledged that the proposed seeks to change the envelopes, increase the floor space ratio (but remain compliant with the prescribed under the Newcastle LEP 2012), and increase the height of the buildings. These changes have been deemed to be within the boundaries of a modification in Court cases, in our opinion the proposed modification can be considered substantially the same.

The proposed modification scope has been reviewed by both the DIP and UDRP. Both acknowledge the direction set in the Architectural Design Excellence Brief and the existing planning controls and have provided their endorsement of the winning competition scheme.

#### Qualitative

In qualitative terms, the land use remains to be a *mixed-use development comprising of retail, commercial, public spaces residential apartments associated car parking & site works.*

The proposed modification will still deliver the vision and objectives established at DA2017/00701. In fact, the modification proposed to improve compliance with the vision and objectives established in the Newcastle DCP 2012 by re massing to deliver the Harbour to Cathedral Park link and view corridor. This link was never contemplated to be delivered when the Concept DA consent was issued. If it had been, it is expected that the Concept DA consent would have reacted with changes to the concept massing similar or same as that sought in the modification before CN for assessment today.

The proposed modification will improve the visual relationship to the Christ Church Cathedral from the Newcastle Harbour.

The refinements improve the public domain experience, improve compliance with the ADG and Newcastle DCP 2012, and will generally improve internal amenity of apartments. The proposed modifications will not substantially change the overall precinct site composition and arrangement, alter the building type, heritage response or road network approach.

Table 10 provides a detailed qualitative analysis, comparing DA2017/00701 and the proposed modification.

Table 10 Qualitative comparison

Factor	DA2017/00701	Proposal (Detailed DA)	Change
<b>Vision</b>	East End will be the next catalyst in the ongoing revitalisation of Hunter Street and the surrounding CBD. The development is a critically important project with the purpose of rejuvenating the heart of the Newcastle CBD.	East End will be the next catalyst in the ongoing revitalisation of Hunter Street and the surrounding CBD. The development is a critically important project with the purpose of rejuvenating the heart of the Newcastle CBD.	<b>No change</b> – the vision remains the same for East End.  Stage 3 and 4 will contribute to the revitalisation of Hunter Street and the surrounding CBD.
<b>Objectives</b>	<ul style="list-style-type: none"> <li>Reinforces Hunter Street Mall as a retail destination with provision of some 7,300m<sup>2</sup> of retail floor space;</li> <li>Increases housing supply and choice within the city;</li> <li>Protects and reinterprets the heritage character of the area;</li> <li>The building heights maintain the visual prominence of the Christ Church Cathedral in the city skyline.</li> <li>Retains and incorporates heritage</li> </ul>	<ul style="list-style-type: none"> <li>Reinforces Hunter Street Mall as a retail destination with provision of some 7,300m<sup>2</sup> of retail floor space;</li> <li>Increases housing supply and choice within the city;</li> <li>Protects and reinterprets the heritage character of the area;</li> <li>The building heights maintain the visual prominence of the Christ Church Cathedral in the city skyline.</li> <li>Retains and incorporates heritage</li> </ul>	<b>No change</b> – the redevelopment objectives remain the same.  Stage 3 and 4 will contribute to the revitalisation, increase housing supply, protect the heritage character, protect important view corridors, create employment opportunities during construction and on an ongoing basis, and enhance pedestrian permeability and comply with the LEP mapped FSR.



Factor	DA2017/00701	Proposal (Detailed DA)	Change
	<p>elements into the new development.</p> <ul style="list-style-type: none"> <li>The building envelopes minimise impacts on public views to and from the Cathedral and mitigate any private view loss and potential overshadowing impacts.</li> <li>Complies with the maximum FSR of 4:1 that is applicable to the site under NLEP 2012.</li> <li>Creates employment opportunities within the city; and</li> <li>Enhances pedestrian permeability and circulation within the city by creating a connected laneway network from Perkins to Newcomen Street running parallel to Hunter Street</li> </ul>	<p>elements into the new development.</p> <ul style="list-style-type: none"> <li>The building envelopes minimise impacts on public views to and from the Cathedral and mitigate any private view loss and potential overshadowing impacts.</li> <li>Complies with the maximum FSR of 4:1 that is applicable to the site under NLEP 2012.</li> <li>Creates employment opportunities within the city; and</li> <li>Enhances pedestrian permeability and circulation within the city by creating a connected laneway network from Perkins to Newcomen Street running parallel to Hunter Street</li> </ul>	
<b>Land Use</b>	<p>mixed-use development comprising of retail, commercial, public spaces residential apartments associated car parking &amp; site works.</p>	<p>mixed-use development comprising of retail, commercial, public spaces residential apartments associated car parking &amp; site works.</p>	<b>No change</b> – the same land use proposed.
<b>Access and Road Network</b>	<p>Vehicular access for car parking from King Street, Perkins Street, Wolfe Street, Thorn Street, Laing Street, Morgan Street, and Newcomen Street.</p> <p>Service vehicular access from Perkins Street, Thorn Street, Laing Street, and Morgan Street.</p>	<p>Vehicular access for car parking from King Street, Perkins Street, Wolfe Street, Thorn Street, Laing Street, Morgan Street, and Newcomen Street.</p> <p>Service vehicular access from Perkins Street, Thorn Street, Laing Street, and Morgan Street.</p>	<p><b>No change</b> – vehicular access for Stage 3 is from Thorn Street and Laing Street.</p> <p>The road network is unchanged, the site is still bound by Hunter, Laing, Morgan, King and Newcomen streets.</p>

Factor	DA2017/00701	Proposal (Detailed DA)	Change
<b>Number of Envelopes</b>	9 envelopes plus the tourist and visitor accommodation within the David Jones building.	9 envelopes plus the tourist and visitor accommodation within the David Jones building.	<b>No change</b> – the number of envelopes remains the same
<b>Heritage Approach</b>	<p>The following buildings are proposed to be retained for adaptive reuse:</p> <ul style="list-style-type: none"> <li>▪ The original north-western portion of the former David Jones' store;</li> <li>▪ The Municipal Building (121 Hunter Street);</li> <li>▪ The former Lyrique Theatre/Masonic Hall 98 King Street (Wolfe Street); and</li> <li>▪ The terrace houses at 104, 108 and 110 King Street.</li> </ul> <p>The following buildings are proposed for conservation of the facade and investigation into the potential for adaptive reuse:</p> <ul style="list-style-type: none"> <li>▪ The former Duke of Kent Hotel, (153 Hunter Street); and</li> <li>▪ 105 Hunter Street.</li> </ul> <p>The retention of the facade of the following buildings, with new vertical additions for residential use:</p> <ul style="list-style-type: none"> <li>▪ The later additions to the former David Jones' store fronting Hunter Street;</li> <li>▪ The section of the former David Jones'</li> </ul>	<p>The following buildings are proposed to be retained for adaptive reuse:</p> <ul style="list-style-type: none"> <li>▪ The original north-western portion of the former David Jones' store;</li> <li>▪ The Municipal Building (121 Hunter Street);</li> <li>▪ The former Lyrique Theatre/Masonic Hall 98 King Street (Wolfe Street); and</li> <li>▪ The terrace houses at 104, 108 and 110 King Street.</li> </ul> <p>The following buildings are proposed for conservation of the facade and investigation into the potential for adaptive reuse:</p> <ul style="list-style-type: none"> <li>▪ The former Duke of Kent Hotel, (153 Hunter Street); and</li> <li>▪ 105 Hunter Street.</li> </ul> <p>The retention of the facade of the following buildings, with new vertical additions for residential use:</p> <ul style="list-style-type: none"> <li>▪ The later additions to the former David Jones' store fronting Hunter Street;</li> <li>▪ The section of the former David Jones'</li> </ul>	<p><b>No change (and considered an improvement)</b> – the modification does not change the approved heritage conservation strategy. In fact, it results in an improved heritage conservation strategy.</p> <p>The Municipal Building is proposed to be retained; no addition is proposed atop of the building resulting in an improved heritage response.</p> <p>105 and 111 Hunter Street facades are also proposed to be retained. Conservation of the façade was only envisaged or 105 Hunter Street, however Iris is also retaining the façade of 111 Hunter Street. Therefore, there is an improved heritage response.</p>

Factor	DA2017/00701	Proposal (Detailed DA)	Change
	<p>store fronting Wolfe Street;</p> <ul style="list-style-type: none"> <li>No. 163-167 Hunter Street; and</li> <li>The Soul Pattinson building (151 Hunter Street)</li> </ul>	<p>store fronting Wolfe Street;</p> <ul style="list-style-type: none"> <li>No. 163-167 Hunter Street; and</li> <li>The Soul Pattinson building (151 Hunter Street)</li> </ul>	
<b>Through site link</b>	<p>Stage 3: Market Square with connection from Market Street to Laing and Morgan Street.</p> <p>Stage 4: Morgan Street to Newcomen Street.</p>	<p>Stage 3: Market Square with connection from Market Street to Laing and Morgan Street.</p> <p>Stage 4: Morgan Street to Newcomen Street.</p>	<p><b>No change (and considered an improvement)</b> – redistributing the bulk and mass of the building throughout the precinct, the proposal creates a positive outcome delivering the Harbour to Cathedral through site link, both a physical connection and achieving the view corridor as desired by the NDCP 2012.</p> <p>The Morgan Street to Newcomen Street connection will also be retained.</p>
<b>Solar Access</b>	<p>70% of apartments are capable of achieving a minimum of two (2) hours of sunlight.</p>	<ul style="list-style-type: none"> <li>Building 3E and Municipal: 79% of apartments receive a minimum of 2 hours direct sunlight in mid-winter.</li> <li>Building 3W: 71% of apartments receive a minimum of 2 hours direct sunlight in mid-winter.</li> <li>Building 4N: 87.5% of apartments receive a minimum of 2 hours direct sunlight in mid-winter.</li> <li>Building 4S: 72% of apartments receive a</li> </ul>	<p><b>No change (and considered an improvement)</b> – originally envisaged baseline compliance with solar access is exceeded in Stage 3 and 4.</p>

Factor	DA2017/00701	Proposal (Detailed DA)	Change
		minimum of 2 hours direct sunlight in mid-winter.	
<b>Cross Ventilation</b>	Adequate cross ventilation can be achieved.	<ul style="list-style-type: none"> <li>Building 3E and Municipal: 95% of apartments are naturally cross-ventilated.</li> <li>Building 3W: 79% of apartments are naturally cross ventilated.</li> <li>Building 4N: 79% of apartments are naturally cross-ventilated.</li> <li>Building 4S: 88% of apartments are naturally cross-ventilated.</li> </ul>	<b>No change (and considered an improvement)</b> – originally envisaged baseline compliance with cross ventilation is exceeded in Stage 3 and 4.
<b>Separation Distances</b>	<p>8m between Building 3 West and Building 3 South. Blank façade on Building 3 South proposed.</p> <p>18.5m between Building 3 South and Building 4 North proposed.</p> <p>9m between Building 4 North (and 16-18 Newcomen Street) to Building 4 South).</p>	<p>22.1m between Building 3 West and Building 3 South. Blank façade on Building 3 South proposed.</p> <p>9m (Upper Ground Level) to 17m (Level 02 and above) between Building 4 North to Building 4 South.</p>	<b>No reduction in compliance (and considered an improvement)</b> – increased separation distances proposed.

## Quantitative

It is important to remember that this s4.55 modification relates **only to Stage 3 and 4**. No modification is proposed to Stage 1 and 2. Stage 3 and 4 have not been subject to any previous modifications. The proposed modification must be looked at from a precinct perspective.

Considering this, more than 50% of this mixed use precinct is complete or near completion. Stage 1 and Stage 2 have delivered:

- 333 apartments from Stage 1 and 2 combined are complete or near complete, comprising 63% of the total apartments for the precinct (528 apartments).
- 4,064 m<sup>2</sup> of commercial and retail is complete or near complete, comprising 72.8% of the total commercial and retail GFA for the precinct.

- 4,256 m<sup>2</sup> of hotel accommodation in Stage 1, comprising 100% of the total hotel accommodation GFA for the precinct.

Considering this, averaging the above numeric, 78.6% of the precinct plan has been delivered. Therefore, the argument regarding 'sustainability the same' is related to approximately 20% of the East End precinct.

Table 11 provides a detailed quantitative analysis, comparing DA2017/00701 and the proposed modification.

Table 11 Quantitative comparison

Element	DA2017/00701	DA2017/00701.03 (as modified)	Proposal (Detailed DA)	Degree of Change
Site Area	16,611m <sup>2</sup>	16,611m <sup>2</sup>	16,611m <sup>2</sup>	No change.
Apartments	563 apartments		Stage 1: 212 Stage 2: 121 Stage 3: 90 Stage 4: 105 Total: 528 apartments	Decrease of 35 apartments
Floor Spaces Ratio (gross)	3.68:1	3.83:1	3.90:1	This is a <b>5.97%</b> degree of change. This is considered 'essentially' or 'materially' the same.  Stage 1 and 2 – design excellence bonus was taken as GFA which explains part of the spread across the site.  <b>However, the FSR will overall comply with the Newcastle LEP.</b>

Element	DA2017/00701	DA2017/00701.03 (as modified)	Proposal (Detailed DA)	Degree of Change
<b>Maximum Building Height allocation across blocks</b>  <b>(Stage 3 and 4 only)</b>	Building 3 West: RL + 30.20*  Building 3 North: RL + 28.65 and RL + 31.28*  Building 3 East: RL + 30.20*  Building 4 North: RL + 28.35*  Building 4 South: + 42.00*	Building 3 West: RL + 30.20*  Building 3 North: RL + 28.65 and RL + 31.28*  Building 3 East: RL + 30.20*  Building 4 North: RL + 28.35*  Building 4 South: + 42.00*	Building 3 West: +34.30 RL  Municipal Building: +20.43 RL  Building 3 East: +45.65 RL  Building 4 North: +36.92 RL  Building 4 South: +51.70 RL  As a result of CN requiring the re massing of the Concept DA to deliver their desired public domain outcome, built form sits outside of the LEP height RL polygons specifically for Building 3 West and Building 3 South. The areas outside of the EP height RL polygons.	13.5% increase  34.7% decrease  51.2% increase  30.2% increase  23.1% increase  <i>Note: this should be read in conjunction with the clause 4.6 variation statement.</i>  The Concept DA did not consider available 10% design excellence provisions.
<b>Carparking (all stages)</b>	553 vehicles	616 spaces	Stage 1: 273  Stage 2: 158  Stage 3 and 4: 304 (excluding EV and car wash bays)  Total: 735 spaces	<b>182 space increase.</b> However, this does not consider the change in the DCP rates and the additional net commercial spaces above the DCP that have been provided in Stage 3 from Stage 1 and 2.



Element	DA2017/00701	DA2017/00701.03 (as modified)	Proposal (Detailed DA)	Degree of Change
Staging	4 stages	4 stages	No changes – 4 stages still proposed. Block 3 and 3 to be completed concurrence.	No changes – 4 stages still proposed. Block 3 and 3 to be completed concurrence.

It is understood that primarily the question of ‘substantially the same’ relates to height, however, the Panel has not articulated their concerns about ‘substantially the same’ clearly or with any detail. For clarity, almost all the additional height impact is the result of the sum of:

- Relocating the massing to that enabled the Harbour to Cathedral Park link, as required by CN.
- Removal of any built form above the heritage Municipal Building allowing it to present as it was constructed.
- The permitted 10% design excellence height bonus that was not envisaged under the Concept DA.

Considering the above, the below steps out the GFA that was required to be re massed.

Iris was confident and comfortable in delivering a scheme that was fully compliant with the Concept Approval. It was at CN’s direction that this approach changed. The Applicant simply wanted to be in no worse position amenity and GFA wise by agreed to change the Concept DA – a fair and reasonable position.

All the additional height impact is the result of the sum of:

- Relocating the massing to that enabled the Harbour to Cathedral Park link, as required by CN.
- Removal of any built form above the heritage Municipal Building allowing it to present as it was constructed.
- The permitted 10% design excellence height bonus that was not envisaged under the Concept DA.

Considering the above, the below steps out the GFA that was required to be re massed.

In the Concept DA, Building 3 South extended across the corridor by approximately 190m<sup>2</sup> per level of GFA. Over 8 levels, that is a minor 1,520 m<sup>2</sup>.

In the Concept DA, Building 3 North has an approved height of an average height of RL + 31 across the site (the height at the parapet northeast corner is RL + 20.25) was approved, which would allow for 3 extra levels above the existing Municipal Building. The current non-rectilinear design has a GFA per floor of 444 m<sup>2</sup> and applying a 20% enlargement factor this results in a loss of circa 1,599m<sup>2</sup> from the additional 3 floors that need to be accommodated elsewhere.

Total GFA relocated to other parts of the development to accommodate the requested Harbour to Cathedral Park and allow the heritage Municipal Building to stand proud absent any additions above is 3,119 m<sup>2</sup> (1,520m<sup>2</sup> + 1,599m<sup>2</sup>).

The GFA above the 10% bonus in height achieved from the DA comp scheme can be summarised as follows:

- Building 3 West – 717m<sup>2</sup>
- Building 3 South – 355m<sup>2</sup>
- Building 4 North – 299m<sup>2</sup>
- Building 4 South – 711m<sup>2</sup>

- Total – 2,082m<sup>2</sup>. This is GFA additional to the Concept DA, but within the bounds of the LEP.

The following levels are over and above the 10% bonus

- Building 3 South – L8 + L9 + L10 + L10Mezz – 1,035m<sup>2</sup>
- Building 4 North – L8 – 57m<sup>2</sup>
- Building 4 South – L9 – 399 m<sup>2</sup>
- Total – 1,491m<sup>2</sup>. This GFA is included in the Concept DA, it is re-massing of the corridor bulk (1,520m<sup>2</sup>) and the allowable height above the Municipal Building (1,599m<sup>2</sup>). Only 1,491m<sup>2</sup> has been re-massed.

The total GFA that sits over the LEP height limit + 10% being the new base line is 1,491m<sup>2</sup> (sum of GFA # above) and this represents 98% of GFA that has been moved from the corridor to accommodate CN's desired public domain outcome that was contemplated in the design competition has been redistributed to achieve outcomes that make massed amenity no worse than what the Applicant had approved pursuant to the Concept DA. This is a concept and concession that was articulated in the Architectural Design Competition Brief and endorsed by both CN and the Government Architect. Relocating the GFA has always been contemplated as an outcome of the design competition.

**Overall, the majority of the GFA that has been relocated is due to accommodating and opening the corridor. Excluding the competition bonus height, 6.1% of the GFA that has led to the additional height can be directly linked to the re-massing to open the view corridor that CN required and acknowledged in the Brief. GFA (and FSR) across the entire development and across Stage 3 and 4 remains under the LEP control with the design bonus.**

#### 7.2.1.1. Material and Essential Features and Critical Elements

The material and essential features and critical elements are summarised as follows:

- East End is a multi-staged redevelopment. East End will be the next catalyst in the ongoing revitalisation of Hunter Street and the surrounding CBD. The development is a critically important project with the purpose of rejuvenating the heart of the Newcastle CBD. **This vision has been consistent from the Concept DA approval to present and remains the driving vision – no change to this critical element.**
- East End is a mixed-use development comprising of retail, commercial, public spaces residential apartments associated car parking and site works. **The land uses will remain the same – no change to this critical element and feature.**
- A key feature of East End is the network of pedestrian links, and public open space. This modification does not seek to change the ground plane network of Stage 1 and 2. The Concept DA and LEP controls allowed for a smaller 'Market Square.' The reconfiguration improves the public domain experience and improves solar access to the City of Newcastle site to the south which will also be required to contribute to the Harbour to Cathedral link. This "opening up" results in improved connectivity between The Hill and Harbour. **The public domain outcome is improved – in essence there is no negative change to this material and essential feature.**
- 9 envelopes plus the tourist and visitor accommodation within the David Jones building formed part of the Concept DA. **The number of envelopes will remain the same – no change to this critical element and feature.**
- The modification does not change the approved heritage conservation strategy. In fact, it results in an improved heritage conservation strategy. The Municipal Building is proposed to be retained; no addition is proposed atop of the building resulting in an improved heritage response. **The heritage response is improved – in essences there is no negative change to this material and essential feature.**

The key changes to the approved massing are outlined below:

- The concept DA proposes 3 buildings in Stage 3 of commensurate height, size, type and yield. This includes building a substantial addition on the Municipal Building. This proposal retains the Municipal Building without an addition over. This allows the Municipal Building to be a hinge for Stage 3 and Stage 4 along Hunter Street. The built form surrounding the Municipal building creates a Square.
- Stage 3 West twists to hold the corner of Hunter Street and Thorn Street, increase setback to Stage 2, create views to harbour for apartments, and most importantly creates a visual corridor to the Christ

Church Cathedral. The Christ Church Cathedral axis is created by pulling back Stage 3 South. The view corridor is further re-enforced by subtly tapering Stage 3 South (reducing its footprint as it becomes taller) and twisting Stage 3 West.

- Stage 3 South pulls in from the west to align with Municipal Building, establish view corridor to the cathedral and form a new public space.
- Stage 4 North pulls in from the south and carves out the middle to create an urban courtyard. This improves the relationship with existing residential development and Stage 4 South improving amenity.
- Stage 4 South pushes and pulls to establish relationships with the Newcomen Street context, adjacent developments and corner of King and Newcomen Street.

The modifications to the Concept DA massing have resulted in changes to the distribution of height and floor space across the precinct. However, overall the material and essential features and critical elements remain consistent.

### 7.2.1.2. Consequences and Environmental Impacts

The modification to the Concept DA has arisen from a desire by both CN and Iris to drive a stronger public benefit outcome. The consequences of the modification are primarily positive and benefit the broader community.

At a high-level, the consequences and environmental impacts because of the modification are minor to moderate and deemed acceptable. Primarily the changes to the Concept DA have resulted in the following consequences (primarily positive):

- **Improved public views to the Christ Church Cathedral:** The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view from View 4 and View 5 towards the Christ Church Cathedral. If the Concept DA arrangement was retained, View 4 and View 5 would be greatly impacted and the Christ Church Cathedral would be obscured. The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome. This is achieved by the inclusion of a wide view corridor between the Hunter River and the Cathedral and the protection of NDCP view 21.
- **Improved compliance with the Newcastle Development Control Plan:** The redistribution of floor space from within the identified view corridor for the “Harbour to Cathedral Park” to Building 3 South (DBJ) provides a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a small component of the western end of Building 3 South. The Concept DA is not aligned with the Newcastle Development Control Plan as it blocks the view corridor, therefore the proposal results in improved compliance.
- **Improved solar access to the CN’s car park and future public domain:** he overshadowing impacts are improved with the proposed scheme compared to the Concept DA because of the redistributed building mass. The re massing and inclusion of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the Concept DA assessment, and results in an improved outcome.
- **Improved connectivity and pedestrian experience; and overall community experience:** The Concept DA and LEP controls allowed for a smaller ‘Market Square.’ In conjunction, with unlocking the view corridor, the reconfiguration improves the public domain experience and improves solar access to the City of Newcastle site to the south which will also be required to contribute to the Harbour to Cathedral link. This “opening up” results in improved connectivity between The Hill and Harbour, and will deliver a better community meeting place.
- **Improved heritage outcome for the Municipal Building:** The Concept DA and LEP controls allow for additional built form to be constructed on top of the Municipal Building. The Municipal Building has been retained ‘freestanding’ and unencumbered of additional storeys. This is because of the redistribution of building mass. Given this key move, the building mass above the Municipal Building was distributed and contributed to the height variation of Building 3 East (Bluebell). The adaptive reuse of the Municipal Building will help preserve heritage within the Newcastle’s city centre while also enabling the opportunity to diversify the building’s purpose. The proposal also respects surrounding heritage items and is conscious of their significance.

- **Minor overshadowing increases to The Newcastle Club and The Herald, however, compliance remains with the Apartment Design Guidelines or Newcastle DCP:** However, the additional shadowing does not prevent these premises receiving adequate solar access primarily in the morning. The increase in overshadowing does not result in any non-compliances to these premises under the Apartment Design Guidelines or Newcastle DCP.
- **Minor increase in impacts to private views for Segenhoe, however, the impact on a limited number of private views is acceptable against the combined benefits of the public views achieved:** In respect to private views, impacts have been determined to be reasonable by Jane Maze-Riley and CN. Iris have undertaken a comprehensive design development process which has been assessed by design experts to have achieved design excellence, to reach the considered balancing of various issues resulting in the design as proposed and would likely require the loss of development/amenity to the overall proposal to further decrease private view impacts. On balance, the impact on a limited number of private views is acceptable against the combined benefits of the public views achieved and the significant renewal proposed within the precinct. Further as outlined by CN, the redevelopment and revitalisation of the Newcastle City Centre as detailed within CNs strategic planning framework cannot reasonably be constrained and limited based on impact to private views.

On balance, the public benefits outweigh the minor increase in consequences and environmental impacts for private residents of The Herald and Segenhoe; and those members of the Newcastle Club.

### 7.2.1.3. Case Law Assessment

In establishing that the proposal is subject to a section 4.55 application, the proposal has been assessed against a set of legal principles governing the power to modify as outlined in the below case law. Table 12 summaries the relevant cases, why these are relevant to modification, and provides an assessment.

Table 12 LEC case assessment for ‘substantially the same’

Principle	Comment
<b>Legal Principles Governing the Power to Modify in s 96 (2) of EPAA – Paragraph 173 of Agricultural Equity Investments Pty Ltd v Westlme Pty Ltd (No 3) [2015] NSWLEC 75.</b>	
first, the power contained in the provision is to “modify the consent”. Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985 (North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468 at 475 and Scrap Realty Pty Ltd v Botany Bay City Council [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]). Parliament has therefore “chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity” (Michael Standley at 440);	<p>It is noted that modifications may involve ‘beneficial cost savings and/or improvements to amenity’.</p> <p>The proposed modification will allow the delivery of a high quality scheme that has undergone significant testing and assessment through the Design Excellence Competition, Design Integrity Panel process and Urban Design Review Panel process. The proposed modification will improve the public amenity, and ground plane experience through the delivery of the Harbour to Cathedral connection.</p> <p>The improvements of amenity are summarised as:</p> <ul style="list-style-type: none"> <li>▪ Delivery of the view corridor for the “Harbour to Cathedral Park” connection.</li> <li>▪ Delivery of a new urban plaza “Market Square” which will improve ground plane activation and permeability through the site.</li> </ul>

Principle	Comment
	<ul style="list-style-type: none"> <li>▪ Increased to Apartment Design Guidelines (ADG) compliance compared to the reference scheme envisaged with the Concept DA. Specifically, regarding solar access and cross ventilation. The Design Review Panel (DIP) were satisfied that the apartments achieve a high level of amenity.</li> <li>▪ Improved heritage response. The built form, façade expression of all buildings carefully considers the context, scale, and appearance, responding to both heritage and design for country, whilst celebrating the public domain. The proposed modification improves the heritage response. The Municipal Building will stand proud with no development atop, and 111 Hunter Street façade is proposed to be retained which was not envisaged in the concept approval.</li> <li>▪ Reduced overshadowing to future public open space. The overshadowing impacts are improved with the proposed scheme compared to the Concept DA for CN's carpark site because of the redistributed building mass. This site will also deliver significant public domain and contribute to the "Harbour to Cathedral Park" connection.</li> </ul> <p>The s4.55 Modification Statement submitted with the s4.55 provides a more detailed assessment and should be reviewed in conjunction with these points.</p>
<p>the modification power is beneficial and facultative (Michael Standley at 440);</p>	<p>The proposed modification will deliver a significant public benefit, compared to the original application.</p> <p>The redistribution of floor space from within the identified view corridor for the "Harbour to Cathedral Park" to Building 3 South (DBJ) provides a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a small</p>

Principle	Comment
	<p>component of the western end of Building 3 South.</p> <p>The Design Team have been driven by delivering a ‘civic response,’ a better public domain outcome. The three buildings on Stage 3 have been combined to form a recognisable civic composition in which the Christ Church Cathedral, remote to the Square, plays a critical role.</p> <p>The Market Square and through site link will improve the ground plane activation and permeability through the site.</p>
the condition precedent to the exercise of the power to modify consents is directed to “the development”, making the comparison between the development as modified and the development as originally consented to (Scrap Reality at [16]);	<p>Section 4 of this RFI response provides a direct comparison between the approved development and the modifications proposed.</p> <p>Note: the modification has come about to accommodate the request from CN and that request is inconsistent with the Concept DA consent as approved. Iris wanted to lodge a compliant DA consistent with the Concept DA; however, this was not supported by CN in the Architectural Design Excellence Brief. The changes to the Concept DA and the sole reason why the modification is required is to accommodate CN who are fully and wholly complicit to causing modification of the consent. The position Iris finds itself in is unfair, having to justify the modification is substantially the same, given CN’s direction at the design competition phase.</p>
the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development (Vacik Pty Ltd v Penrith City Council [1992] NSWLEC 8);	Noted. The Applicant and Project Team have prepared this response to demonstrate that the modified development is substantially the same as the original development.
the term “substantially” means “essentially or materially having the same essence” (Vacik endorsed in Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]);	<p>The proposal continues to be a <i>mixed-use development comprising of retail, commercial, public spaces residential apartments associated car parking &amp; site works</i>. The proposed modification does not substantially alter the ‘essence’ of the overall precinct. The precinct will deliver the originally envisage vision and objections.</p> <p>Whilst the design will be refined, the proposal will be similar to what was approved.</p>



Principle	Comment
	Accordingly, the works will not change the approved design 'essentially or materially'.
the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions (Scrap Realty at [19]);	In our opinion, the proposal provides CN and the Panel Planning with the requisite facts to determine the application.
the term "modify" means "to alter without radical transformation" (Sydney City Council v Ilenace Pty Ltd [1984] 3 NSWLR 414 at 42, Michael Standley at 474, Scrap Realty at [13] and Moto Projects at [27]);	<p>The proposal is for modifications which do not 'radically transform' the essence of the building. The precinct will deliver the originally envisage vision and objections.</p> <p>As outlined in Section 4.2, the quantitative and qualitative assessment demonstrate that then the modification is broken into components the proposed modification is not a "radical transformation."</p>
in approaching the comparison exercise "one should not fall into the trap" of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a) (Vacik);	Noted. A comprehensive quantitative and qualitative assessment has been completed above in Section 4.2. It steps through various elements and does not simply state that the use remains the same therefore it is substantially the same development.
the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their "proper contexts (including the circumstances in which the development consent was granted)" (Moto Projects at [56]); and	The proposal is also considered substantially the same 'qualitatively and quantitatively' (as demonstrated above).
a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be "legally flawed" (Moto Projects at [52]).	A quantitative evaluation is provided above and considered substantially the same.
<b>Arrage v Inner West Council [2019] NSWLEC 85</b>	
a decision of the Chief Judge of the LEC which acknowledges that the most instructive way to approach the substantially the same test is to consider whether the modified development be "essentially or materially" the same or "having the same essence" as the originally approved development but also notes that this is not the only way to ascertain whether the modified development is substantially (in the sense of essentially or materially) the same development as the originally approved	As per above, the proposal continues to be a <i>mixed-use development comprising of retail, commercial, public spaces residential apartments associated car parking &amp; site works</i> . The proposed modification does not substantially alter the 'essence' of the overall precinct. The precinct will deliver the originally envisage vision and objections.

Principle	Comment
development. For example, "comparison could be made of the consequences, such as the environmental impacts, of carrying out the modified development compared to the originally approved development" (at paragraphs [27]-[28])	Whilst the design will be refined, the proposal will be similar to what was approved. Accordingly, the works will not change the approved design 'essentially or materially'.
<b>Feldkirchen Pty Ltd v Development Implementation Pty Ltd [2022] NSWCA 227</b>	
<p>Do not displace the statutory test in s.4.55(2)(a) or demand that the required comparison be undertaken in those ways".</p> <p>Rather, what is required to correctly approach the substantially the same test is that a consent authority address itself as to "the substance of the question raised" because nothing can replace the express words within the EPA Act.</p>	<p>This case essentially leaves the door open for a consent authority to take into account essentially any 'way' to consider whether a s.4.55 is substantially the same as an original development consent (and not just based on a qualitative vs quantitative assessment, even though that is the most common 'way' determined by the historical authorities). Considering this, CN have the ability to accept any 'way' to consider whether a s.4.55 is substantially the same.</p> <p>Considering the history outlined in this letter, CN should be comfortable the proposal is substantially the same given it was primarily their direction for the re massing of the built form from the view corridor.</p>
<b>Realize Architecture Pty Ltd v Canterbury-Bankstown Council [2023] NSWLEC 143</b>	
<p>"the proposal as modified:</p> <p>(a) Will not change the nature or the intensity of the use;</p> <p>(b) Whilst improving the relationship to the public domain at ground level, this is similar with the intent established in the original approval;</p> <p>(c) Will not change the relationship to surrounding developments as the modifications will maintain the character of the original approval;</p> <p>(d) Where an increase in floor space and height is proposed on the upper levels, the development is consistent with the original approval as a whole, and the bulk and scale which establishes the streetscape character (from ground levels to levels 7/8) is unchanged per the original approval;"</p>	<p>The proposed modification is also aligned with points (b) to (d). On the whole and on balance, the proposed development is substantially the same for the following reasons relevant to this case:</p> <ul style="list-style-type: none"> <li>▪ The proposal will still deliver a significantly enhanced public benefit improved from the Concept DA. Through a series of modifications, the Design Team have shifted the approved built form massing to accommodate the view corridor along Market Street to Christ Church Cathedral, aligned with CN's desired public domain outcome. These subtle changes allow the built form to embrace the geography of place while delivering more residential dwellings with views to the harbour. The proposal delivers a significantly improved public benefit in the form of the ground plane.</li> </ul>

Principle	Comment
	<ul style="list-style-type: none"> <li>▪ The proposal will not significantly change the relationship to surrounding developments as the modifications will maintain the character of the original approval. The environment impacts of the proposed development have been considered in the s4.55(2) Modification Report.</li> <li>▪ The increase in the floor space and height is consistent with the original approval as a whole, and the bulk and scale which establishes the streetscape character.</li> <li>▪ The Court acknowledged that although there were quantitative differences between the Subject Modification and the Original Consent that may appear in isolation to be significant, the focus of the test in s.4.55(2)(a) is on the whole and on an overall balancing of the two developments. In this instance, the qualitative similarities between the two schemes were enough to negate the numerical (quantitative) differences. This is the 'balancing' exercise that a consent authority is entitled to undertake, to then form its ultimate opinion.</li> </ul>

### 7.2.2. Conclusion for the Modification Being Substantially the Same Development

The development as proposed to be modified is considered 'substantially the same development' for which consent was originally granted for the following reasons:

- The description and nature of the development is relatively unchanged in that the proposal continues to deliver a "major redevelopment of Hunter Street Mall, a mixed-use development comprising retail, hotel and motel accommodation, serviced apartments and commercial, public spaces, residential (566 apartments), associated car parking & site works".
- The proposal will continue to have a variety of dwelling sizes and types, allowing for diverse housing options.
- The proposal will still deliver an exceptional public benefit improved from the Concept DA. Through a series of modifications, the Design Team have shifted the approved built form massing to accommodate the view corridor along Market Street to Christ Church Cathedral, aligned with CN's desired public domain outcome. These subtle changes allow the built form to embrace the geography of place while delivering more residential dwellings with views to the harbour. The proposal delivers a significantly improved public benefit in the form of the ground plane.
- The proposal will continue to achieve 10% adaptable housing within Stage 3 and Stage 4.
- The realignment of the building envelopes to ensure mass is not situated across the main view corridor will improve the overall public domain and achieve CN's vision within the NDCP 2012. Market Square

forms part of Stage 3 and provides further opportunities for activation. Market Square is aligned with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral.

- The proposed land uses of retail and residential are consistent with the objectives of the MU1 Mixed use zone as per the NLEP 2012.
- The proposal will continue to deliver high quality landscaped areas and remain consistent with the approved development and overall design concept.
- The FSR specified in the NLEP 2012 will not be exceeded.
- The proposed design as amended will not result in unreasonable impacts on the amenity of adjoining developments, specifically the overshadowing impacts will be improved for CN's carpark site to the south of Stage 3. This was specifically requested to be accommodated by CN.
- The proposed redistribution of massing from the view corridor, results in an improved public view towards the Christ Church Cathedral. If the Concept DA arrangement was retained, key views would be greatly impacted, and the Christ Church Cathedral would be obscured.
- 4 private domain views were assessed by Urbis being, Segenhoe Apartments, the Herald Apartments and Newcomen Apartments (residential views) and the Newcastle Club (commercial view). The conclusions are as follows:
  - The view impact for the Newcastle Club as a whole is moderate, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
  - The view impact for the Segenhoe Building as a whole is minor. Almost all views from most units are not affected or are affected to a very limited extent, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
  - The view impact for the Herald Apartments as a whole is minor, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
  - The view impact for the Newcomen Apartments as a whole is minor, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
- Over 11 public views were assessed by Urbis in the Visual Impact Assessment which concluded that:
  - The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view from View 4 and View 5 towards the Christ Church Cathedral. If the Concept DA arrangement was retained, View 4 and View 5 would be greatly impacted and the Christ Church Cathedral would be obscured.
  - The additional building height predominately blocks views to vegetation or open sky beyond, and generally does not block views of scenic or highly valued features. The additional height is not visible from View 7 and does not result in any view loss or impact.
  - The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome. This is achieved by the inclusion of a wide view corridor between the Hunter River and the Cathedral and the protection of NDCP view 21.
- The proposal seeks to maintain and adaptively reuse heritage elements identified in the Concept DA.
- The additional building height (above the Concept DA) will not result in unreasonable impacts to public spaces adjacent residential developments. The majority of overshadowing falls within the approved concept DA massing with only small increments of shadow falling outside of the approved envelopes.
- The proposal engaged heavily with First Nations persons to ensure connection with Country, which has received glowing endorsement from the First Nations community who assisted with evolving the scheme.
- The proposal maintains the laneway network that the Concept DA approved from Perkins Street to Newcomen Street.

For all these reasons, in our opinion, the modification to the concept approval is substantially the same as the approval. As the proposal is substantially the same as the approved development quantitatively, qualitatively, and essentially, the proposed modification can be considered under section 4.55 (2).

The Panel have not clearly articulated the key reasons they feel the modification is not 'substantially the same,' they have not met with the applicant to explain their decision, nor have they supported this decision with Case Law.

## 8. SECTION 4.15 ASSESSMENT

The section 4.55(2) application has been assessed in accordance with the matters for consideration listed in section 4.15 of the EP&A Act and as outlined below.

### 8.1. ENVIRONMENTAL PLANNING INSTRUMENTS

The proposal is consistent with the relevant environmental planning instruments as follows:

- The application has been submitted in accordance with the requirements of section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.
- Pursuant to Section 4.47(2) of the EP&A Act, before granting development consent to 'Integrated Development', the consent authority must obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. In this case, approval under the *Water Management Act 2000* is required due to the basement levels impact on the groundwater levels within the site.

Water NSW provided their concurrence as per section 91 of the *Water Management Act 2000* for the Concept DA. Due to the nature of the proposed modification is not considered that concurrence from Water NSW is required for this Modification Application as it not envisaged that there will be any changes to the advisory conditions provided by the Water NSW at the time of the Concept DA.

Subsidence Advisory NSW provided their concurrence as per section 22 of the *Coal Mines Subsidence Compensation Act 2017* for the Concept DA. Subsidence Advisory NSW is directed to the previous GTA's, Concept DA Notice of Determination and Stamped Plans.

- The proposed modification has no bearing on the potential for the development to comply with the relevant State Environmental Planning Policies, most notably *State Environmental Planning Policy (Resilience and Hazards) 2021*.
- The proposed envelope is in keeping with the amenity of adjoining development. The proposed modification has been assessed against the Newcastle Local Environmental Plan 2012.

#### 8.1.1. State Environmental Planning Policies

The proposed modifications have been assessed in accordance with the relevant State environmental planning policies (SEPPs) outlined in **Table 13**.

Table 13 Compliance with State Environmental Planning Policies

SEPP	Approved	Proposed Modification
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (R&H SEPP)	<p>It was determined that the land could be made suitable for the approved development in accordance with State Environmental Planning Policy No. 55 – Remediation of Land, which has now been consolidated into the R&amp;H SEPP.</p> <p>A Detailed Site Investigation (DSI) prepared by Foundation Earth Science accompanies this development application and concludes, the site can be made suitable for the proposed development subject to the preparation of a Remediation</p>	<p>The proposal does not change the extent of excavation approved under D/2017/00701 as no physical works are proposed within this modification application.</p> <p>Considering the above, CN can be satisfied that the land is suitable for the proposed development under clause 4.6 of the SEPP Resilience and Hazards.</p>



SEPP	Approved	Proposed Modification
	Action Plan ( <b>RAP</b> ). The recommendations of this report are considered appropriate to be accommodated as a condition of development consent, to be addressed prior to the issue of the relevant Construction Certificate. With the RAP in place, the site will be suitable for the proposed development.	

### 8.1.2. Newcastle Local Environmental Plan 2012

The modified development remains consistent with the NLEP 2012. The modified development does not seek to change the approved land uses on Site and is consistent with the objective of MU1 Mixed Use zone.

A compliance summary of the proposed development against the relevant development standards is provided in **Table 14** below.

Table 14 NLEP compliance table

Clause	Provision	Proposed	Complies
Clause 4.3 – Height of Building	<p><b>Stage 3</b></p> <p>The buildings on this site have a maximum building height ranging from 20m (RL) to 30m (RL).</p> <p><b>Stage 4</b></p> <p>Morgan and Hunter Street corner – maximum height of building is 29m (RL). Newcomen and King Street corner – maximum height of building is 42m (RL).</p> <p>Subject to achieving design excellence, clause 7.5(6) of the LEP provides for an additional 10% bonus height.</p>	<p><b>Stage 3</b></p> <p>3 West: 34.30 RL 3 North: 20.43 RL 3 South: 45.65 RL</p> <p><b>Stage 4</b></p> <p>4 North: 36.92 RL 4 South: 51.70 RL</p>	<p>Does not comply, however justified in the Clause 4.6 Report prepared by Urbis which accompanies the Detailed DA.</p> <p>A Clause 4.6 Report is not required to be prepared for modifications however, consideration of the objectives has been included in <b>Section 8.1.2.1</b> of this Report.</p> <p>Height to buildings has gone through a Design Competition and a rigorous integrity review of 6 meetings and subsequently received endorsement by the DIP. The DIP has determined the proposal can achieve design excellence.</p>

Clause	Provision	Proposed	Complies
Clause 4.4 – Floor Space Ratio	A maximum FSR of 4:1 applies to the site.	As demonstrated within the architectural plans prepared by SJB, DBJ and Curious Practice which accompany this application, the proposal has an overall FSR of 3.90:1.	Yes.
Clause 5.10 – Heritage Conservation	<p>The site is located within the Newcastle City Centre heritage conservation area. Part of the site is a locally listed heritage item (No. I403) at 121 Hunter Street. The item is known as a Municipal Building.</p> <p>The site is surrounded by numerous State and local items.</p>	The proposed changed will not impact the significance of the heritage item or conservation area.	Yes.
Clause 7.5 Design Excellence	Subject to achieving design excellence, clause 7.5(6) of the LEP provides for an additional 10% bonus either height or FSR.	<p>The proposed development is the result of an Architectural Design Competition that was endorsed by Council and the Jury on the 4 June 2022.</p> <p>Subject to achieving design excellence, clause 7.5(6) of the LEP provides for an additional 10% bonus either height or FSR.</p> <p>It is anticipated the proposal will achieve design excellence, as determined by the consent authority, given the comprehensive Architectural Design Competition and extensive design development.</p>	Yes.

### 8.1.2.1. Further consideration of clause 4.3 (Height of Buildings) of the NLEP 2012

NLEP 2012 prescribes the maximum heights across the site as:

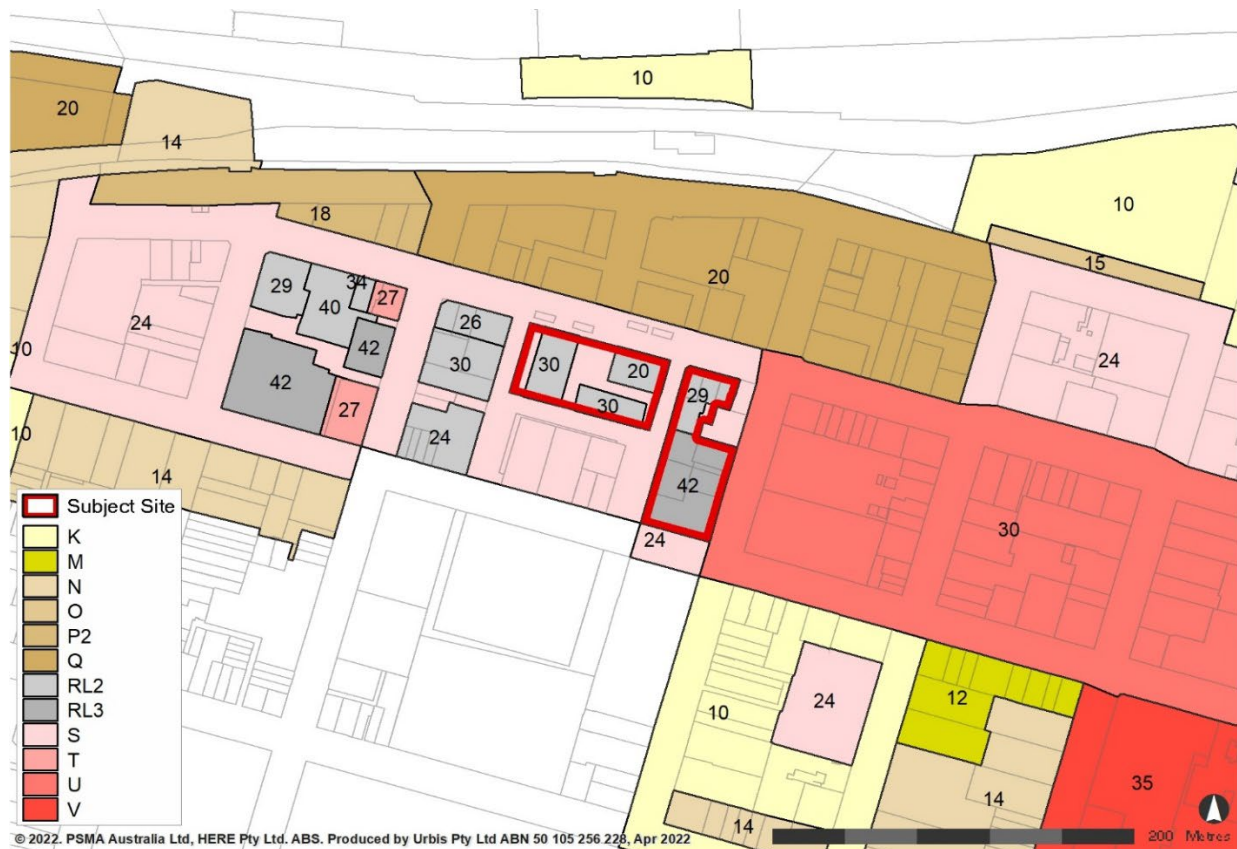
- Building 3 West: RL + 30.00
- Municipal Building: RL + 20.00
- Building 3 East: RL + 30.00
- Building 4 North: RL + 29.00
- Building 4 South: + 42.00

Figure 14 below illustrates the maximum height of building provisions in the NLEP 2012. Notwithstanding the NLEP 2012 provisions, the maximum heights prescribed by the Concept DA are:

- Building 3 West: RL + 30.20
- Municipal Building: Range between RL + 28.65 and RL + 31.28
- Building 3 East: RL + 30.20
- Building 4 North: RL + 28.35
- Building 4 South: RL + 42.00

It is noted that some inconsistencies exist between the approved building heights in the Concept DA and the height of buildings map in NLEP 2012.

Figure 14 Height of Building Map



Source: Urbis

Additionally, subject to achieving design excellence via a design competition process however, clause 7.5(6) of the LEP provides for an additional 10% bonus either height or FSR. Subclause (6) reads:

(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.

The consent authority may grant an additional 10% of building height subject to demonstrating design excellence and the building being reviewed by a design review panel.

Considering the allowable 10% height bonus, the allowable heights with the 10% bonus provision are outlined below:

- Building 3 West: RL + 33m
- Municipal Building: RL + 22m
- Building 3 East: RL + 33m
- Building 4 North: RL + 31.9m
- Building 4 South: RL + 46.2m

A summary of the building height is provided below in **Table 15**.

Table 15 Summary of Building Height

Building	Concept DA RL	LEP Height RL	LEP Height RL + 10%	Proposed Height RL	Variation in metres	Variation in %
Building 3 West	RL + 30.20	RL + 30	RL + 33	RL + 34.30	1.30 metres	3.94%
Municipal Building	RL + 28.65 and RL + 31.28	RL + 20	RL + 22	RL + 20.43	Nil	Nil
Building 3 South	RL + 30.20	RL + 30	RL + 33	RL + 45.65	12.65	38.33%
Building 4 North	RL + 28.35	RL + 29	RL + 31.9	RL + 36.92	5.02 metres	15.74%
Building 4 South	RL + 42	RL + 42	RL + 46.2	RL + 51.70	5.50 metres	11.9%

The specific objectives of the height of buildings clause (clause 4.3 of the NLEP 2012) are considered in **Table 16**.

Table 16 Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,	The redistribution of the approved GFA enhances the characteristic of Newcastle's silhouette and does not deliver a 'flat top' planning envelope. The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution toward the desired built form of Hunter Street when compared to the Concept DA scheme.

Objectives	Assessment
	<p>The proposal does not comply with the height controls set out in the LEP, however during the design excellence competition and subsequent design integrity panels, the DIP was in agreeance that the scale of development and heights of the proposal were appropriate to the site and surrounding development context. The proposed built form has been through a rigorous design process and was agreed by the Panel, that it has achieved design excellence, despite being non-compliant with height of buildings control. Overall, given the rigorous architectural process and assessment of the design by leading industry experts, as well as the high-quality design finishes, the proposal will make a highly positive contribution toward the desired built form of the Newcastle city centre and is consistent with the established centres hierarchy.</p> <p>The additional height does not undermine the established centres hierarchy, which is evident in the skyline. In the skyline, the variation is not discernible as it contributes to the playful skyline and reinforces the topography of The Hill. The skyline will illustrate the established centres hierarchy with height focused on the Newcastle Interchange.</p> <p>The built form outcome directly responds to its surrounding context, urban setting, orientation, and CN's desired public domain outcome. This desired public domain outcome is reflected in the Newcastle DCP 2023 and seeks to enhance public views to and from Christ Church Cathedral and the Newcastle Harbour. The proposed built form directly responds to this vision through the building orientation, separation and design which allows for the construction of extensive public open space between Hunter Street and Laing Street, and eventually King Street following the redevelopment of the Council owned former carpark site.</p> <p>The scale and urban arrangement have been reviewed by the DIP. During DIP Session 1 the following observations regarding the height exceedance were made:</p> <ul style="list-style-type: none"> <li>– <i>The DIP commented that removing a storey from Building 3 South does not improve the urban design outcome of the proposal based upon the information presented.</i></li> </ul>

Objectives	Assessment
	<p>– <i>The DIP supports the Competition Scheme height exceedance and arrangement based on the illustrated views from Hunter Street, and Newcomen Street provided. However, the visual impacts need to be further explored via a robust a view assessment.</i></p> <p>A Visual Impact Assessment (VIA) has been prepared by Urbis (Appendix E, F and G) and considers the Planning Principal ‘views – general principle’ namely <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140 at 25-29. The VIA concludes that the re-massed built forms result in lower visual impacts and a better public domain view sharing outcome than the approved Concept DA.</p> <p>The VIA lodged with the Detailed DA and subject modification was an accurate estimate of view impacts. At the request of CN, the Applicant has obtained access to the properties (post lodgement of the Detailed DA) that objected to the development, and a supplementary VIA has been provided to CN. Overall, the VIA concludes that the impacts are reasonable based upon the Tenacity Planning Principal.</p>
(b) to allow reasonable daylight access to all developments and the public domain.	<p>A Shadow Analysis has been prepared by SJB.</p> <p>It demonstrates that most overshadowing falls within the approved concept DA massing with only small increments of shadow falling outside of the approved envelopes.</p> <p>The proposed shadow diagrams will pose minimal impacts to surrounding residential dwellings. Noting there will be no additional impacts to Stage 2 East End residents’ solar access, residents will continue to receive a minimum two hours of solar access in mid-winter.</p> <p>The overshadowing impacts are improved with the proposed scheme compared to the Concept DA because of the redistributed building mass to CN’s car park site, which will ultimately carry the ‘Hill to Cathedral’ link. The re massing and inclusion of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the Concept DA assessment, and results in an improved outcome.</p>



<b>Objectives</b>	<b>Assessment</b>
	The proposed Market Square receives more than 2 hours of solar access and provides an improved daylight access solution compared to the Concept DA.

### 8.1.2.2. Further consideration of Clause 7.5 (design excellence provisions) of the NLEP 2012

There is a well-developed body of case law that has expressly considered this query and confirmed that local design excellence clauses are relevant matters for consideration by consent authorities when undertaking assessments of concept applications which seek consent for concept building envelopes. The leading case to support this position is *The Uniting Church in Australia Property Trust (NSW) v Parramatta City Council [2018] NSWLEC 158* ('Uniting Church'). Clause 7.5 is relevant to the Concept DA, modifications to the Concept DA and this section 8.2(1) review.

The proposed re-massing of the Concept DA development is the result of an Architectural Design Competition that was endorsed by Council and the Jury on the 4 July 2022.

Following consideration of each scheme based on the assessment criteria contained within the Brief, the Jury noted the SJB, DBJ and Curious Practice Architecture scheme had demonstrated design merit that could achieve design excellence. The key merits of the scheme have been retained during design development.

Subclause (6) of clause 7.5 outlines:

*(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.*

A modified concept approval can exhibit design excellence in the terms outlined in a local design excellence provision, while the particulars of the exhibition of design excellence are more readily apparent in detailed development applications.

**Table 17** demonstrates how the proposal meets the relevant design excellence provisions outlined within clause 7.5 of the NLEP

Table 17 Consideration of 'Relevant' Design Excellence Provisions

Clause	Response
(3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—	
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	<p><b>Not a consideration of the s4.55(2) modification. The 'architectural design, materials and detailing' is more appropriate for consideration under the Detailed DA planning framework.</b></p> <p>Nevertheless, the proposal has undertaken a competitive design process followed by 6 design integrity panel meetings with advice that interrogated the architectural design, materials and detailing. Feedback has been taken on board and through collaboration with technical consultants</p>

Clause	Response
	<p>and members of First Nations communities, the materials and detailing of the proposal has resulted in a high standard of design for the buildings and the locality.</p>
<p>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</p>	<p><b>This objective is partly relevant to the s4.55(2) modification. The ‘form’ is a relevant consideration; however, the ‘external appearance of the development’ is more appropriate for consideration under the Detailed DA planning framework.</b></p> <p>The built form of all buildings carefully considers the context, scale and appearance, responding to both heritage and design for country, whilst celebrating the public domain.</p> <p>The purpose of the section 4.55(2) modification is to amend the building envelopes approved under the Concept DA to reflect the re-distribution of the massing out of the central view corridor towards other parts of Stage 3 and Stage 4, and the Christ Church Cathedral. The revised form results in an improved quality and amenity of the public domain.</p> <p>The accompanying diagrams also reveal that the proposed overshadowing does not fall onto public open spaces and the proposed Market Square will receive plenty of sunlight during mid-winter making it a pleasant space for residents and visitors to enjoy.</p>
<p>(c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,</p>	<p><b>This objective is relevant to the s4.55(2) modification.</b></p> <p>All relevant view corridors have been examined; none are detrimentally impacted, refer to Appendix E, F and G.</p> <p>The modification to the Concept DA, results in a significant improvement to the identified view corridors – specifically the “Harbour to Cathedral Park” connections.</p> <p>The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the “Harbour to Cathedral Park” to Building 3 South (DBJ) providing a generous and publicly accessible area. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public domain outcome is currently</p>

Clause	Response
	restricted by a component of the western end of Building 3 South. By redistributing the bulk and mass of the building throughout the precinct, the proposal creates a positive outcome delivering the Harbour to Cathedral through site link, both a physical connection and achieving the view corridor as desired by the NDCP 2023.
<p>(d) how the development addresses the following matters—</p> <p>(i) heritage issues and streetscape constraints,</p>	<p><b>This objective is relevant to the s4.55(2) modification.</b></p> <p>The proposed modification including the redistributed scale and mass of the Concept DA envelopes will have marginal change (in respect to views to heritage items) a positive way due to the opportunity of creating the 'Harbour to Cathedral' visual corridor and link that was not available in the Concept DA.</p> <p>The proposal has responded to the Municipal Building, a local heritage item, by retaining it as a 'freestanding' building, unencumbered by additional storeys. This key move provides a positive heritage response and is within the public interest as it enables the heritage item to be retained.</p> <p>The proposed street frontage heights of the proposal were appropriate to the site and surrounding development.</p>
<p>(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,</p>	<p><b>N/A</b></p> <p>The development does not propose any towers nor is it located near other tower developments. However, the proposal provides adequate building separation distances between the buildings onsite and those neighbouring, to ensure it achieves an acceptable relationship with surrounding developments.</p>
<p>(iii) bulk, massing and modulation of buildings,</p>	<p><b>This objective is relevant to the s4.55(2) modification.</b></p> <p>Through a series of modifications, the Design Team have shifted the approved built form massing to accommodate the view corridor along Market Square to Christ Church Cathedral, aligned with CN's desired public domain outcome. These changes allow the built form to embrace the geography of place while delivering more residential dwellings with views to the harbour. The proposal delivers a significantly improved public</p>

Clause	Response
	<p>benefit in the form of the ground plane and views (opening up the view corridor).</p> <p>The built form of the proposed development is coherent with the endorsed design scheme of the Design Excellence Competition. The built form outcome directly responds to its surrounding context, urban setting, orientation, and CN's desired public domain outcome.</p> <p>The proposed built form effortlessly connects with Stage 1 and 2 of East End through offering an alike, high quality architectural style and design intent, producing a distinct yet unique family of buildings which have been designed by a suite of architectural firms to give the impression that they have been built at different moments in time.</p> <p>The UDRP noted their strong support for the Concept modification in its current form, specifically <i>"The Panel advises that this is a well-considered and presented scheme and that the architectural, urban design and landscape is of a very high standard."</i></p>
(iv) street frontage heights,	<p><b>This objective is relevant to the s4.55(2) modification.</b></p> <p>In this location of the city, there are limited street wall heights.</p> <p>The proposal does not comply with the street wall heights as set out within the NDCP 2023. However, during the design excellence competition and subsequent design integrity panels, the Panel were in agreeance that the proposed street frontage heights of the proposal were appropriate to the site and surrounding development. The proposed built form has been through a rigorous design process and was agreed by the Panel, has potential to achieve design excellence, despite being non-compliant with street wall heights.</p>
(v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	<p><b>This objective is partly relevant to the s4.55(2) modification, specifically overshadowing.</b></p> <p>The Urban Design Report prepared by SJB has carefully considered the proposals environmental impact and includes details on sustainable design, wind, reflectivity and overshadowing.</p> <p><b>Sustainable Design:</b></p>

Clause	Response
	<p>The envelopes have been designed to maximise solar access, natural ventilation and overshadowing. This is a consideration for the concurrently Detailed DA.</p> <p><b>Overshadowing:</b></p> <p>Most overshadowing falls within the approved Concept DA massing with only small increments of shadow falling outside of the approved envelopes. The diagrams also reveal that the proposed overshadowing does not fall onto public open spaces and the proposed Market Square will receive plenty of sunlight during mid-winter making it a pleasant space for residents and visitors to enjoy.</p> <p><b>Wind and reflectivity:</b></p> <p>Wind and reflectivity impacts can be adequately address via relevant conditions of consent for the Detailed DA, not a matter for a consideration as part of the Concept DA.</p>
(vi) the achievement of the principles of ecologically sustainable development,	<p><b>Not a consideration of the s4.55(2) modification.</b></p> <p>Nevertheless, as detailed above, the proposal includes a number of ecologically sustainable development principles incorporated into the design, including:</p> <ul style="list-style-type: none"> <li>▪ Extensive landscaping to roofs and over structure, minimising storm water run-off;</li> <li>▪ On-site rainwater detention and re-use;</li> <li>▪ Natural ventilation to the majority of apartments;</li> <li>▪ Maximising direct sun to apartments while utilising overhangs to control summer heat gain;</li> <li>▪ Materials demolished to be reused or recycled where possible;</li> <li>▪ Predominantly constructed from locally produced, sustainable materials chosen favouring longevity and minimising maintenance;</li> <li>▪ Energy-efficient lighting and appliances;</li> <li>▪ Water-efficient fixtures; and</li> </ul>

Clause	Response
	<ul style="list-style-type: none"> <li>Proximity to public transport and local shops.</li> </ul> <p>Overall, the proposal is highly sustainable and will achieve a 4-star Greenstar buildings rating.</p>
(vii) pedestrian, cycle, vehicular and service access, circulation and requirements,	<p><b>This objective is relevant to the s4.55(2) modification.</b></p> <p>A Traffic Report has been prepared by CPJ Consulting and accompanies this application. The Report shows that through swept path analysis, achieving requirements for parking, outlining adequate circulation zones and provision of a loading zone, the proposal will achieve the requirements as listed.</p>
(viii) the impact on, and any proposed improvements to, the public domain.	<p><b>This objective is relevant to the s4.55(2) modification.</b></p> <p>The development has proposed an activated public domain with a Market Square that creates a generous giveback and amenity with retail, landscaping and the 'harbour to cathedral' link. The public domain also creates an exceptional ground floor plane that integrates the Connecting with Country framework.</p>

## 8.2. PROPOSED ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are relevant to this proposal.

## 8.3. DEVELOPMENT CONTROL PLAN

Newcastle DCP 2012 provides the core controls for the site. The Concept DA will remain consistent with the provisions and improve the design response to Section 6.01 of the Newcastle DCP 2012.

As outlined previously, Figure 6.01-29 of the Newcastle DCP 2012 outlines the preferred structure plan for the Hunter Street Mall precinct. The blue hatched area is an 'important view corridor to Christ Church Cathedral'. The Applicant initially submitted a Design Competition Brief to CN which complied with Concept DA. Subsequently, CN advised of their desired public domain vision and requested the Applicant amend the Design Competition Brief to encourage competitors to explore variations to the approved Concept DA.

However, subsequently competitors in the design competition were encouraged to carefully examine the current approved building envelope configuration in Block 3 and present creative and sensitively designed responses that provide an alternative massing arrangement in the precinct.

The key moves identified by the Design Team to facilitate this outcome where:

- The concept DA proposes 3 buildings in Stage 3 of commensurate height, size, type and yield. This includes building a substantial addition on the Municipal Building. This proposal retains the Municipal Building without an addition over. This allows the Municipal Building to be a hinge for Stage 3 and Stage 4 along Hunter Street. The built form surrounding the Municipal building creates a Square.

- Stage 3 West twists to hold the corner of Hunter Street and Thorn Street, increase setback to Stage 2, create views to harbour for apartments, and most importantly creates a visual corridor to the Christ Church Cathedral. The Christ Church Cathedral axis is created by pulling back Stage 3 South. The view corridor is further re-enforced by subtly tapering Stage 3 South (reducing its footprint as it becomes taller) and twisting Stage 3 West.
- Stage 3 South pulls in from the west to align with Municipal Building, establish view corridor to the cathedral and form a new public space.

In responding positively to the opportunity to unlock the public domain improvements in Stage 3, the design response achieves an equivalency in the provision of ADG compliance, views, aspect, and residential amenity from the distributed massed. The redistributed mass makes a positive contribution toward the desired built form, consistent with the established centres hierarchy. It also results in a better daylight access to both the public domain.

The Concept DA will remain consistent with the objectives of the Hunter Street Mall precinct, being:

5. *Strengthen the sense of place and urban character of the east end as a boutique retail, entertainment and residential destination.*
6. *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.*
7. *Promote active street frontages.*
8. *Protect heritage items and contributory buildings.*
9. *Protect views to and from Christ Church Cathedral.*
10. *Promote a permeable street network in Hunter Street Mall precinct with well connected easily accessible streets and lanes.*
11. *To create a space that is safe, comfortable, and welcoming for pedestrians.*

Based on the above, it is considered the development as modified complies with the relevant provisions within the DCP. A DCP compliance table accompanies the Detailed DA.

## 8.4. REGULATIONS

This application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021*.

## 8.5. LIKELY IMPACTS OF THE DEVELOPMENT

The building envelope as proposed to be modified will result in a built form that responds to its context and improves the amenity of the public domain.

This proposal purely relates to the re-distribution of building massing out of the central view corridor towards other parts of Stage 3 and Stage 4 and toward the Christ Church Cathedral. This amendment ensures the proposal remains in accordance with the NDCP 2012 and aligns with CN's vision for the view corridor and improved public benefit.

Overall, the proposed development results in an improved urban design outcome for the site compared to what exists today and was approved under the original Concept DA. A more detailed assessment of the key impacts is addressed in the following subheadings.

### 8.5.1. Design Excellence

The endorsed Design Excellence Strategy established the rigorous process which has been undertaken to ensure that the future detailed design of the buildings achieve design excellence. This modification does not seek to amend the Design Excellence Strategy applicable to the site and development.

As discussed in Section 3 the proposed modifications are the result of the Competitive Design Process and seek to ensure consistency between the proposed Detailed DA and Concept DA. The building envelopes as proposed to be amended do not undermine the ability of the future detailed design to achieve design excellence in accordance with the Design Excellence Strategy. The design excellence merits of the proposal



have been addressed in the Statement of Environmental Effects prepared by Urbis and accompanying the Detailed DA.

### 8.5.2. Visual Impact

A detailed View Sharing and Visual Impact Assessment has been prepared by Urbis and accompanies this application (refer to Appendix E, F and G). This provides an assessment of potential impacts on public domain views and provides views because of the development. This assessment has been informed by a review of architectural plans, field work observations and an analysis of CGIs prepared by SJB.

- Views were inspected, surveyed and modelled to produce accurate and certifiable photomontages that satisfy the requirements of the photomontage policy established by the Land and Environment Court of NSW. This modelling was verified by fieldwork observations including in relation to potentially affected private domain locations, documented DCP views and sensitive public domain locations.
- The preparation of photomontages from private domain view locations has informed our analysis and application of the view sharing Planning Principle established in the Land and Environment Court *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, commonly referred to as *Tenacity*.
- The extent and significance of the potential visual change to View Corridor 17 has been informed by the preparation of one photomontage and assessed against our well-established and accepted visual impact assessment methodology.
- Private domain view impacts for all nominated buildings were rated as either Moderate or Minor-Moderate.
- In Urbis' opinion, the proposed development creates low visual effects on the majority of baseline factors such as visual character, scenic quality and view place sensitivity for View Corridor 17. The overall view impact rating was found to be low.

Based on observations and the use of multiple analytical photomontages, the view sharing outcome for each of the nominated buildings, as whole, is reasonable, based on consideration of all relevant matters, and the following key reasons:

- The public domain benefit of the creation of a wide north-south view corridor which extends and protects DCP view corridor 15 and 21 (to Christ Church Cathedral), via part of the subject site is a relevant consideration in relation to Step 4 of *Tenacity*.
- Inclusion of the view corridor in the scheme constrains development potential across part of the site which has been re-distributed to compensate. *Tenacity* recognises the need for reasonable development potential across a site to be achieved notwithstanding that some view impacts may arise.
- The majority of view loss is caused by complying built form including below the LEP + 10% bonus and within the existing Approved Concept. The majority of the extent of view loss of scenic features is therefore contemplated by the Approved Concept and LEP controls.
- The extent of view loss caused by the additional height and massing sought under the Clause 4.6 Variation is minor.
- For the majority of private domain compositions affected, views to be lost are fortuitous, gained wholly across a privately owned, underdeveloped site (rather than accessible or created as a result of the application of planning controls which affect views, for example setbacks or height controls). Further, the majority of views are obtained via side or rear boundaries. In *Tenacity*, the expectation to retain views via a side boundary is said to be unrealistic.
- The *Tenacity* assessment also intimates that achieving reasonable development potential across a site is a relevant matter for consideration and should be afforded some weight.
- On balance, when all relevant matters are considered, as is required in *Tenacity*, we find that the proposed development and Clause 4.6 Variation Application, can be supported on view sharing grounds.
- The report considered the visual impacts to View Corridor 17 low and acceptable, based on consideration of all relevant matters and the following key reasons:

- The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome by prioritising views between the Hunter River and Cathedral from a highly accessible, activated and sensitive viewing location.
- The majority of view loss is caused by complying built form including below the LEP + 10% bonus and within the existing Approved Concept. The majority of the extent of view loss of scenic features is therefore contemplated by the Approved Concept and LEP controls.
- Where additional massing is sought, blocking of features that are scenic or highly valued, was found to be minor.
- Considering the visual effects of the proposal and improved public view outcomes, the proposal is considered reasonable, acceptable and can be supported on visual impact grounds.

#### **8.5.2.1. Private Views**

Urbis determined that three close neighbouring developments were likely to be affected to some extent by potential view loss.

##### **Segenhoe:**

- 16 units across levels 1, 2, 3 and 4 retain all existing views in all directions and are unaffected by the proposal.
- 12 north facing units at levels 5, 6 and 7 have potential views to the proposal via the north-east edge of the building's side (north boundary). These units are partially affected, from some rooms by a low/minimal extent of view loss per dwelling.
- 3 east facing units at levels 5, 6 and 7 have potential views to the proposal via the junction of the side and front boundary. These units are partially affected, from some rooms by a low/minimal extent of view loss per dwelling.

##### **Herald Apartments:**

- 61/64 units across levels ground, basement 1, floors 1, 2, 3, 4, 5, 6 & 7 retain all existing views.
- The west end of levels 5 and 6 are occupied by 2 units. The northernmost unit includes 3 bedrooms and 1 living which present to the western elevation. Loss of scenic compositions affects 1 room only per dwelling in one view direction, via a side boundary to the north-west to a low/minimal or less extent.
- The west end of level 7 is occupied by one penthouse unit. Loss of scenic compositions affects 1 room only per dwelling in one view direction, via a side boundary to the north-west to a low/minimal or less extent.
- 3 rooms out of 3 dwellings, out of 64 units at the Herald Building are affected. As demonstrated in the VIA, of the 3 dwelling the view loss is low/minimal.

##### **Newcastle Club:**

- All rooms and outdoor spaces with north side boundary views from ground, level 1 and 2 will be affected by view loss. View loss of scenic compositions in northerly views from ground, level 1 and 2 is caused by the approved concept and/or permissible envelope.
- All rooms and outdoor spaces with existing views to the east, north-east and west-north-west, south and west from ground 1, and 2 are not affected and retain all existing views.
- One room or space occupies the north end of the Newcastle Club floorplate at each floor. Only northerly views via a side boundary, from 3 rooms (at ground, 1 and 2) out of all rooms within the Club are affected by view loss in northerly (side) views.
- The extent of view loss is shown in photomontages 03, 04 and 05 (Urbis VIA), where blocking of scenic compositions is caused by the approved concept and/or permissible envelope.

#### **8.5.2.2. Public Views**

Public views are enhanced. The modification will not impact views to the Christ Church Cathedral as claimed by objectors.

The modification does not result in any significant loss of public views. In fact, there is an improvement to key DCP viewpoints, specifically the view to the Christ Church Cathedral from Market Street and the Harbour. All DCP views (plus additional) have been modelled to demonstrate this, refer to Table 18.

Table 18 Summary of Public View Findings

Location	Overall rating of significance of visual impact
View South Towards Newcastle CBD from Stockton Ferry Wharf	Low
View South-West Towards Site from Fort Scratchley Parade Ground	Low
View South-West Towards Site from Nobbys Pedestrian Walkway	Low
View South Towards Cathedral from Market Place	Low-medium
View South Towards Cathedral from Queens Wharf Promenade (Cathedral to Harbour Corridor)	Medium
View South Towards Cathedral from Queens Wharf Promenade (Cathedral to Harbour Corridor)	Medium
View North Towards Site from North Side of the Cathedral	Low
View East Towards Site Along Hunter Street	Low
View South Towards Cathedral from the Station Public Domain	Low
View North Over Site from Cathedral Park Steps	Medium
View from centre of Laing Street towards Christ Church Cathedral	Medium
<ul style="list-style-type: none"> <li>View towards site from intersection of Wharf Road and Watt Street x 2</li> <li>View towards site from pedestrian link between carpark and park.</li> </ul>	Negligible or will not be visible
<ul style="list-style-type: none"> <li>View towards the site from Obelisk.</li> <li>View towards the site from Reserve Road pedestrian path.</li> <li>View from central open space in King Edward Park.</li> </ul>	Negligible or will not be visible

The modification to the Concept DA has arisen from a desire by both CN and Iris to drive a stronger public benefit outcome. **Figure 15** illustrated the improved public views from Market Street. The Concept DA would block the entirety of the view to the Christ Church Cathedral.

Urbis are confident that the proposal is acceptable in terms of its cumulative impacts on both public and private views. Urbis agree with CN that whilst the modification alters views from the public domain, on balance the views within have been enhanced, noting the significant public benefit of the view corridor from the harbour to the Christ Church Cathedral.

Figure 15 Improved public view from Market Street



Source: Urbis

### 8.5.3. Public Domain

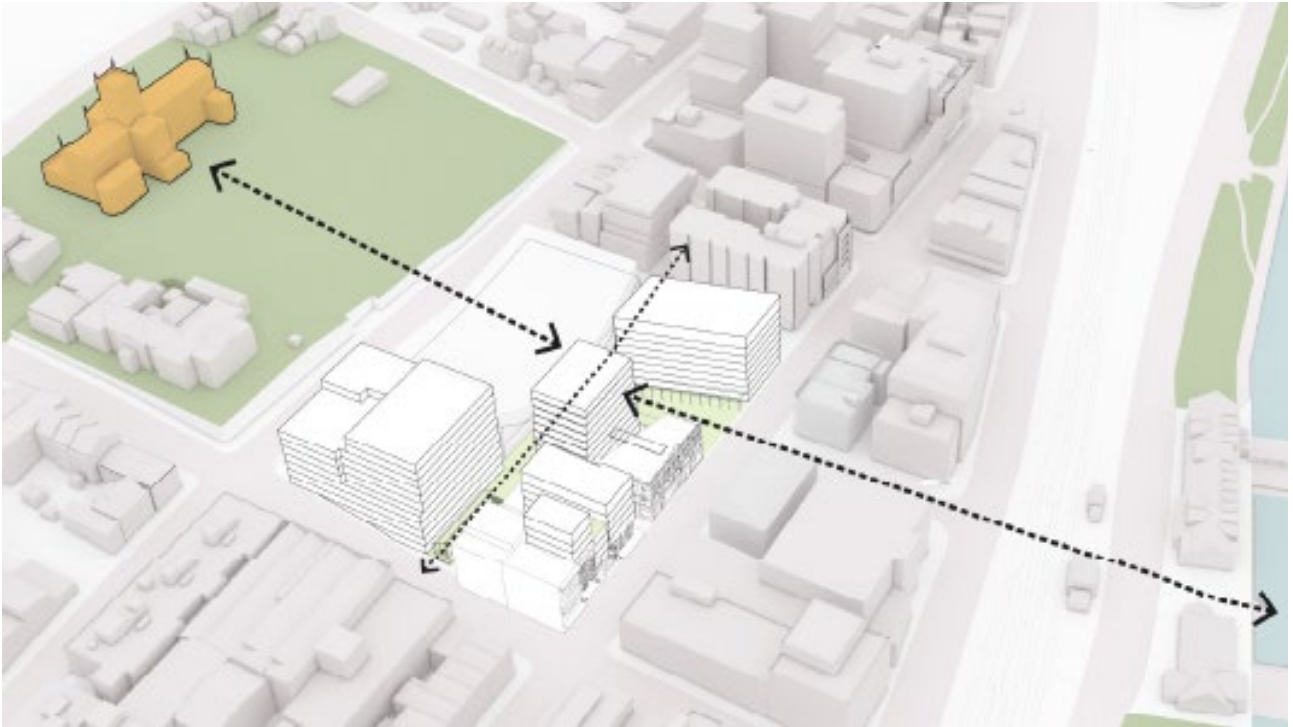
The modification to the Concept DA will allow for the ground plane to increase the vitality of the streets and activate the public domain, with the reconfiguration of Market Square. The modification to the Concept DA results in an improved public domain outcome.

The built form of the proposed development is coherent with the endorsed design scheme of the Design Excellence Competition. The built form outcome directly responds to its surrounding context, urban setting, orientation, and CN's desired public domain outcome. This desired public domain outcome is reflected in the Newcastle DCP 2012 and seeks to enhance public views to and from Christ Church Cathedral and the Newcastle Harbour. The proposed built form directly responds to this vision through the building orientation, separation and design which allows for the construction of extensive public open space between Hunter Street and Laing Street, and eventually King Street following the redevelopment of the Council owned former carpark site.

The proposed built form effortlessly connects with Stage 1 and 2 of East End through offering an alike architectural style and design intent. The Municipal Building at 121 Hunter Street is proposed to be retained without additional built form above, to present as a freestanding building to Hunter Street, also in alignment with CN's intentions to preserve heritage items. The retained façade will achieve this intention.

**Figure 16** illustrates the connection from the Harbour to the Cathedral through the new Market Square and the future public domain activation resulting from through site links and public domain upgrades.

Figure 16 Built Form



Picture 1 – Harbour to Cathedral Connection

Source: SJB



Picture 2 – Public Domain Activation

Source: SJB



## 8.5.4. Overshadowing

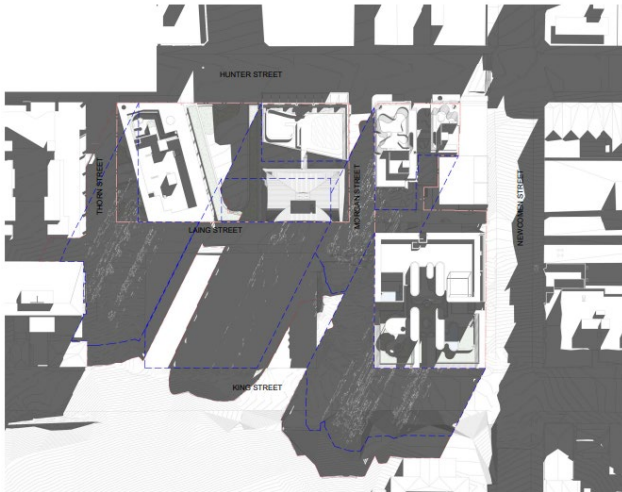
A Shadow Analysis has been prepared by SJB. As pictured below in **Figure 17**, most overshadowing falls within the approved Concept DA massing with only small increments of shadow falling outside of the approved envelopes.

In terms of key surrounding development:

- **CN's carpark site:** the overshadowing impacts are improved with the proposed scheme compared to the Concept DA because of the redistributed building mass. The retention of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the Concept DA assessment, and results in an improved outcome.
- **The Newcastle Club:** the overshadowing impacts are marginally increased, specifically for the northern garden area. However, the additional shadowing does not prevent the northern façade of the club receiving solar access between 9am and 3:00pm.
- **The Herald:** the Herald apartments in the south-west corner of the site will be slightly impacted by the additional height, however they will receive more than 3 hours of morning sun between 9am and 1pm.
- **Newcomen Street residents (eastern side):** the eastern side of Newcomen Street will be self-shadowed between 9am and 10am. These residents will receive solar access between 11am and 1pm (3 hours).
- **Newcomen Street residents (western side):** the western side of Newcomen Street will receive morning sun between 9am and 11am. The modification to the Concept DA will not change the solar access provisions for these buildings.

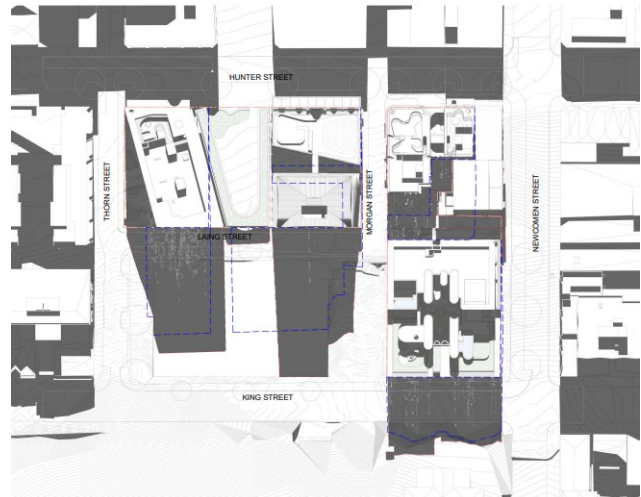
The diagrams also reveal that the proposed overshadowing does not fall onto public open spaces and the proposed Market Square will receive plenty of sunlight during mid-winter making it a pleasant space for residents and visitors to enjoy. This assessment is based upon the winter solstice and improved solar access would be experienced during the summer solstice.

Figure 17 Shadow Diagrams



Picture 3 – 9am

Source: SJB



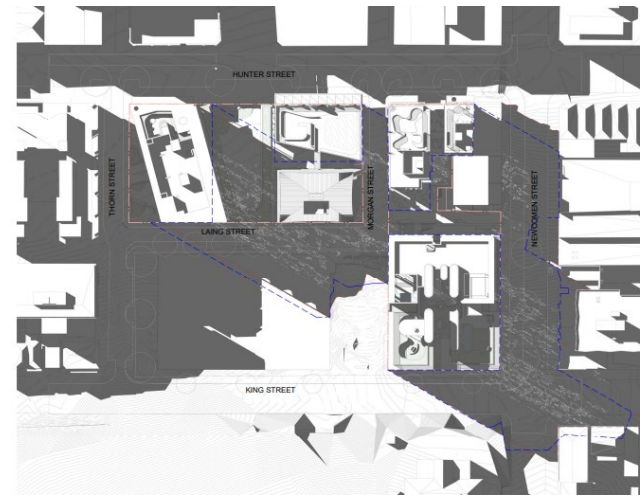
Picture 4 – 11am

Source: SJB



Picture 5 – 1pm

Source: SJB



Picture 6 – 3pm

Source: SJB

Specifically, the following conclusions are made:

- At 9am the additional shadow created primarily falls within the road reserves of Kings Street and Laing Street and Morgain Street. The Stage 2 development will still retain adequate solar access and the Herald apartments will not be impacted. The impacts to Newcastle Club will be marginally increased, primarily within the northern garden. The Newcastle Club is a commercial premises and will adequate solar access during the day.
- At 1pm the additional shadow will have some impact on the demolished CN car park site, although most of the site will not be impacted by the shadow. The Stage 2 development will still retain adequate solar access, with no afternoon sun impacts from Stage 3 and 4. The Herald apartments in the south-west corner of the site will be slightly impacted by the additional height, however they will receive more than 3 hours of morning sun between 9am and 12pm. The impacts to Newcastle Club will be marginally increased, primarily within the northern garden. The Newcastle Club is a commercial premises and will adequate solar access during the day.
- At 3pm the additional shadow will have some impact on the demolished CN car park site, although most of the site will not be impacted by the shadow. The Stage 2 development will still retain adequate solar access, with no afternoon sun impacts from Stage 3 and 4. The Herald apartments in the south-west corner of the site will be slightly impacted by the additional height, however they will receive more than 4 hours of morning sun between 9am and 12pm. No impacts to the Newcastle Club will occur. Minor



increase to overshadowing impacts to properties on the southern side of King and Newcomen Street. These properties are mixed use in nature. These properties will receive more than 4 hours of morning sun between 9am and 12pm.

The shadow impacts of the proposed development are suitable and consistent with the anticipated level of development envisaged by the LEP. In addition, solar access within the precinct has been improved within the public domain, with minor increased impacts to The Herald apartments.

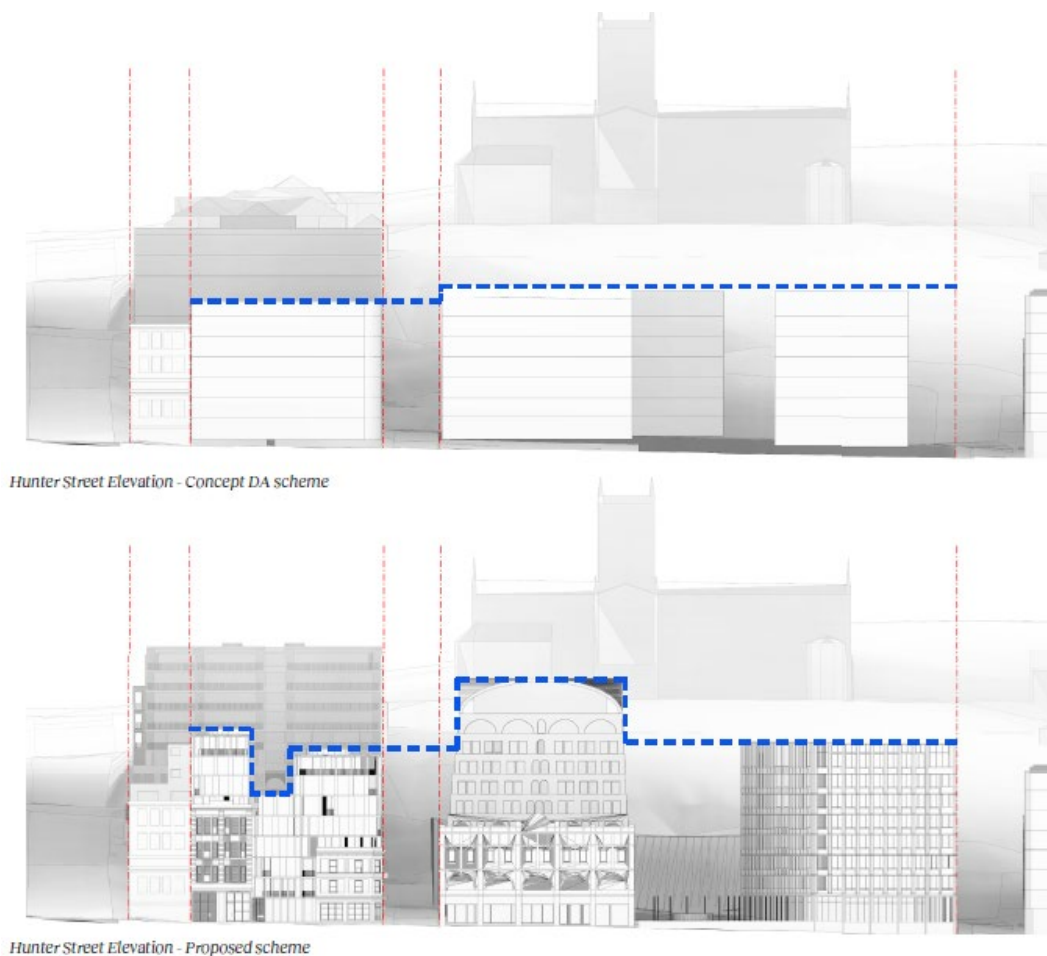
### 8.5.5. Skyline and Topography

One of the key pieces of feedback from the Design Excellence Competition (by the Jury) was that the height variation across the scheme was positive. Specifically, the following comment was made “the differing heights and rhythms of the proposed buildings, believing the interplay between them works cohesively to create a height amenity precinct of diverse character.”

The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the Concept DA scheme, refer to **Figure 18**. The Concept DA results in “flat tops” which is not aligned with clause 7.1(c) of LEP: *to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population*.

The proposed design response provides a distinctive playful identity for East End which is aligned with the vision for Newcastle City Centre. The skyline also results in a unique and identifiable development appropriate to a regional city (clause 7.1(e)). Further, the proposed skyline responds to the sloping topography of East End and is characterised by the detailed parapets of the historical buildings.

Figure 18 Skyline Comparison between Concept DA and Proposed Scheme



Source: SJB

## 8.5.6. Heritage

### Municipal Building

Part of the site is a local heritage item, namely a Municipal Building (No. 1403) located at 121 Hunter Street.

The Concept DA and LEP controls allow for additional built form to be constructed on top of the Municipal Building. The Municipal Building has been retained 'freestanding' and unencumbered of additional storeys. This is because of the redistribution of building mass.

In the Design Excellence Competition, the Jury noted that the "relative height variation between Municipal building and the Stage 3 South building are successful."

Given this key move, the building mass above the Municipal Building was distributed and contributed to the height variation of Building 3 East (Bluebell – previously Building 3 South). The adaptive reuse of the Municipal Building will help preserve heritage within the Newcastle's city centre while also enabling the opportunity to diversify the building's purpose. The proposal also respects surrounding heritage items and is conscious of their significance.

This key move provides a positive heritage response and delivers a greater public benefit than complying with the height controls. The response provides a better outcome than the approved Concept DA from a heritage perspective.

### Christ Church Cathedral

An Addendum to the Heritage Impact Assessment (Appendix H) has been prepared by City Plan and a Design Report has been prepared by SJB (Appendix K), these documents have been appended to this response. The Addendum has provided greater consideration of the potential heritage impacts pursuant to Clause 5.10(4) of the *Newcastle Local Environmental Plan 2012* (NLEP 2012).

Firstly, it is important to reflect on the heritage design principles from the original Concept DA. The Concept DA employed the following design principles to inform the proposed envelope massing, relevant to heritage (extracted from the approved Clause 4.6 Variation Statement relevant to Clause 4.3 Height of buildings prepared by SJB):

- *The proposed height variation continues to **respect the form and scale of the heritage buildings on site**, and results in a better outcome in respect to the siting of the development to heritage items in the vicinity of the site.*
- *The proposed **scale is also viewed against the backdrop of the Cathedral Hill with streets creating clear boundaries at transition points**. The parapet levels of the three (3) taller building elements at RL 40 AHD, with plant at RL 42, which are less than the height permitted, area in order of 18m below the ridge of the Cathedral, which is RL 58.65.*
- *From the **perspective of the city skyline, the reduction in height of the building envelopes, at the edges of the view cone towards the Cathedral**, means any resultant building will sit below the Cathedral, **such that the Cathedral maintains its prominence**. When considered in the context of an evolving city scale, buildings envelopes and height proposed area considered acceptable.*
- *The redistribution of height across the site has provided an opportunity to **minimise impacts on public views to and from the Cathedral and accommodate an appropriate built form that responds to the slope of the land and its heritage context** and resulted in buildings and building envelopes that response to the heritage context and maximising amenity.*

Further, the Urban Design Review Panel (UDRP) in 2021 have provided the following comments in relation to the heritage context and relationship between site and Cathedral:

*The existing built form in this area has to date largely been a product of the natural landform rising from the harbour up towards the Cathedral. The consequence of this has been that the steep landform and topography of The Hill has remained quite legible from the surrounding areas and is an important contributor to the outstanding visual attractiveness of the eastern part of the city and its surroundings. The Cathedral sits very near the top of the rise, and as a tall and imposing structure, which represents a memorable and visually dominant built form that is of considerable significance to the skyline of the city. **This should not be visually challenged by newer, less significant built forms, the height of which has potential to reduce legibility of the topography.***

The fundamental heritage design principals have been retained. The proposed built form is subservient to the Cathedral and complementary to the cityscape rather than competing with it. The proposal does not visually challenge the Cathedral or reduce legibility of the topography.

The key points of the Addendum are summarised as follows:

- The State and local heritage values of the Cathedral as being an extraordinary piece of architecture in a most dramatic setting, providing evidence of the early town planning of Newcastle city centre, and its visual dominance defining its city skyline will be respected and preserved while significantly enhancing its appreciation as a landmark through the 'Harbour to Cathedral' visual corridor. This is also a reflection of the central north-south axis seen in Dangar's 1823 plan.
- The redistribution scale and massing of the Concept DA envelopes have a positive impact in terms of heritage as the Concept DA was completely blocking the views to the Cathedral from the Harbour along Market Street.
- Additional view corridor has also been created through tapering the new building (3W) to open a new view corridor from the corner of Thorn Street, which did not exist to date.
- Creation of these additional and significant view corridors were made possible by the demolition of the Council car park and by the redistribution of the mass and scale to the other parts of the Stages 3 and 4. Considering the positive and enhanced benefits to the heritage context and State level significance of the Cathedral having marginally increased height and scale towards the north of the Cathedral is an acceptable compromise.
- The foreground of the Rest Park was already partially blocked under the Concept DA and the slight increased blockage does not adversely affect the dominance and landmark qualities of the Cathedral.
- The relatively smaller footprint of Building 3S and its tapering form allows the building moves more quickly through the sky as one moves around the site. Furthermore, the building continues to diminish as it gets taller to open up the view to the Cathedral more quickly than otherwise larger/latter block form as it was under the Concept DA.
- The eastern end of the city is built on and into the hill, with existing buildings vary in height, scale and proportion. This forms an undulating urban fabric especially when viewed from a distance across the Harbour. By adopting a playful skyline, the proposed buildings blend in and are disguised within the pre-existing assembled urban fabric. They are complementary to the cityscape rather than competing with it. The 3S tower adds to the memorable silhouette of Newcastle, although always subservient to the profile of the Cathedral.
- The distance between the Cathedral and the closest Buildings 3S and 4S, which are separated by 92 King Street, the King Street road reserve and the Rest Park and the King Street road reserve and Rest Park respectively, with the Cathedral being at the south end of the grounds at the top of the hill, allows for an appropriate buffer zone for the appreciation of the landmark qualities and dominant presentation of the Cathedral across the close public domain and at distant views and vistas.

In addition to the heritage support from City Plan, the Design Review Panel (DIP) provided the following comments in relation to the heritage context and relationship between proposed height and the Cathedral:

- *The DIP is supportive of the design development of with regards to colour. **The gradient of mottled 'earthy greens' is supported and sits within the context well, picking up on the Perkins and King Building in Stage 1 and the Christ Church Cathedral Park** (Session 2).*
- ***The DIP agree that the height of the Competition Scheme for Building 3 South is appropriate considering the presented view analysis.** However, the DIP request that private views from the western side of the Cathedral Park, specifically the Segenhoe Building and the Wolfe Street apartment building nominated by the Design Team, be explored further (Session 3).*
- *One of the key pieces of jury feedback commended the height variation across the Competition scheme, supporting **'the differing heights and rhythms of the proposed buildings, believing the interplay between them worked cohesively to create a high amenity precinct of diverse character'**. The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the Concept DA scheme. Consistent with the Concept DA, the proposed scale is viewed against the backdrop of the Cathedral Hill with streets creating clear boundaries at transition points. All the built form proposed in Stage 3 and 4 are below the Cathedral parapet.*

In summary, whilst the proposal does seek to distribute height from the approved Concept DA, the views and prominence of the Cathedral is not compromised. The proposed development has an improved heritage outcome and does not impact the curtilage of the Christ Church Cathedral. The proposed development does not erode any identified DCP or general public views to the Cathedral that were not otherwise contemplated by the Concept DA.

### 8.5.7. Car Parking

There is no residential use car parking deficiency.

Stage 3 and 4 will not be deficient in respect to commercial and retail car parking spaces. The deficiency for commercial and retail car parking spaces is because of Stage 1 and 2, which are already approved, built, and deemed acceptable by the previous Panel. The deficiency would exist even if Stage 3 and 4 was approved.

The entirety of the precinct is deficient by 76 visitor parking spaces. However, of the 76 spaces, 50 spaces are attributed to Stage 1 and 2, which are already approved, built, and deemed acceptable by the previous Panel. The deficiency claimed results from a subsequent event being CN's decision to demolish its King Street car park building. A decision the applicant has no control over in circumstances alone CN has publicly stated it will reinstate all spaces that are currently lost. The majority deficiency would exist even if Stage 3 and 4 was approved – strictly speaking, the argument is related to 26 car parking spaces. Despite this, the Panel have not considered the changing context in relation to the Newcastle DCP, which allows for a merit-based assessment for visitor spaces rather than strict compliance. The DCP also states a desire to keep vehicles out of the city centre and encourages other forms of transport including the light rail, cycling or walking.

It is also noted the car parking survey which was undertaken revealed there is copious on street parking for visitors and the 2018 Concept DA said any parking discounted by the consent would be accommodated by the King Street car park building and on street car parking.

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

The concept application for Stages 1 to 4 (DA2017/00701.03), approved a parking deficit of 159 spaces (85 residential visitor and 74 commercial /retail). At the time of the approval, it was accepted that the additional parking demand associated with this development could be met by available parking located within the King Street multi-level car park.

The concurrent DA 2023/00419 (Stages 3 & 4) seeks to further amend the approved parking and results in a reduced parking deficit across the total development (Stages 1-4) of 113 spaces, being 76 residential visitor and 37 commercial/retail spaces. The parking deficiency associated with DA 2023/00419 (Stages 3 & 4) is confined to 26 residential visitor parking spaces as the application provides for the full quota of commercial / retail spaces required at 1 space per 60m<sup>2</sup> GFA.

As the CN owned King Street has now been demolished, a parking occupancy survey has been undertaken by Trans Traffic Surveys. The results confirm that there is an extensive amount of parking remaining available for visitors within walking distance of the development, even during peak periods, should they be unable to source an on-site visitor space. Based on the results of the survey, it can be concluded:

- 31 visitor spaces across 530 apartments is, on merit, acceptable.
- The worst case analysis/peak period for parking shows there are a total of 845 on and off-street parking spaces available
- Under the old DCP (NDCP 2012), approximately 106 visitor parking spaces would be required based on apartment numbers - under that DCP, City of Newcastle would conclude on a strict reading of that planning document that a shortfall of 75 car spaces results (106 less 31 = 75 spaces).
- The conditions of the concept consent, based on greater certainty of actual and proposed apartments, would have placed the onus on Iris to provide for 27 visitor parking spaces – with the balance 75% DCP requirement to be provided by the King Street car park or on-street parking.

- This report has referenced that the discount provided in the concept consent meant that 75% of visitor car parking would be provided by the now defunct King St car park and on-street parking. It has been demonstrated that:
  - There is ample on and off street parking through the parking survey to cater for the old DCP parking rates for visitor parking, and if the full assessment/peak requirement for visitor parking of 106 spaces (per the rates of the old DCP) were required at the same exact time that general parking demand (on and off-street) was at its peak, CN's claimed shortfall of spaces (net 75) would only consume 8.9% of available on and off-street public parking.
  - CN has a commitment to honour the conditions of the concept consent and in terms of its undertaking to the local community to replace the parking lost as a result of its decision to demolish the community asset that was the King Street car park – that the CN car park when rebuilt will further reduce pressure on the surrounding infrastructure in terms of parking demand and availability.
  - The CN King St car park did not operate in a manner that the author believed would have provided any significant relief for casual visitor parking (or casual any type of parking). It closed at 7pm weekdays, closed at 4.30 on Saturdays and was closed all day Sunday – even if the car park was still standing, the contribution that asset would have made to accommodating the parking arising from the DCP visitor parking discount would have been minimal at best and on-street parking would have provided most, if not all, of the “shortfall” parking would have defaulted to on street anyway

Overall, we are the parking occupancy survey results confirms that there is an extensive amount of parking remaining available for visitors within walking distance of the development, even during peak periods.

### 8.5.8. Council Car Park Site

A Design Response has been prepared by SJB and appended to this response. This Design Response should be read in conjunction with the below summary (**Appendix J**).

From the outset, Mills Oakley (in the appended legal opinion) have confirmed that the HCCRPP must assess the impacts of the development proposed on the environment existing at the time of determination of the application. This is reinforced by the Chief Judge of the Land and Environment Court's decision in *Tuite v Wingecarribee Shire Council (No 2) [2008] NSWLEC 321* ('Tuite') at [55].

To remove all doubt, Iris Capital do not have a financial connection or ability to influence the outcome of the development of the CN carpark site at 92 King Street. However, all development applications require significant coordination between the consent authority and the Applicant to ensure the delivery of an outcome that benefits the community. Therefore, SJB and Urbis have considered this RFI matter from the HCCRPP in detail.

For completeness, the relationship between 92 King Street and the site have been through a thorough review process. The likely highest and best use for this site was modelled by SJB and presented to both the DIP and the Urban Design Review Panel (UDRP).

The UDRP provided the following comments in their minutes post the Wednesday 26 June 2024 meeting, with reference to the removal of the car park and the opportunity it presents:

- *A new opportunity has arisen from Council's decision to demolish its King Street Car Park due to it having serious structural issues – that could not viably be repaired. This opportunity was in line with the DCP requirement for an open corridor between the Harbour, south to King Street/ and the Cathedral Park hill. This change would require a Modification to the Approved Concept for Stages 3 and 4, but did not fundamentally change it. An initial Pre-concept schematic response incorporating the Market Street corridor was prepared by a different firm of architects to that which undertook the approved Concept design. This Pre-Concept design was considered inherently flawed by the UDRP, and was inconsistent to the approved Concept. This opinion was frankly communicated to the developer (meetings held 29 September 2021 and 24 November 2021).*
- *The only changes to the approved Concept Plan have been in direct response to the demolition of Council's former car park, which previously obstructed the view corridor from the Harbour to the Hill, and CN's intent advised to Iris Capital, of its desire to activate the existing provision in the DCP to open up the Market Street corridor to connect the waterfront to the Hill. The UDRP strongly supported this initiative, on the condition that public views to the landform of The Hill were enhanced, and that compared with the Concept Approval, there should be no erosion of the quality of public views obtained within the area.*

- *The only other relatively minor changes to the Concept also arose from the existing DCP provision and relate to the new public space that in both the Approved Concept and the Modification, extend the Market Street opening southwards across Hunter Street into the Site. The relocation of built form, which had previously been used to screen the ugly car park, was essential to achieve the intent of the DCP provision, but the public space was further enhanced by placing the 3W building at an angled setback to its northern end, widening the mouth of the public space and inviting people into it.*

Like East End Stage 3 and 4, 92 King Street will be subject to the planning controls outlined in the Newcastle LEP 2012 and the Newcastle Development Control Plan (DCP) 2023, specifically, 92 King Street will be required to continue the through site link. The through site link and 'Hill to Harbour' view corridor is enriched in both the Newcastle LEP 2012 and the Newcastle DCP 2023.

From a planning compliance perspective, 92 King Street is subject to the controls outlined in the Newcastle LEP 2012 and Newcastle DCP 2023.

The Design Response has assumed compliance with the controls in Option 1. A residential scheme has been massed and documented; however, the same built form outcome would apply to non-residential developments. Within the planning controls, as illustrated in the indicative built form plan at **Figure 19**, an FSR of 3.6:1 and potential residential yield of 70 apartments could feasibly be achieved.

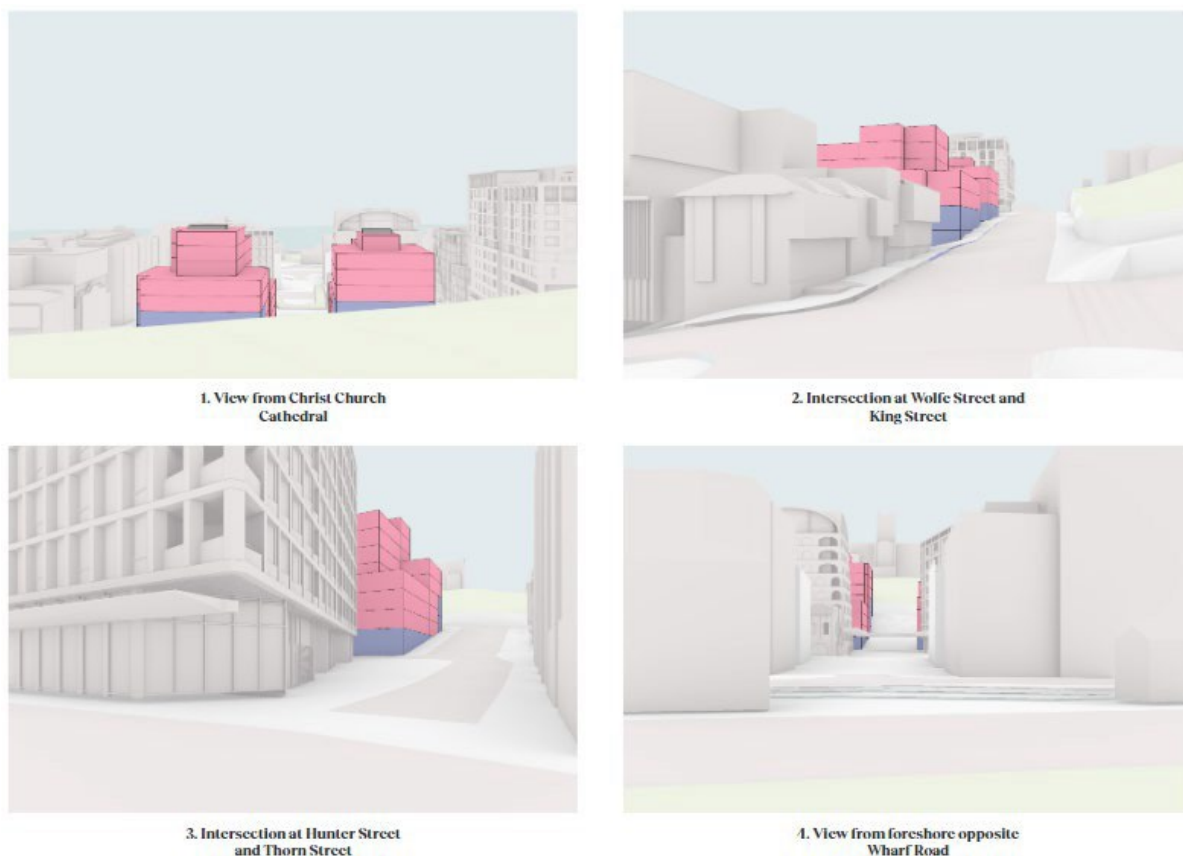
Of importance, the street view images demonstrate, refer to **Figure 20**, the relationship of the future massing in the context of Stage 3 and 4 and shows the view corridor continuation.

Figure 19 Option 1 Indicative Built Form Plan



Source: SJB

Figure 20 Option 1 Street view analysis



Source: SJB

SJB have also modelled an alternative option, Option 2. An FSR of 4:1 and potential residential yield of 86 apartments could feasibly be achieved if variations to the Newcastle DCP 2023 are explored through a design excellence process.

In summary, the application has made assumptions in relation to the arrangement of future development within the former Council Car Park site. These assumptions have heavily informed the submitted Visual Impact Assessments and the concluded overall planning balance of the proposed modification.

The detailed analysis and explanation of the planning assumptions above, confirm that any future development of the former Council Car Park site, must maintain of the Harbour to Christ Church Cathedral view corridor as it is enriched in the Newcastle LEP 2012 and Newcastle DCP 2023.

Considering this, the submitted Visual Impact Assessment remains accurate, and fair, and the conclusions remain valid. The proposed development does not erode any identified DCP public views to the Cathedral.

## 8.6. SUITABILITY OF THE SITE

The proposed modification does not alter the existing consent to such a degree that the development as approved would no longer be suitable. The proposed modifications do not seek to alter the intended land use and the proposal remains substantially the same as the development for which consent was granted.

As such, the site remains suitable for the proposed development, as modified.

## 8.7. SUBMISSIONS

A comprehensive Response to Submissions has been prepared to respond to the submissions received during the notification period, refer to **Appendix D**.

## 8.8. PUBLIC INTEREST

The proposal as modified will result in an increased to public domain outcome for the local community. The key benefits of the project can be summarised as follows:



- The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the “Harbour to Cathedral Park” to Building 3 South (DBJ) providing a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a small component of the western end of Building 3 South.
- The Design Team have been driven by delivering a ‘civic response.’ The three buildings on Stage 3 have been combined to form a recognisable civic composition in which the Christ Church Cathedral, remote to the Square, plays a critical role.
- The proposal includes the creation of a new urban plaza “Market Square” and will improve ground plane activation and permeability through the site. The planning of this space is in keeping with the sites historic and originally intended use. Market Square is left open to possibility and will be able to adapt to the community needs including community markets, food festivals, open air cinema, small concerts and the list goes on.
- The redistribution of the approved GFA enhances the characteristic of Newcastle’s silhouette and does not deliver a ‘flat top’ planning envelope. The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the Concept DA scheme.
- The scheme has been through a Design Excellence process. The SJB, DBJ and Curious Practice scheme was recommended by the Jury as the winning scheme in the competitive design process. The design is a result of iterative detailed engagement and input from various CN teams including planning, waste, engineering, and public domain; and the Chair of CN’s UDRP. Stage 3 and 4 will complete the staged revitalisation of Iris’ East End project.
- The project is underpinned by Country. Through several community consultations with Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) the Design Team have developed a series of segments to assist the development to be a more culturally inclusive space for the local First Nations Community, and all.
- The proposal results in an improved public domain outcome in terms of the proposed view corridor which displays an outlook from the harbour to the Christ Church Cathedral. The public will significantly benefit from the improved view sharing outcome.
- The results of the parking occupancy survey that was undertaken by Trans Traffic Surveys confirms that there is an extensive amount of parking remaining available for visitors within walking distance of the development, even during peak periods, should they be unable to source an on-site visitor space.
- Dhiira has endorsed the scheme stating that “the final submission will include and be reflective of community, their voice is now in design. This project not only created new ways of participating for our people, economic outcomes for the project team through ideation, a chance to imagine and shape the future of the city. The outcomes produced broadly through the design process are incredible conceptualisations of a place that was, this tells a story to all people who will be drawn and access this space and preserve this opportunity to engage for future generations in Newcastle.”
- The Municipal Building has been retained as ‘freestanding’ and unencumbered of additional storeys. This is as a result of the redistribution of building mass. This key move provides a positive heritage response.
- The proposal will deliver high-quality residential dwellings in a convenient, accessible, and naturally beautiful location. Future residents will be afforded the opportunity to live in a high-amenity location, with all the benefits of modern apartment living. The proposal provides a variety of apartment types to suit the needs and lifestyles of existing and future residents of Newcastle.
- The proposal is highly consistent with all strategic planning aims and objectives for the Newcastle City Centre and the Hunter region by providing a diversity of housing, and employment opportunities in a well-connected area.
- The proposal is sympathetic to the surrounding context and is a well-designed scheme that unlocks the site’s potential and provide significant community, local and regional social, environmental, and economic benefits.

East End is the next catalyst in the ongoing revitalisation of Hunter Street and the surrounding CBD. Stage 3 and 4 will delivery on the project vision established in the Architectural Design Competition, which was “*to achieve design excellence that raises the bar higher than what has been achieved to date, such that the final*

*outcome is so compelling that owners in Stage 1 and 2 will want to move into this third and final stage in a location that with harbour on one side and ocean on the other, is second to none."*

## 9. RESPONSE TO THE REASONS FOR REFUSAL

Following determination of this modification application the Applicant has sought to critically review the reasons for refusal to ensure that these matters can be adequately addressed and ultimately approved.

This has involved engaging with the Executive Director of Planning & Environment at CN (Michelle Bisson) following the determination (15 May 2024), as well as undertaking a further review of the issues raised by the Panel.

The Executive Director of Planning & Environment has shown a desire for the site to deliver the proposed mixed-use development in association with the view corridor and public domain works. She has indicated a willingness to work closely with the applicant to resolve these remaining issues.

Urbis via CN have also requested a debrief with the Panel to further unpack the reasons for refusal. At present, the Panel has not shown any willingness to engage further.

As noted earlier, it is important to acknowledge that despite the Panel's refusal, **Council have continued to recommend this application** for approval.

In summary, in response to the recommendations for refusal, the applicant has:

- ***In response to Reason for Refusal 1:*** A robust justification as to why the development as proposed to be modified is considered 'substantially the same development' for which consent was originally granted forms part of this response and has been previously provided. CN outlined in their Council Assessment Report that "*The proposed modification is considered to satisfy the 'substantially the same development test' required by s.4.55 of the EP&A Act.*" This robust justification was also reviewed by the Applicant's legal representative (Mills Oakley).

To add greater rigor to the assessment, Urbis have reviewed a recent Land and Environment Court judgement (*Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 143) which shows that a balanced approach is required when answering the test of substantially the same, which Urbis strongly believe is aligned with the modification application.

- ***In response to Reason for Refusal 2:*** Urbis have provided a detailed View Sharing and Visual Impact Assessment. CN's Supplementary Report details their agreeance that the cumulative impacts on public and private views are acceptable from a view impact and view sharing perspective.
- ***In response to Reason for Refusal 3:*** A detailed assessment and examination of the parking situation in East End has been provided, supported by a parking survey.
- ***In response to Reason for Refusal 4:*** A more detailed analysis of the public benefits of the proposal forms part of this response, including a response to the public concerns raised in the 11 March Panel meeting, this demonstrates that the modification is within the public interest. Furthermore, the modification to the Concept DA has arisen from a desire by both CN and Iris to drive a stronger public benefit outcome. A poorer public benefit outcome would arise from compliance with the Concept DA, as the view lines to the Christ Church Cathedral would be compromised.

Accordingly, Urbis are of the strong view that the previous reasons for refusal have now been overcome, and the modification application can be approved by the Panel. A detailed consideration of each of the reasons for refusal, and responses are provided below.

## 9.1. REASON FOR REFUSAL 1 – SUBSTANTIALLY THE SAME

### KEY TAKEAWAY

It is important to remember that this s4.55 modification relates **only to Stage 3 and 4**. No modification is proposed to Stage 1 and 2. Stage 3 and 4 have not been subject to any previous modifications. The proposed modification must be looked at from a precinct perspective.

Considering this, more than 50% of this mixed use precinct is complete or near completion. Stage 1 and Stage 2 have delivered:

1. 333 apartments from Stage 1 and 2 combined are complete or near complete, comprising 63% of the total apartments for the precinct (528 apartments).
2. 4,064 m<sup>2</sup> of commercial and retail is complete or near complete, comprising 72.8% of the total commercial and retail GFA for the precinct.
3. 4,256 m<sup>2</sup> of hotel accommodation in Stage 1, comprising 100% of the total hotel accommodation GFA for the precinct.

**Considering there 3 key metrics, averaging the above numerics, 78.6% of the precinct plan has been delivered. Therefore, the argument regarding 'sustainability the same' is related to approximately 20% of the East End precinct.**

### 9.1.1. Panel's Position

The Panel noted in their determination that:

1. *The consent authority is not satisfied that the modification application is substantially the same development as the concept approval pursuant to Section 4.55 (2)(a) of the Environmental Planning and Assessment Act 1979.*

It is important to note that in the 'consideration' section of the Determination, the only comment made by the Panel in relation to this matter was:

- *The Panel was not satisfied that the modification application has met the threshold test for being substantially the same development given the increased yield, FSR and height increases proposed.*
- *The Panel did not raise this issue prior to its determination on 15 May 2024. There was no indication from the Panel that they has any concern that the application was not substantially the same.*

### 9.1.2. CN's Position

CN are of the opinion that the modification is considered to satisfy the 'substantially the same development test' required by s.4.55 of the EP&A Act.

The Council Assessment Report states (abridged):

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

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

- *The proposal had been subject to a design excellence process via CN's Urban Design Consultative Group (now known as the Urban Design Review Panel).*
- *The proposal was acceptable in terms of amenity impacts notwithstanding the associated height variation.*

- *Heritage issues had been appropriately addressed in context of the area and the retention/re-use of heritage buildings/facades.*
- *Issues raised within community concerns could be addressed through conditions of consent.*
- *The proposed design is acceptable having regard to the application being for a Concept DA.*
- *The Panel considered that the traffic and parking assessment demonstrated the proposal would have acceptable impacts.*
- *That land contamination has been satisfactorily addressed.*

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

CN were satisfied with the level of assessment the Applicant undertook regarding substantially the same, and formed the same opinion that the modification is considered to satisfy the substantially the same development test.

### 9.1.3. Applicant Response

Refer to Section 7 of this Report.

## 9.2. REASON FOR REFUSAL 2 – UNACCEPTABLE CUMULATIVE IMPACTS ON BOTH PUBLIC AND PRIVATE VIEWS

### KEY TAKEAWAY

**We disagree that there is an unacceptable cumulative impact on public and private views.** A robust View Sharing and Visual Impact Assessment was prepared to assess the potential view sharing and view impact of the modification, not the concept envelopes considering they are approved.

Specifically, **public views are enhanced.** The modification does not result in any significant loss of public views. In fact, there is an improvement to key DCP viewpoints, specifically the view to the Christ Church Cathedral from Market Street and the Harbour. All DCP views (plus additional) have been modelled to demonstrate this. **The modification will not impact views to the Christ Church Cathedral as claimed by objectors.**

In respect to **private views, impacts have been determined to be reasonable by Jane Maze-Riley and CN.** It is not considered that a "...more skilled design..." could reasonably provide for a better outcome balancing the "...same development potential and amenity..." against a reduction in "...the impact on the views of neighbours..." Conversely, Iris have undertaken a comprehensive design development process which has been assessed by design experts to have achieved design excellence, to reach the considered balancing of various issues resulting in the design as proposed and would likely require the loss of development/amenity to the overall proposal to further decrease private view impacts.

On balance, the impact on a limited number of private views is acceptable against the combined benefits of the public views achieved and the significant renewal proposed within the precinct.

2. *The modification application will have unacceptable cumulative impacts on both the public and private views and is therefore unacceptable pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979.*

### 9.2.2. CN's Position

CN has provided its continued support and recommendation for approval of the project. Council concluded within their Supplementary Assessment Report that: **the private view impacts are acceptable having regard to the existing circumstances and Tenacity.**

More specifically, CN provided the following comments in relation to the individual buildings' private views.

- **Newcastle Club** – *Based on the scale given by Tenacity, the resultant overall view loss is moderate and is considered acceptable.*
- **Segenhoe Apartments** – *The resulting view impacts from the modification application are considered acceptable having regard to Tenacity.*
- **Herald Apartments** – *The modification application will result in view impacts to three western-facing dwellings located at levels six and seven. The view impacts for these dwellings are reasonable having regard to the principles set out in Tenacity. With the exception of the 23 dwellings which have an elevation facing Newcomen Street (i.e. towards the west which are impacted by compliant development massing), the views of all other 43 dwellings within the Herald Apartment complex are not affected by the proposal.*

The approved modification will have an existing impact on views that would be achieved by neighbouring properties. However, the view impacts have been determined by Jane Maze-Riley and CN to be reasonable and the modification is found to be satisfactory having regard to the principals outlined in Tenacity and undertaking a balanced assessment of the proposal in its entirety. Further, **the redevelopment and revitalisation of the Newcastle City Centre as detailed within CNs strategic planning framework cannot reasonably be constrained and limited based on impact to private views.**

In relation to **public views**, Council notes:

- *An assessment of the applicant's VIA finds that the impacts on most of the view corridors are acceptable, and height increases to the Concept DA proposed under this s4.55 modification (and the concurrent DA2023/00419) are satisfactory. As detailed within the report, the proposal will significantly enhance the view corridor from the harbour to the Christ Church Cathedral as detailed by Section 6.01 of the NDCP, where block three has been relocated further to the east, increasing the width of the corridor and achieving greater public domain benefits.*
- *In many instances, the impacts on the public view corridors already exists as a result of the approved Concept DA and the current s4.55 modification application has little real additional impact. Additionally, the proposed modification facilitates a significant enhancement to the view corridor from the harbour to the Christ Church Cathedral*
- *Following the HCCRPP's deferral of the proposal, the applicants have also submitted additional public view assessments which have been addressed within CN's assessment. These additional public view assessments do not alter CN's original assessment that the view impacts were reasonable and provide additional details supporting this assessment. Overall, the view impacts are acceptable having regard to the existing circumstances and Tenacity.*

Overall, CN considered the cumulative impacts on both public and private views, and they were deemed acceptable.

## 9.2.3. Applicant Response

### 9.2.3.1. Summary of View Sharing and View Impact Findings

It is important to note that the applicant provided responses to multiple RFIs from Council during the assessment of the modification application, and further information to the Panel in relation to public and private views in the lead up to the recent Determination.

As detailed within the robust View Sharing and Visual Impact Assessment which was provided to Council to address the RFIs concerns:

- Views were inspected, surveyed and modelled to produce accurate and certifiable photomontages that satisfy the requirements of the photomontage policy established by the Land and Environment Court of NSW. This modelling was verified by fieldwork observations including in relation to potentially affected private domain locations, documented DCP views and sensitive public domain locations.
- The preparation of photomontages from private domain view locations has informed our analysis and application of the view sharing Planning Principle established in the Land and Environment Court *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, commonly referred to as Tenacity.

- The extent and significance of the potential visual change to View Corridor 17 has been informed by the preparation of one photomontage and assessed against our well-established and accepted visual impact assessment methodology.
- Private domain view impacts for all nominated buildings were rated as either Moderate or Minor-Moderate.
- In Urbis' opinion, the proposed development creates low visual effects on the majority of baseline factors such as visual character, scenic quality and view place sensitivity for View Corridor 17. The overall view impact rating was found to be low.

Based on observations and the use of multiple analytical photomontages, the view sharing outcome for each of the nominated buildings, as whole, is reasonable, based on consideration of all relevant matters, and the following key reasons:

- The public domain benefit of the creation of a wide north-south view corridor which extends and protects DCP view corridor 15 and 21 (to Christ Church Cathedral), via part of the subject site is a relevant consideration in relation to Step 4 of Tenacity.
- Inclusion of the view corridor in the scheme constrains development potential across part of the site which has been re-distributed to compensate. Tenacity recognises the need for reasonable development potential across a site to be achieved notwithstanding that some view impacts may arise.
- The majority of view loss is caused by complying built form including below the LEP + 10% bonus and within the existing Approved Concept. The majority of the extent of view loss of scenic features is therefore contemplated by the Approved Concept and LEP controls.
- The extent of view loss caused by the additional height and massing sought under the Clause 4.6 Variation is minor.
- For the majority of private domain compositions affected, views to be lost are fortuitous, gained wholly across a privately owned, underdeveloped site (rather than accessible or created as a result of the application of planning controls which affect views, for example setbacks or height controls). Further, the majority of views are obtained via side or rear boundaries. In Tenacity, the expectation to retain views via a side boundary is said to be unrealistic.
- The Tenacity assessment also intimates that achieving reasonable development potential across a site is a relevant matter for consideration and should be afforded some weight.
- On balance, when all relevant matters are considered, as is required in Tenacity, we find that the proposed development and Clause 4.6 Variation Application, can be supported on view sharing grounds.
- The report considered the visual impacts to View Corridor 17 low and acceptable, based on consideration of all relevant matters and the following key reasons:
- The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome by prioritising views between the Hunter River and Cathedral from a highly accessible, activated and sensitive viewing location.
- The majority of view loss is caused by complying built form including below the LEP + 10% bonus and within the existing Approved Concept. The majority of the extent of view loss of scenic features is therefore contemplated by the Approved Concept and LEP controls.
- Where additional massing is sought, blocking of features that are scenic or highly valued, was found to be minor.

Considering the visual effects of the proposal and improved public view outcomes, the proposal is considered reasonable, acceptable and can be supported on visual impact grounds.

### 9.2.3.2. Private Views

The View Sharing and Visual Impact Assessment concluded the following regarding private views, as per **Table 19**.



Table 19 Summary of Private View Findings

Location	Conclusion	Acceptability
Segenhoe	<ul style="list-style-type: none"> <li>▪ <b>16</b> units across levels 1, 2, 3 and 4 <b>retain all existing views</b> in all directions and are unaffected by the proposal.</li> <li>▪ <b>12</b> north facing units at levels 5, 6 and 7 have potential views to the proposal via the north-east edge of the building's side (north boundary). These units are partially affected, from some rooms by a <b>low/minimal extent of view loss per dwelling</b>.</li> <li>▪ <b>3</b> east facing units at levels 5, 6 and 7 have potential views to the proposal via the junction of the side and front boundary. These units are partially affected, from some rooms by a <b>low/minimal extent of view loss per dwelling</b>.</li> </ul>	<b>Minor to Moderate Impact</b>
Herald Apartments	<ul style="list-style-type: none"> <li>▪ <b>61/64</b> units across levels ground, basement 1, floors 1, 2, 3, 4, 5, 6 &amp; 7 <b>retain all existing views</b>.</li> <li>▪ The west end of levels 5 and 6 are occupied by 2 units. The northernmost unit includes 3 bedrooms and 1 living which present to the western elevation. Loss of scenic compositions affects 1 room only per dwelling in one view direction, via a side boundary to the north-west to a low/minimal or less extent.</li> <li>▪ The west end of level 7 is occupied by one penthouse unit. Loss of scenic compositions affects 1 room only per dwelling in one view direction, via a side boundary to the north-west to a low/minimal or less extent.</li> <li>▪ <b>3 rooms out of 3 dwellings, out of 64 units</b> at the Herald Building are affected. As demonstrated in the VIA, of the 3 dwelling the view loss is low/minimal.</li> </ul>	<b>Low to Minimal Impact</b>
Newcastle Club	<ul style="list-style-type: none"> <li>▪ All rooms and outdoor spaces with north side boundary views from ground, level 1 and 2 will be affected by view loss. View loss of scenic compositions in northerly views from ground, level 1 and 2 is caused by the approved concept and/or permissible envelope.</li> <li>▪ All rooms and outdoor spaces with existing views to the east, north-east and west-north-west, south and west from ground 1, and 2 are not affected and retain all existing views.</li> <li>▪ One room or space occupies the north end of the Newcastle Club floorplate at each floor. Only northerly views via a side boundary, from 3 rooms (at ground, 1 and 2) out of all rooms within the Club are affected by view loss in northerly (side) views. View loss is on all occasions caused by the approved Concept DA and / or permissible building envelope.</li> <li>▪ The extent of view loss is shown in photomontages 03, 04 and 05 (Urbis VIA), where blocking of scenic compositions is caused by the approved concept and/or permissible envelope.</li> </ul>	<b>Moderate</b>

Location	Conclusion	Acceptability
Newcomen Apartments	<ul style="list-style-type: none"> <li>The formal presentation of Newcomen Apartments is east, facing Newcomen Street. All views to the south and east will be unaffected by the proposal. All balconies and windows at the eastern elevation will remain unaffected by the proposal.</li> <li>Views from a limited number of upper level dwellings on the western side of the building will be affected to the west and south.</li> <li>The most scenic and highly valued view compositions (in Tenacity terms) to the north-east are retained and remain unaffected by the proposal.</li> </ul>	Minor

### 9.2.3.3. Public Views

**Public views are enhanced. The modification will not impact views to the Christ Church Cathedral as claimed by objectors.**

The modification does not result in any significant loss of public views. In fact, there is an improvement to key DCP viewpoints, specifically the view to the Christ Church Cathedral from Market Street and the Harbour. All DCP views (plus additional) have been modelled to demonstrate this, refer to Table 20.

Table 20 Summary of Public View Findings

Location	Overall rating of significance of visual impact
View South Towards Newcastle CBD from Stockton Ferry Wharf	Low
View South-West Towards Site from Fort Scratchley Parade Ground	Low
View South-West Towards Site from Nobbys Pedestrian Walkway	Low
View South Towards Cathedral from Market Place	Low-medium
View South Towards Cathedral from Queens Wharf Promenade (Cathedral to Harbour Corridor)	Medium
View South Towards Cathedral from Queens Wharf Promenade (Cathedral to Harbour Corridor)	Medium
View North Towards Site from North Side of the Cathedral	Low
View East Towards Site Along Hunter Street	Low
View South Towards Cathedral from the Station Public Domain	Low
View North Over Site from Cathedral Park Steps	Medium
View from centre of Laing Street towards Christ Church Cathedral	Medium
<ul style="list-style-type: none"> <li>View towards site from intersection of Wharf Road and Watt Street x 2</li> </ul>	Negligible or will not be visible

Location	Overall rating of significance of visual impact
<ul style="list-style-type: none"> <li>View towards site from pedestrian link between carpark and park.</li> </ul>	
<ul style="list-style-type: none"> <li>View towards the site from Obelisk.</li> <li>View towards the site from Reserve Road pedestrian path.</li> <li>View from central open space in King Edward Park.</li> </ul>	Negligible or will not be visible

The modification to the Concept DA has arisen from a desire by both CN and Iris to drive a stronger public benefit outcome.

Urbis agree with CN that whilst the modification alters views from the public domain, on balance the views within have been enhanced, noting the significant public benefit of the view corridor from the harbour to the Christ Church Cathedral.

### 9.3. REASON FOR REFUSAL 3 – UNACCEPTABLE IMPACTS GIVEN THE DEFICIENCY IN CAR PARKING

#### KEY TAKEAWAY

**There is no residential use car parking deficiency.**

**Stage 3 and 4 will not be deficient in respect to commercial and retail car parking spaces.** The deficiency for commercial and retail car parking spaces is because of Stage 1 and 2, which are already approved, built, and deemed acceptable by the previous Panel. The deficiency would exist even if Stage 3 and 4 was approved.

The entirety of the precinct is deficient by 76 visitor parking spaces. However, of the 76 spaces, 50 spaces are attributed to Stage 1 and 2, which are already approved, built, and deemed acceptable by the previous Panel. The deficiency claimed results from a subsequent event being CN's decision to demolish its King Street car park building. A decision the applicant has no control over in circumstances alone CN has publicly stated it will reinstate all spaces that are currently lost. **The majority deficiency would exist even if Stage 3 and 4 was approved – strictly speaking, the argument is related to 26 car parking spaces. Despite this, the Panel have not considered the changing context in relation to the Newcastle DCP, which allows for a merit-based assessment for visitor spaces rather than strict compliance. The DCP also states a desire to keep vehicles out of the city centre and encourages other forms of transport including the light rail, cycling or walking.**

**It is also noted the car parking survey which was undertaken revealed there is copious on street parking for visitors and the 2018 Concept DA said any parking discounted by the consent would be accommodated by the King Street car park building and on street car parking.**

#### 9.3.1. Panel's Position

The Panel noted in their determination that:

- The development will create unacceptable impacts given the deficiency in car parking and is therefore acceptable pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979.*

#### 9.3.2. CN's Position

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

of the current parking generation, including the applicant's parking study, the proposed modification, including amendments to Condition 19, is acceptable with respect to parking

### 9.3.3. Applicant Response

It is important to note that the Applicant provided responses to RFIs from Council during the assessment of the modification application, and in the lead up to the recent determination. Specifically, we note a parking survey was conducted by Trans Traffic Survey and accompanying Traffic Assessment prepared by CPJ Engineering to understand the demand for parking within the Newcastle East End area.

Table 21 outlined the car parking requirements are per the Concept DA consent, Newcastle DCP 2012, and the Newcastle DCP 2023 in respect to commercial, retail and visitor spaces.

In our opinion, **the Panel have not considered the changing context in relation to the Newcastle DCP, which allows for a merit based assessment for visitor spaces rather than strict compliance.** The DCP 2023 emphasises: **That there should not be a minimum or maximum parking rate for visitors, or commercial/retail uses in the Newcastle City Centre. The parking provision should be merits based.**

Table 21 Car Parking Provisions (Consent and DCP's)

Standard	Provision
Condition 19	<p><i>The number of car parking spaces shall be provided within each stage in accordance the requirements of Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or <b><u>the applicable standard at the date of lodgement of the application for each stage</u></b>. The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition:</i></p> <p><b><i>a) 100% of car spaces required for residents are to be provided on site;</i></b></p> <p><b><i>b) A minimum of 25% of the required number of residential visitor parking spaces shall be provided for residential visitor parking in each of the car parks for each Block contained in Stages 1-4 inclusive. These spaces are not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents. Spaces cannot be allocated or deferred to different Blocks/stages unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 75% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on-street parking.</i></b></p> <p><b><i>c) Stages 1 to 4 of the development shall each provide on-site car parking for the parking for commercial and retail staff at the rate of 50% required by Council's DCP for commercial and retail use unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 50% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on- street parking.</i></b></p> <p><b><i>d) 42 carparking spaces are to be provided for the hotel located within Stage 1 of the development, comprising 34 guest and 8 staff spaces which may otherwise be reduced if justified or approved through a</i></b></p>

Standard	Provision
	<p><i>separate development consent or modification after a minimum of two (2) years operations.</i></p> <p><i>e) an additional 5 parking spaces and 11 residential visitor parking spaces are to be included in Stage 3, in addition to compliance with Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for this stage. This additional 5 parking spaces are not to be allocated to residential uses and the allocation is to be approved by Council. This term applies unless otherwise justified or approved through separate development consent that demonstrates it is not warranted based on traffic and parking analysis of Stage 1 including specific information from a minimum of two (2) years hotel operations.</i></p>
Newcastle DCP 2012	<p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li><i>1. Ensure an appropriate level and mix of parking provision within the development, having regard to the demand and the impacts of over/undersupply of parking.</i></li> <li><i>2. Establish an appropriate parking standard for the Newcastle City Centre, Renewal Corridors, The Junction and Hamilton B2 Local Centre zone and Darby Street Mixed Use zone that recognises its locational advantages, public transport access and active transport connections to facilitate an increase in the use of public and active transport modes.</i></li> </ol> <p><b>Controls:</b></p> <p><u><a href="#">Attached dwellings, Dual occupancies, Multi dwelling housing, Residential Flat Buildings, Semi-detached dwellings, Shop Top Housing:</a></u></p> <ul style="list-style-type: none"> <li>▪ <i>Minimum of 1 space per dwelling.</i></li> <li>▪ <u><i>Minimum 1 space for the first 5 dwellings (excluding dual occupancies) plus 1 space for every 5 thereafter or part thereof for visitors.</i></u></li> </ul> <p><u><a href="#">Commercial and Retail:</a></u></p> <p><u><b>1 space per 60sqm</b></u></p> <p><i>The following controls apply only to the <u>Newcastle City Centre, Renewal Corridors, The Junction and Hamilton B2 Local Centre zone and Darby Street Mixed Use zone:</u></i></p> <p><i>Car parking rates for all development in these areas are established based on a car parking assessment submitted with the development application which addresses the following criteria:</i></p> <ol style="list-style-type: none"> <li><i>(a) the size and nature of the development, including any change of use proposed, the amount of additional floor area relative to the existing floor area and the increased parking demand likely to be generated.</i></li> </ol>

Standard	Provision
	<p>(b) <i>the proportion of staff, visitors or patrons likely to arrive by car</i></p> <p>(c) <b><u>the availability and level of service of public transport relative to the site and the probable transport mode of staff, visitors or patrons of the development</u></b></p> <p>(d) <i>the number of employees and their likely spread of work hours</i></p> <p>(e) <i>the hours of operation the location of the premises, particularly in relation to schools, local services, and employment, retail and recreational facilities</i></p> <p>(f) <i>the number of occasions during the year when the proposed development is likely to be fully utilised</i></p> <p>(g) <i>the availability of public parking within a reasonable distance of the proposed development</i></p> <p>(h) <i>the availability of additional parking facilities to cover peak demands</i></p> <p>(i) <i>the impacts of providing on-site parking</i></p> <p>(j) <i>anticipated impacts of not providing adequate on-site car parking ensuring no significant impact on public on-street parking provision in the area in context to the CN Parking Plan 2021 - Newcastle Parking Management Framework.</i></p>
Newcastle DCP 2023	<p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li><b><u>1. Reduce car dependency and prioritise walking, cycling and use of public transport.</u></b></li> <li><i>2. Ensure an appropriate level and mix of parking provision within the development, having regard to the demand, avoiding parking over/undersupply impacts.</i></li> <li><i>3. Establish an appropriate parking standard for the Newcastle city centre, Renewal corridors, The Junction and Hamilton B2 Local Centre zone and Darby Street mixed use zone that recognises its locational advantages to public transport access and active transport connections to facilitate an increase in the use of public and active transport modes.</i></li> <li><i>4. Minimise inconvenience to all users of the parking spaces.</i></li> <li><i>5. Minimise impacts on the surrounding road network.</i></li> <li><i>6. Enable greater land use efficiency.</i></li> </ol> <p><b>Controls:</b></p> <p><b><u>Commercial/ Retail:</u></b></p> <p><i>Car parking is provided in accordance with the rates set out in Table C1.01, except for car parking for development in the Newcastle City Centre, Renewal Corridors, The Junction and Hamilton B2 Local Centre</i></p>

Standard	Provision
	<p>zone and Darby Street Mixed Use zone. <b><u>The rates may be varied within these areas, subject to merit assessment of the proposal. The total number of spaces to be provided for each type of parking is rounded up to the nearest whole number.</u></b></p> <p><b><u>Attached dwellings, dual occupancy, multi dwelling housing, residential flat buildings, semi-detached dwellings, shop top housing om Newcastle city centre:</u></b></p> <ul style="list-style-type: none"> <li>▪ Small 1 bedroom – maximum average of one space per dwelling</li> <li>▪ Medium 2 bedrooms – maximum average of one space per dwelling</li> <li>▪ Large 3+ bedrooms – maximum average of two spaces per dwelling</li> <li>▪ <b><u>Visitor parking – no minimum with a maximum rate of 1 visitor space per 5 dwellings</u></b></li> </ul> <p>C-1. The following controls apply only to the <u>Newcastle city centre</u>, and mixed use zone:</p> <p><b><u>a. Car parking rates for all development in these areas are established based on a car parking assessment submitted with the DA which addresses the following criteria:</u></b></p> <ul style="list-style-type: none"> <li>i. the size and nature of the development, including any change of use proposed, the amount of additional floor area relative to the existing floor area and the increased parking demand likely to be generated.</li> <li>ii. the proportion of staff, visitors or patrons likely to arrive by car</li> <li>iii. the availability and level of service of public transport relative to the site and the probable transport mode of staff, visitors or patrons of the development</li> <li>iv. the number of employees and their likely spread of work hours</li> <li>v. the hours of operation</li> <li>vi. the location of the premises, particularly in relation to schools, local services, and employment, retail and recreational facilities</li> <li>vii. the number of occasions during the year when the proposed development is likely to be fully utilised</li> <li>viii. the availability of public parking within a reasonable distance of the proposed development</li> <li>ix. the availability of additional parking facilities to cover peak demands</li> <li>x. the impacts of providing on-site parking</li> <li>xi. anticipated impacts of not providing adequate on-site car parking ensuring no significant impact on public on-street parking provision in the area in context to the City of Newcastle (CN) Parking Plan 2021 - Newcastle Parking Management Framework</li> </ul>

Standard	Provision
	<p><i>b. residential development as listed in Table C1.03 must provide no more than the number of car parking spaces specified</i></p> <p><i>c. for residential development, the proposed provision of car parking within this maximum car parking rate does not prevent the reallocation of car parking through unbundling</i></p> <p><i>d. for residential development, visitor car parking spaces are not to be unbundled and are to be nominated as common property in a strata subdivision.</i></p> <p><i>C-2. The following control applies to residential development with visitor parking:</i></p> <p><i>a. visitor parking is allocated, marked out on the pavement surface, clearly signposted and designated as common property on any Strata Plan.</i></p> <p><i>C-3. The following controls apply only to Mixed Use Development:</i></p> <p><i>a. the total number of parking spaces for a mixed-use development is generally calculated based on the sum of required car parking spaces in respect of each use, unless it is demonstrated that an overlap of car parking demand is likely to occur</i></p> <p><i>b. the total number of spaces to be provided for each type of use of parking is rounded up to the nearest whole number.</i></p> <p><i>C-4. Car parking is provided in accordance with the rates set out in Table C1.01, except for car parking for development in the <u>Newcastle City Centre</u>, <u>Renewal Corridors</u>, <u>The Junction</u> and <u>Hamilton B2 Local Centre zone</u> and <u>Darby Street Mixed Use zone</u>. <b><u>The rates may be varied within these areas, subject to merit assessment of the proposal. The total number of spaces to be provided for each type of parking is rounded up to the nearest whole number.</u></b></i></p> <p><i>C-6. Parking provision for major traffic generating development is assessed on merit, with particular reference to:</i></p> <p><i>a. likely peak usage times</i></p> <p><i>b. the extent to which development will attract additional patronage, as opposed to drawing on existing visitations.</i></p> <p><i>c. the likely use of public transport.</i></p>

Considering the above parking provisions, Table 22 illustrates the proposed car parking across the precinct.

Table 22 Car Parking Provisions

Stage	DCP 2012 requirement	DCP 2023 requirement	Provision	Deficit	Relevance to Stage 3 and 4
Commercial and Retail Uses					



Stage	DCP 2012 requirement	DCP 2023 requirement	Provision	Deficit	Relevance to Stage 3 and 4
1	52	52	26	26	The deficiency for commercial and retail car parking spaces is because of Stage 1 and 2, which are already approved, built, and deemed acceptable by the previous Panel. <b>The deficiency would exist even if Stage 3 and 4 was approved.</b>
2	22	22	11	11	The deficiency for commercial and retail car parking spaces is because of Stage 1 and 2, which are already approved, built, and deemed acceptable by the previous Panel. <b>The deficiency would exist even if Stage 3 and 4 was approved.</b>
3	17	17	38	SURPLUS – Nil deficiency	<b>There is no non-compliance for Stage 3.</b>
4	9	9	9	Nil	<b>There is no non-compliance for Stage 4.</b>
<b>Visitor</b>					
1	43	Nil – merits based assessment	11 (provided in Stage 3)	32 spaces under DCP 2012.  Nil under DCP 2023 (merits based assessment)	<b>The refusal of Stage 3 and 4, has worsened the visitor parking provision for Stage 1.</b>  <b>Under the DCP 2023, if a merits based approach was taken by the Panel, as per the Parking Occupancy Survey, the parking would be considered acceptable.</b>
2	25	Nil – merits based assessment	7	18 spaces under DCP 2012.  Nil under DCP 2023 (merits	<b>The deficiency would exist even if Stage 3 and 4 was approved.</b>  <b>Under the DCP 2023, if a merits based approach was taken by the Panel, as per the Parking Occupancy</b>

Stage	DCP 2012 requirement	DCP 2023 requirement	Provision	Deficit	Relevance to Stage 3 and 4
				based assessment)	<b>Survey, the parking would be considered acceptable.</b>
3	18	Nil – merits based assessment	6	12 spaces under DCP 2012.  Nil under DCP 2023 (merits based assessment)	<b>The majority deficiency would exist even if Stage 3 and 4 was approved – strictly speaking, the argument is related to 26 car parking spaces. Despite this, the Panel have not considered the changing context in relation to the Newcastle DCP, which allows for a merit based assessment for visitor spaces rather than strict compliance.</b>
4	21	Nil – merits based assessment	7	14 spaces under DCP 2012.  Nil under DCP 2023 (merits based assessment)	<b>The majority deficiency would exist even if Stage 3 and 4 was approved – strictly speaking, the argument is related to 26 car parking spaces. Despite this, the Panel have not considered the changing context in relation to the Newcastle DCP, which allows for a merit based assessment for visitor spaces rather than strict compliance.</b>

In principle, the Panel's position is that the proposed development generates a demand for parking and the responsibility to address the issue of parking resides with the developer of the site. Iris accepts this position; however, CN voluntarily granted a concession against the then current DCP which provided the development with a discount against those parking rates.

Under the original concept DA2015/10185, the traffic consultant, GTA, identified a parking deficit in the order of 162 spaces. The parking deficit essentially comprises 50% commercial / retail and 75% residential visitor parking concessions granted under the application's approval.

The East End development is a complex development with over 16,611m<sup>2</sup> of site area in the city centre that involves heritage retention, ground conditions that require grouting of abandoned mines, and is set over an inclined site. As the Panel is aware, the site is being developed at a cost of circa \$300m in 3 distinct stages over circa 8 years in planning (construction is longer). Whilst each site may have small non-compliances that would be expected over such a large master plan project (e.g. Stage 1 has no visitor parking, Stage 3 has a greater proportion of retail/commercial parking to cover Stages 2 and 4 etc.), overall, the development is compliant on strict current DCP requirements or newly introduced merit-based assessments. Both CN and the Applicant have said that a common-sense approach must be adopted in applying a car parking solution.

The parking survey shows that there is ample on-street parking to address the merit based visitor parking against the old, no longer relevant, specified DCP visitor rates. The survey results show that even at the peak for on-street and off-street parking across the survey area, there were 675 and 170 available parking spaces (total 845) respectively to cater for visitor parking in addition to the 31 visitor spaces provided across the development. These on and off-street parking spaces are in addition to the replacement spaces that CN has publicly committed to return to the King St car park site. However, it is clear that when CN does make known its parking numbers, there will be far more than 845 spaces available to address visitor parking demands for the East End (development in addition to the 31 merit-based visitor spaces that are provided).

### 9.3.4. Conclusion

The parking occupancy survey results confirm that there is an extensive amount of parking remaining available for visitors within walking distance of the development, even during peak periods, should they be unable to source an on-site visitor space. Based on the results of the survey, it can be concluded:

- 31 visitor spaces across 530 apartments is, on merit, acceptable.
- The worst case analysis/peak period for parking shows there are a total of 845 on and off-street parking spaces available
- Under the old DCP (NDCP 2012), approximately 106 visitor parking spaces would be required based on apartment numbers - under that DCP, City of Newcastle would conclude on a strict reading of that planning document that a shortfall of 75 car spaces results (106 less 31 = 75 spaces).
- The conditions of the concept consent, based on greater certainty of actual and proposed apartments, would have placed the onus on Iris to provide for 27 visitor parking spaces – with the balance 75% DCP requirement to be provided by the King Street car park and on-street parking.
- This report has referenced that the discount provided in the concept consent meant that 75% of visitor car parking would be provided by the now defunct King St car park and on-street parking. It has been demonstrated that:
  - There is ample on and off street parking through the parking survey to cater for the old DCP parking rates for visitor parking, and if the full assessment/peak requirement for visitor parking of 106 spaces (per the rates of the old DCP) were required at the same exact time that general parking demand (on and off-street) was at its peak, CN's claimed shortfall of spaces (net 75) would only consume 8.9% of available on and off-street public parking.
  - CN has a commitment an obligation to honour the conditions of the concept consent and in terms of its undertaking to the local community to replace the parking lost as a result of its decision to demolish the community asset that was the King Street car park –that the CN car park when rebuilt will further reduce pressure on the surrounding infrastructure in terms of parking demand and availability.
  - The CN King St car park did not operate in a manner that the author believed would have provided any significant relief for casual visitor parking (or casual any type of parking). It closed at 7pm weekdays, closed at 4.30 on Saturdays and was closed all day Sunday – even if the car park was still standing, the contribution that asset would have made to accommodating the parking arising from the DCP visitor parking discount would have been minimal at best and on-street parking would have provided most, if not all, of the “shortfall” parking would have defaulted to on street anyway.

Overall, the parking occupancy survey results confirms that there is an extensive amount of parking remaining available for visitors within walking distance of the development, even during peak periods. Therefore, we are confident that the development will not create unacceptable impacts given the deficiency in car parking.

## 9.4. REASON FOR REFUSAL 4 – DEVELOPMENT IS NOT IN THE PUBLIC INTEREST

### KEY TAKEAWAY

Iris Capital have gone above and beyond throughout the lifespan of this modification and **have the support of CN, the Government Architect of NSW, the Design Integrity Panel, Urban Design Review Panel and First Nation's people**. Furthermore, Iris has the support of the broader community considering the significant public benefit the project will deliver and the success of Stage 1.

Furthermore, the proposed modification is an expected outcome of CNs intended strategic planning goals for the Newcastle City Centre and the aims of Newcastle East End Character Area providing for a significant revitalisation with a focus on a mixture of commercial and residential redevelopment. **The proposal will achieve a significant public benefit and outcome in terms of the NDCP (i.e. Section 6.01) by improving the view corridor from the harbour to the Cathedral by removing the conflict caused by the layout of the existing Concept DA approval.**

### 9.4.1. Panel's Position

The Panel noted in their determination that:

4. *The development is not in the public interest having regard to impacts on views and the deficiency of car parking spaces pursuant to Section 4.15(1)(e) Environmental Planning and Assessment Act 1979.*

### 9.4.2. CN's Position

CN considered the modification in the public interest, specifically the following was noted in their assessment report:

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

### 9.4.3. Applicant's Response

The proposal as modified is in the public interest as it will result in an increased to public domain outcome for the local community. The key benefits of the project can be summarised as follows:

- The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the "Harbour to Cathedral Park" to Building 3 South (DBJ) providing a generous and publicly accessible space. City of Newcastle have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012 (and NDCP 2023). The desired public outcome is currently restricted by a small component of the western end of Building 3 South.
- The Design Team have been driven by delivering a 'civic response.' The three buildings on Stage 3 have been combined to form a recognisable civic composition in which the Christ Church Cathedral, remote to the Square, plays a critical role.
- The proposal includes the creation of a new urban plaza "Market Square" and will improve ground plane activation and permeability through the site. The planning of this space is in keeping with the sites historic and originally intended use. Market Square is left open to possibility and will be able to adapt to the community needs including community markets, food festivals, open air cinema and small concerts.
- The redistribution of the approved GFA enhances the characteristic of Newcastle's silhouette and does not deliver a 'flat top' planning envelope. The redistribution of height across Stage 3 reinforces the notion

of a playful skyline, creating a positive contribution to Hunter Street when compared to the Concept DA scheme.

- The scheme has been through a Design Excellence process. The SJB, DBJ and Curious Practice scheme was recommended by the Jury as the winning scheme in the competitive design process. The design is a result of iterative detailed engagement and input from various CN teams including planning, waste, engineering, and public domain; and the Chair of CN's UDRP. Stage 3 and 4 will complete the staged revitalisation of Iris' East End project.
- The project is underpinned by Country. Through several community consultations with Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) the Design Team have developed a series of segments to assist the development to be a more culturally inclusive space for the local First Nations Community, and all.
- Dhiira has endorsed the scheme stating that "the final submission will include and be reflective of community, their voice is now in design. This project not only created new ways of participating for our people, economic outcomes for the project team through ideation, a chance to imagine and shape the future of the city. The outcomes produced broadly through the design process are incredible conceptualisations of a place that was, this tells a story to all people who will be drawn and access this space and preserve this opportunity to engage for future generations in Newcastle."
- The Municipal Building has been retained as 'freestanding' and unencumbered of additional storeys. This is as a result of the redistribution of building mass. This key move provides a positive heritage response.
- The proposal will deliver high-quality residential dwellings in a convenient, accessible, and naturally beautiful location. Future residents will be afforded the opportunity to live in a high-amenity location, with all the benefits of modern apartment living. The proposal provides a variety of apartment types to suit the needs and lifestyles of existing and future residents of Newcastle.
- The proposal is highly consistent with all strategic planning aims and objectives for the Newcastle City Centre and the Hunter region by providing a diversity of housing, and employment opportunities in a well-connected area. As well as the directions of the State Government is aiming to provide more housing to NSW residents.
- The views within the public domain are significantly enhanced via the creation of the view corridor from the Harbour to the Christ Church Cathedral, providing an attractive outlook which benefits the wider community.
- The parking occupancy survey results show that there is an extensive amount of parking available for visitors within walking distance of the development, even during peak periods demonstrating that the development will not create unacceptable impacts.
- The proposal is sympathetic to the surrounding context and is a well-designed scheme that unlocks the site's potential and provide significant community, local and regional social, environmental, and economic benefits.

East End is the catalyst in the ongoing revitalisation of Hunter Street and the surrounding CBD. Stage 3 and 4 will deliver on the project vision established in the Architectural Design Competition, creating a development which results in significant public benefit by providing an activated, pedestrian focused ground floor precinct, with high quality-built form that will deliver residential apartments for the City of Newcastle.

Specifically, the Panel in the Determination and Statement of Reasons stated:

*In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel during the public meeting on 11 March 2024. The Panel notes that issues of concerns included:*

- *Whether the modification is substantially the same development*
- *Height and inconsistency with the planning controls*
- *Proposal is an overdevelopment*
- *Impacts on character, streetscape, and heritage*
- *Visual impact, views, overshadowing and privacy*

- *Impacts on Christ Church Cathedral view corridors*
- *Acoustic impacts*
- *Tree removal*

*The above matters raised by the community were determined to be adequately considered by CN. The Panel considered that issues raised by the community have not been adequately addressed by the Applicant.*

Urbis is unclear if the Panel reviewed the comprehensive response to submissions prepared by the Applicant. The Panel did not engage or seek feedback from the Applicant immediately prior to or post the 11 March 2024 meeting to clarify any concerns they may have had in relation to this application. The cited concerns do not have merit for a refusal, are factually inaccurate or have been grossly overstated. For completeness, a response to each of these points has been addressed in Table 23.

**Delivering public benefit has been at the heart of the design response, particularly the ‘Harbour to Cathedral’ connection and a civic square. The Design Team have been driven by delivering a ‘civic response.’ The three buildings on Stage 3 have been combined to form a recognisable civic composition in which the Christ Church Cathedral, remote to the Square, plays a critical role.**

Table 23 Response to Public Submissions

Matter	Response
Whether the modification is substantially the same development	Urbis and CN are of the opinion that the modification is substantially the same development. The Panel and objections do not justify the concerns with reference to relevant Case Law to support this position.
Height and inconsistency with the planning controls	<p>The proposed variation to the height standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient planning grounds and public benefit to justify this variation. The additional height as a result of the re massing of the Concept DA is considered justifiable from an environmental planning perspective as it delivers a significant public benefit.</p> <p>Furthermore, a key driver for the proposal is to strategically redistribute height and floor space from the part of the approved Concept DA (specifically the part of the building envelope which impeded the visual and pedestrian links to the Cathedral).CN were not supportive of a competition brief for proposals which would have maintained the building envelope/form of the approved Concept DA. Therefore, the competition winning scheme (and subsequent DIP and UDRP meetings following this) have reviewed the appropriateness of this change to the original Concept DA in a very detailed manner from a design, form and impact perspective.</p> <p><b>Inconsistency with the planning controls</b></p> <p>The modification and associated Detailed DA only seeks to modify the height of building development standard.</p> <p>In respect to the DCP, the proposal does not comply with the street wall heights as set out within the Newcastle DCP 2012. However, during the design excellence competition and subsequent design integrity panels, the Panel were in agreeance that the proposed street frontage heights of the proposal were appropriate to the site and surrounding development.</p>

Matter	Response
	<p>The proposed built form has been through a rigorous design process and was agreed by the Panel, has potential to achieve design excellence, despite being non-compliant with street wall heights.</p>
<p>Proposal is an overdevelopment</p>	<p>As referenced by CN in the Council Assessment Report regarding 'overdevelopment':</p> <p>The combination of the NLEP, NDCP and Concept DA (DA2017/00701) all envision a significant change within the East End Character Area of the Newcastle City Centre and the proposed modification is generally consistent with that strategic planning intent and the intended future character of the area.</p> <p>The proposed modification as detailed within this report, is a reasonable outcome in terms of its impacts balanced against the public interest.</p> <p>The proposed modification retains the two heritage items within the subject site, noting that the concurrent DA2023-00419 also retains the facades of 105-111 Hunter Street.</p> <p>As discussed within the UDRP assessment, that this part of the Newcastle City Centre has historically been typified by an eclectic combination of heights and building ages and the current proposal is not inconsistent with this.</p> <p>The proposed modification does not influence street wall heights. The proposed modification is consistent with the design excellence outcomes intended for the site.</p>
<p>Impacts on character, streetscape, and heritage</p>	<p>Part of the site is a local heritage item, the Municipal Building (No. I403) located at 121 Hunter Street. The Municipal Building has been retained as 'freestanding' and unencumbered of additional storeys. This key move provides a positive heritage response as the heritage fabric of the building is able to be maintained and adaptively reused.</p> <p>The proposal also includes the retention of contributory heritage facades on Hunter Street. This ensures the new built form, mixed with the unique and historic facades complements the historical significance of the area by providing a unique mix of architecture within the city centre.</p> <p>Located south of the site is a state heritage item, known as Christ Church Cathedral, Cemetery and Cathedral Park (No. I562), situated at 52A Church Street. The proposal is very cognisant of the significance of this item and accordingly provides a view corridor from the Harbour all the way up to the cathedral. This view frames the item between the new built form, creating a highly positive heritage and public domain response.</p> <p>The timber building at 74 King Street has been approved for demolition by CN and has been demolished consistent with the consent, therefore this is no longer a valid consideration for this DA.</p> <p>The Panel and objectors have also taken an isolated view to 'heritage' not considering cultural and Aboriginal heritage. The project is</p>

Matter	Response
	<p>underpinned by Country. Through several community consultations with Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) the Design Team have developed a series of segments to assist the development to be a more culturally inclusive space for the local First Nations Community, and all.</p>
<p>Visual impact, views, overshadowing and privacy</p>	<p><b>Visual impact and views</b></p> <p>The Panel does not consist of a view sharing or visual impact expert. The public and private views have been considered cumulatively and acceptable by Jane Maze-Riley (an LEC view sharing expert), Dr Philip Pollard (an LEC view sharing expert) and CN.</p> <p><b>Overshadowing</b></p> <p>The shadowing impacts of the proposed modifications are reasonable. Most overshadowing falls within the approved Concept DA massing with only small increments of shadow falling outside of the approved envelopes.</p> <p>In terms of key surrounding development:</p> <ul style="list-style-type: none"> <li>▪ <b>The Herald:</b> the Herald apartments in the south-west corner of the site will be slightly impacted by the additional height between 1:00pm and 2:00pm at level 1 only – it is assumed 1 to 2 apartments are impacted briefly. Apartments above Level 02 will receive solar access at 1:00pm. The concept DA massing would have overshadowed The Herald after 2:00pm. However, they will receive more than 3 hours of morning sun between 9am and 1pm.</li> <li>▪ <b>Newcomen Street residents (eastern side):</b> the eastern side of Newcomen Street will be self-shadowed between 9am and 10am. These residents will receive solar access between 11am and 1pm (2 hours).</li> <li>▪ <b>Newcomen Street residents (western side):</b> the western side of Newcomen Street will receive morning sun between 9am and 11am. The modification to the Concept DA will not change the solar access provisions for these buildings.</li> </ul> <p><u>Newcastle Club:</u></p> <ul style="list-style-type: none"> <li>▪ the overshadowing impacts are marginally increased, specifically for the northern garden area, noting these are the worst overshadow impacts. The building itself will not be overshadowed after 11am. However, the additional shadowing does not prevent the northern façade of the club receiving solar access between 9am and 3:00pm.</li> </ul> <p><u>Public Domain:</u></p> <p>The diagrams reveal that the proposed overshadowing does not fall onto public open spaces and the proposed Market Square will receive plenty of sunlight during mid-winter making it a pleasant space for residents and</p>



Matter	Response
	<p>visitors to enjoy. This assessment is based upon the 21 June time period (winter solstice).</p> <p>In addition, the overshadowing impacts are improved on CN's carpark site with the proposed scheme compared to the Concept DA because of the redistributed building mass. The re massing and inclusion of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the Concept DA assessment, and results in an improved outcome.</p> <p><b>Privacy</b></p> <p>The proposed development generally complies with the ADG, which is a State-wide policy that provides guidance on building separation and what is an equitable setback share in different building scenarios.</p> <p>The removal of street trees in public open spaces is not proposed by Iris.</p> <p>16-18 Newcomen Street does not provide an equitable setback as per the Apartment Design Guidelines. The proposal is not required to provide additional setbacks to compensate the reduced setback of 16-18 Newcomen Street development.</p> <p>Where these setbacks do not comply, the proposal provides appropriate screening to ensure privacy of existing and future residents.</p> <p>Additionally, clause 7.4 of the Newcastle Local Environmental Plan 2012 discusses the requirement for buildings at a height of 45 metres or higher to have a building separation of a minimum 24 metres. However, given the development does not propose any buildings above 45 metres, the proposal is compliant with this clause.</p> <p>In addition, the perceived privacy impacts are not worsened from the Concept DA.</p>
Impacts on Christ Church Cathedral view corridors	<p>Public views are enhanced. The modification will not impact views to the Christ Church Cathedral as claimed by objectors.</p> <p>The Panel and objections do not specify the concerns regarding impacts to Christ Church Cathedral, nor do they justify the concerns with modelling and reference to relevant policy and legislation.</p>
Acoustic impacts	<p>The acoustic impacts have been considered by CN's Environmental Health Officer and Renzo Tonin &amp; Associates, both of whom are qualified acoustic engineers.</p> <p>The Panel and objections do not specify the acoustic concerns, nor do they justify the concerns with modelling and reference to relevant policy and legislation. Furthermore, this is a modification application, and no built form or physical works are proposed – this is therefore a matter for the concurrent Detailed DA.</p>

Matter	Response
Tree removal	<p>No tree removal is proposed by Iris. This is factually incorrect and should not have informed the Panel's decision.</p> <p>Furthermore, this is a modification application, and no built form or physical works are proposed – this is therefore a matter for the concurrent Detailed DA. An extensive landscaping strategy has been proposed to counteract the removal of trees onsite. CN is also currently preparing street trees and public domain landscape work plans.</p>

In addition, a comprehensive Response to Submissions has been prepared by Urbis and attached at **Appendix D**. The standard notification period, as per the Community Participation Plan, was completed between 20 June 2024 and 04 July 2024. The following provides an accurate summary of the valid submissions during the notification period:

- A total of 241 submissions were received during the standard notification period and outside of the standard notification period as of 18 July 2023.
- 134 submissions were received in support of the development, **equating to 55.6% in favour of the development**.
- 107 submissions were received objecting to the development, equating to 44.4% in favour of the development. Of the objections, three (3) were received from Newcastle Club, Newcastle Inner City Residents Alliance, and Newcastle East Residents Group Inc (one submission each).

In addition to the formal City of Newcastle notification period, members of the Newcastle local community has used "Straw Poll" to record their position on RE2024/00002. The results of which can be viewed here: <https://strawpoll.com/poy9kR4M8gJ/results>. 378 votes in support of the proposal have been recorded and 4 votes against the development, **equating to 99% in favour of the development**.

Furthermore, City of Newcastle (CN) support the proposal, as demonstrated by their recommendation for approval. In addition to the support from CN's Planning Officer, East End Stage 3 and 4 has received support from the follow individuals, agencies, and groups:

- Government Architect of NSW.
- Urban Design Review Panel (UDRP), specifically Dr Philip Pollard, Kerry Hunter, and Colin Brady.
- Design Integrity Panel (DIP), and previous the Design Excellence Competition Jury, specifically Paulo Macchia (Director, Design Governance – Government Architect NSW), Dr Philip Pollard (Director & Nominated Architect 5241 – AMENITY urban & natural environments) and Sandra Furtado (Director, Furtado Sullivan Architects).
- Dhiira, Teresa Dargin, Dr. Ray Kelly, Dr. John Maynard, and Peter Townsend (Awabakal LALC) as First Nations representatives. The proposal engaged heavily with First Nations persons to ensure connection with Country, which has received glowing endorsement from the First Nations community who assisted with evolving the scheme.
- CN's internal divisions including heritage, waste, ddevelopment engineers, public space and city greening and environmental health teams.

In summary, the proposed modification is considered, on balance, to be in the public interest. The public benefit outcome has been at the forefront of the design process.

## 10. DIVISION 8.2 & 8.3 OF THE EP&A ACT 1979

Under Section 8.2(1) of the Act, the DA qualifies as an application that able to be reviewed.

Section 8.3 (3) states:

*“In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development”.*

As demonstrated above, by the recent Court Judgement *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 ('*Realize Architecture (1)*') dated 9 August 2023 it is acknowledged that although there were quantitative differences between the Subject Modification and the Original Consent that may appear in isolation to be significant, the focus of the test in s.4.55(2)(a) is on the whole and on an overall balancing of the two developments.

As provided within the findings of the View Sharing and Visual Impact Assessment which was previously provided to Council in response to requests for further information. We have also completed a thorough review of Council's Supplementary Report which details their agreeance that the cumulative impacts on public and private views are acceptable.

The detailed analysis and examination of the parking situation in East End supported by the parking survey confirms that there is an extensive amount of parking remaining available for visitors within walking distance of the development, even during peak periods. Thus, demonstrating the modification will not result in unacceptable impacts given the deficiency in car parking.

The detailed analysis of the community benefits provided by the proposal demonstrates that the modification is within the public interest, creating a development which results in significant public benefit by providing an activated, pedestrian focused ground floor precinct, with high quality-built form that will deliver residential apartments for the CN.

# 11. CONCLUSION

This report has been prepared to support a Section 8.2 Review Application to Modification Application (MA2023/00175).

In summary, we conclude that:

- The project is a significant 2 block site within the heart of Newcastle's CBD, which has the potential to deliver high quality housing in alignment with recent guidance from the State Government around increasing housing supply to assist in alleviating housing stress for NSW residents.
- The determination of the modification application and reasons for refusal have been considered in detail by the applicant, acknowledging that CN have shown significant support for the proposal and have continued to recommend it for approval. The applicant now believes that the reasons for refusal by the Panel have been addressed.
- In response to the reasons for refusal, the applicant has provided a robust justification as to why the development as proposed to be modified is considered 'substantially the same development' for which consent was originally granted forms part of this response. CN also outlined in their Council Assessment Report that "The proposed modification is considered to satisfy the 'substantially the same development test' required by s.4.55 of the EP&A Act." To add greater rigor to the assessment, Urbis have reviewed a recent Land and Environment Court judgement which shows that a balanced approach is required when answering the test of substantially the same, which Urbis strongly believe is aligned with the modification application.
- A detailed View Sharing and Visual Impact Assessment has been provided to aid in our response to the refusal. This assessment demonstrates that public and private view impacts are acceptable from a view impact and view sharing perspective. A detailed assessment of the parking situation within East End has also been provided, supported by a parking survey.
- A thorough analysis of the community benefits of the proposal has formed part of this response, which demonstrates that the modification is within the public interest, given the significant community benefits which the proposal will provide.

We strongly believe that all of the reasons for refusal have now been adequately addressed and the Panel should be in a position to approve the application.

Lastly, we want to re-affirm the strong need for this project to assist in responding positively to the pent-up demand for high quality housing within New South Wales. The project is completely aligned with the recent guidance from the State Government around increasing housing supply, and the applicant looks forward to progressing with the project to assist with this response to the housing crisis.

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