

JOINT REGIONAL PLANNING PANEL HUNTER AND CENTRAL COAST

Panel Reference	PPSHCC-31
DA Number	DA-2017/00701.02
LGA	City of Newcastle
Approved Development	Staged Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed use development comprising retail, commercial, public spaces, residential apartments, associated car parking & site works – Application to Modify Stage 1 of Concept Plan pursuant to Section 4.55(2): building envelopes and height, distribution of land uses, floor space and FSR
Street Address	<p>Lot 1 DP 84634, Lot 1 DP 331535, Lot 1 DP 819134, Lot 500 DP 879162, Lot 1 DP 718456, Lot 100 DP 810457, Lot 1 DP 735255, Lot 1 DP 77846, Lot A & B DP 388647, Lot 31 DP 864001, Lot 31 DP 864001, Lot 32 DP 864001, Lot A DP 89504, Lot 1 DP 84577, Lot 1 DP 610140, Lot 1 DP 749729, Lot 100 DP 1098095, Lot 1 DP 723967, Lot 1 DP 195975, Lot B DP 89504, Lot 1 DP 122380, Lot 1 DP 122381, Lot 98 DP 1098034, Lot 2 DP 331535, Lot 10 DP 1043870</p> <p>105-111, 121, 137-145, 147, 151-153, 163, 169-185 Hunter Street; 22 Newcomen Street; 3 Morgan Street; 66-74, 98-102, 104, 108-110 King Street, 14 Thorn Street and 21, 31, 33, 58 Wolfe Street Newcastle</p>
Applicant/Owner	Iris Land Pty Ltd
Date of DA lodgement	25 October 2019
Number of submissions	Nine
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	The application is a modification to Concept DA approval that was previously approved by the JRPP.
List of All Relevant Section 4.15 (1)(a) Matters	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011 Newcastle Local Environmental Plan 2012 <p>Development Control Plan: 4.15 (1)(a)(iii)</p> <ul style="list-style-type: none"> Newcastle Development Control Plan 2012 Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Appendix A: Recommended conditions of consent.</p> <p>Appendix B: List of the documents submitted with the application for assessment.</p> <p>Appendix C: Plans (SJB Architects)</p> <p>Appendix D: Comparative Diagrams</p> <p>Appendix E: View Analysis (SJB Planning)</p>

Summary of s4.15 matters**Yes**

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

Legislative clauses requiring consent authority satisfaction**Yes**

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

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

Clause 4.6 Exceptions to development standards**Yes**

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions?

**Not
Applicable**

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

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

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

Assessment Report and Recommendation

1. Site and Locality Description

(a) Wider 'Newcastle East End' Concept Plan Site

The land applying to the overall approved 'Newcastle East End' Concept Plan site is located between the Hunter Street Mall and the Christ Church Cathedral and is bounded by Perkins and Newcomen Streets. The Concept Plan site comprises the majority of the buildings across four (4) city blocks, between Perkins, Hunter, Newcomen and King Streets, as shown in **Figure**

1. The total area of the site is 1.66ha and stretches approximately 280m in length east to west along Hunter Street and approximately 90m in depth along Thorn Street. The proposed modifications to the Concept Plan in terms of physical built form principally relate to Block 1, which is bounded by Hunter Street (north), Wolfe Street (west), Thorn Street (east) and King Street (south) – refer heading (b) below.

The wider site is highly urbanised in character, with the majority of development built boundary to boundary, with the exception of the south-east corner of the site between Morgan and Newcomen Streets. Existing development comprises a mix of building forms, styles and ages, of varying heights. Typically, development is two (2), three (3) or four (4) storeys in scale across the majority of the site. Prior to the commencement of development of Stage 1 (Block 1), development across the site comprised 25 buildings with a gross floor area of approximately 23,500m² containing some 91 tenancies, of which approximately 26 were vacant. The buildings have typically been used for a varied range of commercial and retail uses. Land uses within the site include a mix of retail shops and associated parking, cafes and restaurants, medical centres, commercial offices, former theatre, Masonic Hall and car parks.

Car parking across the site is largely limited to on-street parking. CN's King Street above ground car park located adjacent to and south of the site also contributes to the supply of car parking, accommodating 445 vehicles. Prior to the commencement of Stage 1 (on Block 1), parking was available on the site (within the former David Jones car park, located on the corner of Perkins and King Streets, which accommodated approximately 404 vehicles).

The site is located on the southern side of Newcastle Harbour, on the steep north-facing and lower slopes below Cathedral Park. The land has a fall of approximately 21m from a high point at RL 23.47 at the south-eastern corner of Newcomen and King Streets to RL 2.73m at the north-western corner at Hunter and Perkins Streets. The Hunter Street frontage of the site falls gradually from east to west from RL 6.32 at the intersection with Newcomen Street to RL 2.73 at the intersection with Perkins Street. The southern boundary of the site along King Street falls from east to west from RL 23.47 at Newcomen Street to RL 4.74 at Perkins Street. Newcomen Street on the eastern boundary falls steeply from RL 23.47 at the corner of King Street to RL 2.73 at Hunter Street, whereas the western boundary along Perkins Street has a far more gradual fall of only 2m from RL 4.74 at King Street to RL 2.73 at Hunter Street.

(b) Description of Block 1

The proposed modifications to the Concept Plan in terms of physical built form principally relate to Block 1 which generally comprises the city block surrounded by Hunter Street (northern frontage of 66m), Perkins Street (western frontage of 91m), King Street (southern frontage 58m) and Wolfe Street (eastern frontage of 55m). This site forms the western-most block ('Block 1') of the four-block Newcastle East site (refer **Figure 1**).

The subject site comprises two properties and has a total area of 6,556m², 163 and 169-185 Hunter Street, Newcastle (Lot 1 DP 610140 and Lot 1 DP 749729). There are two properties within the block that do not comprise the subject site/Concept Plan, being 159 Hunter Street (north-eastern corner of site) and the Telstra Exchange at 114 King Street (south-eastern corner of site).

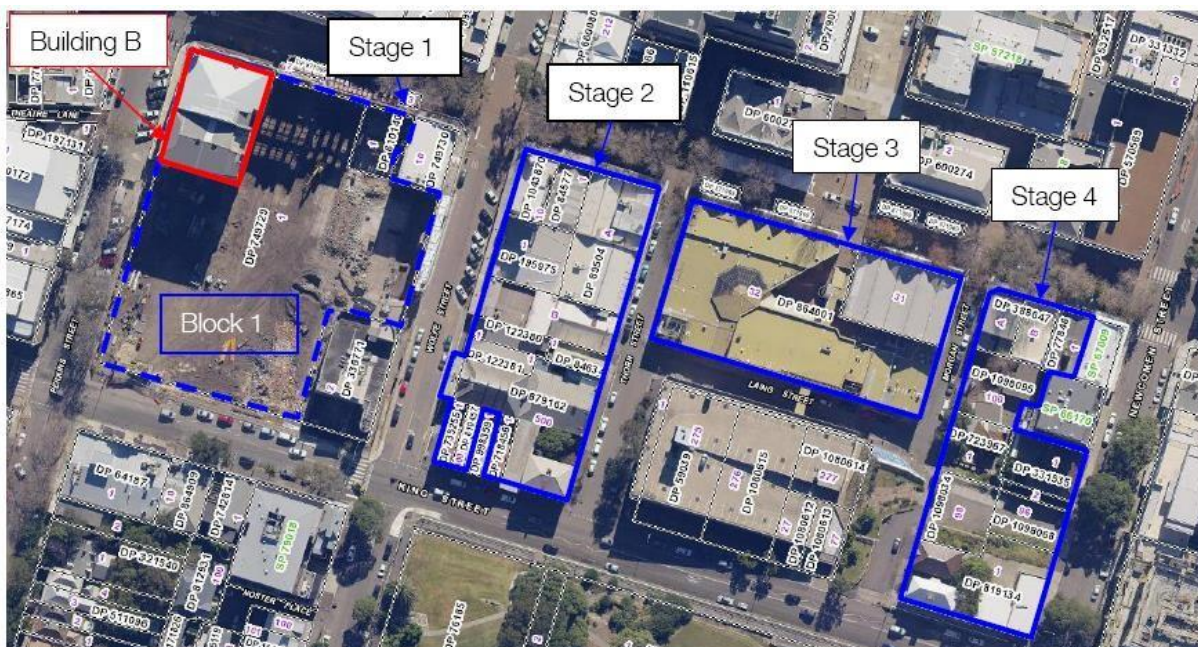
The site is a construction site and does not currently accommodate any uses. With the exception of the former David Jones building (Building B) and other heritage elements on Hunter and Wolfe Streets, all structures have been demolished. Site preparation works and the basement have been completed and the ground level is currently under construction.

Building B, being the former David Jones building, is a five (5) to six (6) storey brick building, that comprises two (2) building elements:

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

The proposed modifications to the Concept Development Approval have arisen due to changes to the design and land use proposed for this building.

Figure 1: Aerial photo showing the location of the subject site (Building B in red), Stage 1/Block 1 outlined in dashed blue, and the other 3 blocks of the Newcastle East End Precinct (in blue) (Source: SIX Maps from Figure 3 SJB Planning, Statement of Support p13)



Description of Surrounding Locality

- North - development along the northern side of the Hunter Street Mall is a mix of two (2), three (3) and four (4) storey buildings with retail at ground and typically commercial office space above, and includes two (2) heritage buildings at 160 and 170 Hunter Street;
- West - Perkins Street forms the eastern boundary of the site. On the western side of Perkins Street is a mix of commercial development of various scales and building forms. Uses comprise the Crown and Anchor Hotel, retail shops and offices and the former Victoria Theatre. The streetscape presents a mixture of scale and form.
- South - The southern boundary of the site is King Street. On the opposite side of King Street, between Newcomen and Wolfe Streets, is Cathedral Park, the Christ Church Cathedral and the Newcastle Club. The presentation to King Street at this point is dominated by an elevated footpath, large sandstone retaining walls and steeply rising topography. The Cathedral Park and the Cathedral locations enjoy views north towards the harbour over the site.

- East - Newcomen Street forms the eastern boundary of the site and falls steeply from King Street toward the Harbour. Street trees within the road carriageway provide a leafy character to the upper part of the street. Otherwise Newcomen Street is dominated by the seven (7) and eight (8) storey multi-unit residential development on the western side of the street. The at-grade car park of the Newcastle Herald site is located on the east side at the corner of King Street. Between Wolfe and Perkins Streets development is a two (2), four (4) and six (6) storey scaled development, which appears to be largely residential in use. Developments east of Newcomen Street and west of Perkins Street along the northern and southern side of King Street vary in scale and form and are typically used for broad commercial uses with some mixed-use development on the northern side of King Street.

2. Background

What is a Concept Approval?

Section 4.22 'Concept development applications' of the *Environmental Planning and Assessment Act 1979* (reproduced below) permits an initial 'concept' application which sets out building envelopes and other relevant controls, for which separate later development applications are lodged for the physical works associated with the development (which may be in stages). For a developer, this provides some certainty for development to be permitted provided it is consistent with the concept. For the consent authority, in approving one part of a development, it provides an understanding of how that part will fit in with the concept for the whole site.

While Concept Approvals contemplates some change to the detail within each future stage within subsequent DAs, these need to be within the parameters of the Concept Approval criteria.

- (1) *For the purposes of this Act, a **concept development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—*
 - (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
 - (b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

Note.

The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).

The following provides a background to the complex and changing Concept Development Process for the East Newcastle Precinct.

Original Newcastle East End Staged Concept Proposal: Development Consent DA- 2015/10182 (Now Surrendered)

A concept development application (No. 2015/10182) for the same four city blocks was lodged by UrbanGrowth NSW land holdings (the former owner of the land, together with GPT). The Concept Proposal was approved by the Hunter & Central Coast Joint Regional Planning Panel (JRPP) subject to conditions on 28 April 2016. The Concept DA was submitted in accordance with (then) Section 83B of the *Environmental Planning and Assessment Act 1979*, now Section 4.22.

The Concept development application granted consent for building envelopes and height, indicative land use mix and floor space allocation, however did not comprise any physical works. The Concept Approval required separate future development applications within the approved seven (7) stages of the development.

In summary the Concept Proposal comprised:

- A mixed-use development comprising retail, commercial and residential uses;
- An indicative GFA of 55,400m² and allocation of FSR;
- Car parking with a capacity for approximately 491 vehicles;
- Vehicular access for car parking from King Street, Perkins Street, Wolfe Street, Thorn Street, Laing Street, Morgan Street and Newcomen Street;
- Service vehicular access from Perkins Street, Thorn Street, Laing Street and Morgan Street;
- Building envelopes and heights varying between 2 and 12 storeys;
- Staging of the development (7 stages);
- Public access, building retention and conservation, infrastructure and construction management strategies.

Development Consent DA-2017/00701: New/Revised Concept Plan for Newcastle East End The land was subsequently acquired by Iris Land Pty Ltd who lodged a Development Application (DA-2017/00701) to replace the above approved Concept Approval, which was surrendered. Many features of the 2017 revised concept application were the same, and it was not necessary to revisit the already assessed aspects of the revised staged concept application that did not change.

In summary, the key changes from the originally-approved (2015) Staged Concept proposal and 2017 Staged Concept DA were as follows:

- Alterations to the setbacks to the building envelopes;
- Redistribution of the floor space ratios (FSRs) on the blocks across the site and increase in the gross FSR on the site from 3.33:1 to 3.67:1;
- Relocation of above ground car parking to basement levels;
- Alterations to staging plan from seven (7) to four (4) stages to align with the four street blocks; and
- Reconfiguration of through-site link.

The Concept Proposal was approved by the JRPP, subject to conditions, on 21 December 2017 and a Development Consent was issued on 2 January 2018.

Development Consent for Stage 1 Works (DA-2017/00700)

A DA for (the revised) Stage 1 (comprising the city block bounded by Hunter, Perkins, King and Wolfe Streets) was submitted at the same time as the 2017 Concept DA and was consistent with that revised Staged Concept DA. A separate assessment report on the Stage 1 DA was considered at the same meeting of the JRPP as the Staged Concept DA (on 21 December 2017) and was approved. A Development Consent was issued on 4 January 2018. Works have commenced.

S4.55 Modification DA-2017/00700.01: Amendment to Stage 1

An application to modify Development Consent DA-2017/00700 pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to amend aspects of Block 1 was approved by CN on 6 February 2019. This modification granted consent to minor amendments to apartment layouts; an increase in apartment numbers from 225 to 227; reconfiguration of retail tenancies; alterations to materials; increase in the roof level of Building C to accommodate construction requirements (with no increase in the maximum overall height); alteration to the footprint of the basement; and other minor changes to signage, loading docks, carparking, substation and fire egress. No change to the Concept Approval was required.

S4.55 Modification DA-2017/00701.01: Amendment to Stage 2/Block 2 of Concept Plan

This application sought to modify Development Consent DA-2017/00701 pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to amend aspects of Block 2 principally of the approved Staged Concept proposal (which does not involve any physical works). The proposed modifications to the Concept Plan in terms of physical built form principally related to Block 2. In summary, the key changes from the approved concept proposal are as follows:

- *Additional Land Uses:* 'Hotel and motel accommodation' and 'serviced apartments' were included as additional uses.
- *Altered mix of uses* [increased retail and residential floor area (by 19 dwellings) and slightly reduced commercial floor area]
- *GFA and FSR:* an increase in the total GFA across the site to 62,375m², thereby increasing the FSR for the whole site from 3:68:1 to 3.75:1.
- *Amendments to Building Envelopes/Massing* (Street Wall Heights & Upper Level Setbacks) & Building Height for Block 2 only.

This application was considered concurrently with Development Application DA-2018/00354 for works within Stage 2/Block 2 and was approved by the JRPP on 28 February 2019.

Development Application for Stage 2 Works (DA-2018/00354)

This DA applied to Stage 2/Block 2 only. The proposed Stage 2 works were consistent with the abovementioned modifications to the Staged Concept DA (DA-2017/00701.01). Development Application DA-2017/00354 was approved by the JRPP on 28 February 2019). In summary, this development approved:

- Construction of multi-storey buildings ranging from 3 to 8 storeys in height, with retail and commercial uses at ground and mezzanine levels and residential apartments above;
- Retention and adaptive use of Lyrique Theatre and Masonic Hall, for retail and commercial uses at ground and mezzanine levels and residential apartments above;
- Retention of heritage facades of former Royal Exchange Hotel and Soul Pattinson Chemist on Hunter Street;
- Retention of the terrace buildings on King Street for multi dwelling housing;
- 121 dwellings and 1,510m² of retail and commercial space;
- A floor space ratio (FSR) of 3.55:1;
- Basement car parking;
- A mid-block pedestrian connection linking Wolfe Street and Thorn Street.

Pre-lodgement Meetings and Design Excellence Process

In March 2019 SJB Architects and SJB Planning presented the project in two separate meetings to (i) the Urban Design Consultative Group (UDCG), and (ii) Council technical staff, in addition to consultant planner Nadine Page (TCG Planning) and Lisa Trueman (GML Heritage). CN provided correspondence to the applicant dated 8 April 2019 of feedback on the draft proposal.

The Statement of Environmental Effects (SJB Planning p28) states that a further meeting was "held with Newcastle Council's UDCG on...24 April 2019. The design of the proposal evolved through this process in response to feedback from the UDCG, as well as ongoing review and

analysis of the design team. Further details of the alternative design excellence process, including the feedback from the UDCG, is provided in the Design Report (accompanying the application)."

Current s4.55 Modification DA-2017/00701.02: Amendment to Stage 1/Block 1 of Concept Plan

This report applies to the application to modify Development Consent DA-2017/00701.01 pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to amend aspects of Block 1 of the approved Staged Concept proposal (which does not involve any physical works). The proposed modifications have arisen from the proposed adaptive reuse of the former David Jones building (Building B) at 163 and 169-185 Hunter Street, Newcastle, for a hotel and associated alterations and additions. Development DA-2019/01150 was lodged concurrently with this modification application (refer below). Hence the Concept DA is proposed to be modified to facilitate these works: building envelopes and height, distribution of land uses, floor space and FSR. A detailed description of the modifications is provided at Section 3 of this report.

Current Development Application for David Jones Building Works (DA-2019/01150)

The DA seeks approval for the adaptive reuse and alterations and additions to the heritage listed former David Jones building for a hotel. With the exception of some miscellaneous amendments to other parts of Block 1, the amendments relate to the former David Jones building only (referred to Building B in the Stage 1 Consent). The other approved aspects of Block 1 will continue to be constructed as approved by DA-2017/00700). Key elements of the proposal include:

- Change of use (from shop top housing) to a hotel incorporating guest rooms, lobby and ancillary licenced bars, restaurant and gaming lounge;
- Demolition of existing southern wall above the ground level, and a new infill addition to the rear adjacent to the approved laneway;
- A roof-top addition incorporating hotel guest rooms, bar and terrace;
- Internal alterations to the existing building including the demolition of the lifts and stairwell and realignment of floor levels to align with the existing window openings on Perkins Street;
- Restoration of facades as per the approved Stage 1 DA.

The proposed works are consistent with the proposed modifications to the Staged Concept DA (DA-2017/00701.02) ie. this application. A separate assessment report on DA-2019/1150 has been prepared for consideration by the JRPP. Hence some of the planning issues within this report also are addressed in the separate report for DA-2019/01150.

3. Project Description (Proposed Modifications)

The application (No. 2017/00701.02) seeks consent for modifications of the approved Concept Proposal for the redevelopment of the four-block combined land holdings of Iris Land Pty Ltd (predominantly to Building B 'former David Jones' building within Block 1 only). The reason for the modification is so the concurrent DA-2019/01150 is not inconsistent with the current approved Staged DA Consent.

Key Aspects of the Revised Concept Proposal:

Table 1 summarises the key aspects of the proposed Staged Concept Development. To indicate how the concept proposal has amended over time, the table also indicates a comparison of the original surrendered (2015) Concept application, the current approved Development Consent (2017.00701.01) and the proposed modification.

Table 1: Comparison of Key Development Data (Source: *SJB Planning, Statement of Support V1 24/10/19*)

Element	Approved Concept (DA2017/00701)	Modification 1	Modification 2 (Proposed Current)
GFA	61,130m ²	62,375m ²	63,617m ²
Land Use GFA (approx.)	7,300m ² retail 1,500m ² commercial 52,330m ² residential use	7,942m ² retail 1,160m ² retail 53,273m ² residential use	8,100m ² retail 1,160m ² retail 50,101m ² residential use 4,256m ² hotel
GFA Allocation Across Blocks	Block 1: 26,224m ² Block 2: 11,709m ² Block 3: 11,034m ² Block 4: 12,163m ²	Block 1: No change Block 2: 12,954m ² Block 3: No change Block 4: No change	Block 1: 27,466m ² Block 2: No change Block 3: No change Block 4: No change
FSR	3.68:1	3.75:1	3.83:1
FSR Across Blocks	Block 1: 4.0:1 Block 2: 3.2:1 Block 3: 3.3:1 Block 4: 4.0:1	Block 1: No change Block 2: 3.55:1 Block 3: No change Block 4: No change	Block 1: 4.19:1 Block 2: No change Block 3: No change Block 4: No change
Maximum Building Height	2-11 storeys (maximum RL 42.0)	No change	No change
Dwellings	563	582	566 (approx.)
Carparking	553	614 (SOS '616 approx')	No change
Carparking Distribution	Block 1: 273 Block 2: 76 Block 3: 88 Block 4: 112	Block 1: 273 Block 2: 143 /137 Block 3: 88 Block 4: 114	Block 1: No change Block 2: No change Block 3: No change Block 4: No change
Staging	4 stages	No change	No change

The following provides a detailed description of the proposed modifications to Stage 1/Block 1 Land Uses [Source: adapted from *SJB Planning 'Statement of Support'* (2018) p20-37; and *SJB Correspondence* (2019)]:

Land Use

The proposal seeks to alter the approved mix of uses within the Stage 1 site (Block 1) by:

- Reducing the quantum of residential floor area and resultant estimated apartments yield across the block (from 582 apartments to 566).
- Introducing a hotel use, incorporating ancillary retail in lieu of residential apartments and the hotel lobby. The location of the lift core within the former David Jones's building has also altered.

GFA and FSR

As outlined in Table 1, the proposal provides an increase in the total GFA across the site which will increase the gross FSR from 3.75:1 to 3.83:1. The increase in GFA and FSR is attributed to the additions to the building envelope of the former David Jones building. Consequently, the FSR in Stage 1 has also increased from 4:1 to 4.19:1, but remains unchanged for Blocks 2, 3 and 4 as indicated in Table 1.

Building Envelopes/Massing (Street Wall Heights & Upper Level Setbacks) & Building Height

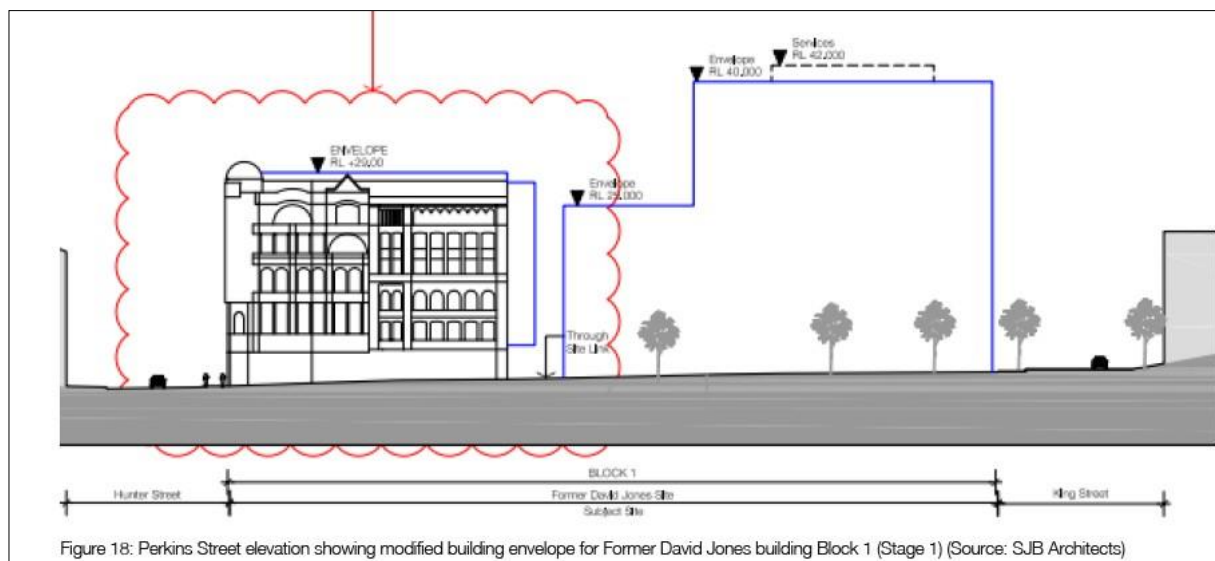
This is the main change and is discussed in detail later in this report. In summary, alterations to the building envelopes relate to Building B (former David Jones Building) only within Block 1. The street wall heights and upper level setbacks are summarised in Table 2. As the proposal continues to retain and adaptively reuses the existing heritage building the street wall heights are largely retained, other than for part of Perkins Street.

Table 2: Street wall heights and upper level setbacks (Source: *SJB Planning, Statement of Support V1 24/10/19*)

Stage 1 (Block 1) Former David Jones Building	Street wall height	Upper level setbacks
Rooftop addition above Hunter Street	Existing heritage façade 22-25m Perkins Street northern portion of addition: existing heritage façade 22-25m Perkins Street	4m behind heritage facade
Rooftop addition above Perkins Street	Northern portion of addition: existing heritage façade 22-25m Southern portion of addition: Perkins Street 25.75m – 26m	4m behind heritage façade 0.69m behind heritage facade
Rear addition	Perkins Street: 22.5m	0m

The building envelopes are proposed to be altered for Stage 1 from the approved envelopes as described below:

- The provision of an additional storey to the former David Jones building increasing the height from part five (5) and six (6) storeys to part six (6) and seven (7) storeys; and
- A rear addition to the former David Jones building.

Figure 2: Perkins Street Elevation showing modified building envelope to former David Jones building Block 1/Stage 1 (Source: *Excerpt from Figure 18 SJB Planning, Statement of Support p25*)

Car Parking and Servicing

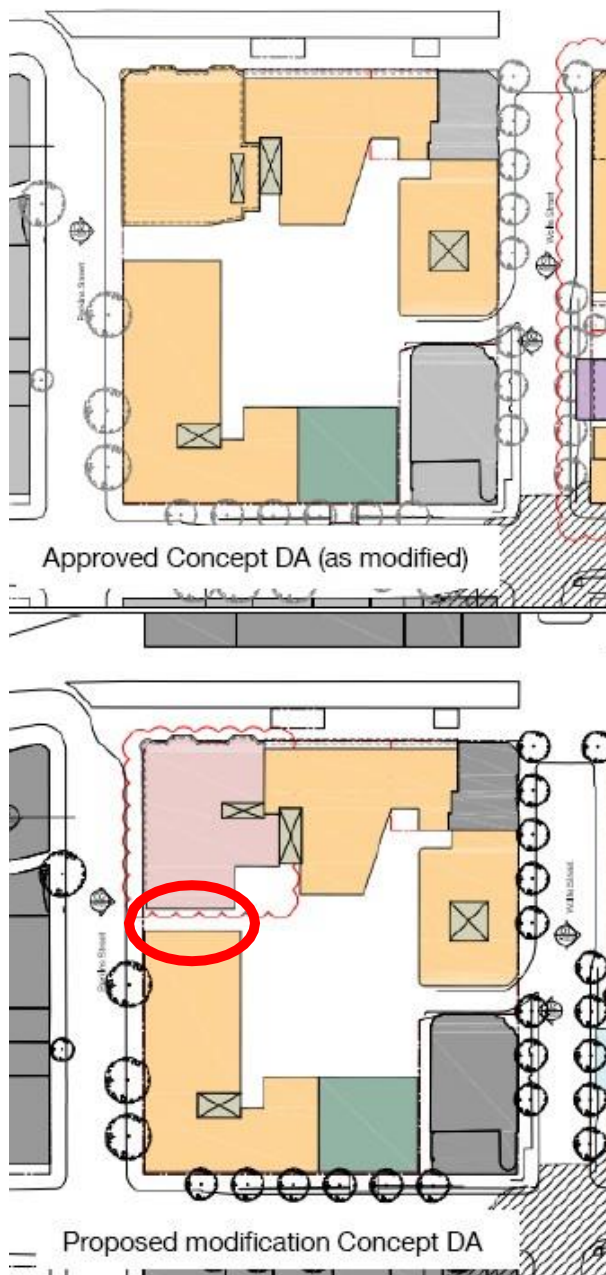
The potential capacity for on-site parking for Block 1 (273) and the overall four-block Newcastle East precinct (616) remains unchanged, as do the vehicle access points and service location.

Pedestrian Link

The proposal maintains the pedestrian public access linkages identified throughout the overall four-block Newcastle East precinct. However, within Block 1, the width of the western part of the pedestrian link between Perkins and Wolfe Streets has been encroached. This is due to the rear addition to the building envelope of the former David Jones Building. While at the ground level the width remains for pedestrian access (with encroaching support columns of the building extension), at the first floor and above the through site link is narrowed.

Figure 3: Comparison of approved (top) and proposed (bottom, circled in red) configuration of through-site link above ground level.

(Source: Excerpt from Figure 21 of SJB Planning, Statement of Support p28)



Amendments to Development Consent

Specific Modification to Development Consent: the proposal will require amendments to the wording of the development consent, including:

- Development description: indicative number of apartments (582 dwellings) to be reduced to 566;
- Condition 4: to reflect proposed gross floor area (and associated retail/hotel use) for entire site and Block 1/Stage 1;
- Condition 5: to reflect proposed floor space ratio for entire site and Block 1/Stage 1;
- Condition 6: to reflect increase in building envelopes and heights;
- Condition 44: to refer to the updated 'Privately owned Public Access' to reflect altered lift cores.

The draft modified consent is provided at **Appendix A**.

Appendix A: Recommended conditions of consent.

Appendix B: List of the documents submitted with the application for assessment. The key plans/documents of the proposed concept development are provided at Appendix C to F, listed below:

Appendix C: Concept Proposals, including overall site Concept Proposal, indicative floor plans, building envelope elevations, sections, public access plan, staging plan and FSR Plan (SJB Architects)

Appendix D: Comparative Diagrams

Appendix E: View Analysis (SJB Planning)

4. Section 4.55(2) of the EP & A Act 1979 – Modifications to Concept Plan

This application seeks modification pursuant to Section 4.55(2) of the EP&A Act 1979. The following provides an excerpt of that clause and how the proposal relates to the provisions:

"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:

- (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*

The proposed modifications relate to Stage 1/Block 1 only (detailed in Section 3 above), however it is noted that there have already been two approved modifications to the Concept DA, and the above clause requires the assessment of this third modification to be substantially the same development as the development for which consent was originally granted. While the previous modifications have been deemed to be acceptable, consideration of the cumulative outcome of the previous and current modifications is required. Below is an excerpt of the applicant's Statement of Support document (p34-35) which provides a qualitative and quantitative assessment of the cumulative modifications proposed. Only the text **in bold** relates to the changes proposed by this modification. All other changes listed have been approved by previous consents however are incorporated within the overall cumulative modifications.

"Quantitative Assessment"

A summary of the quantitative assessment comparison of the proposed modification....is summarised below.

- **The total indicative GFA across the four (4) blocks is proposed to be increased by 2,487m², from 61,130m² to 63,617m². This equates to an increase in the approved indicative GFA of approximately 4%;**
- **The total FSR will increase by 0.15:1 from 3.68:1 to 3.83:1. This equates to an increase in the approved FSR of 4%;**

- **The approximate number of dwellings will increase by three (3) from 563 to 566. This equates to a 0.5% increase in the approximate number of dwellings in the approved Concept DA. It is noted that the number of dwellings was indicative only and ultimately dependent on dwelling mix;** Note: this modification decreases from the previously approved number of apartment dwellings (582 across the whole site and from 227 to 211 within Block 1). However, the modification increases the number of hotel rooms from none to 104 room hotel and ancillary uses).
- **The GFA allocation on Block 1 will increase by 1,242m² from 26,224m² to 27,466m². This equates to a GFA increase on Block 1 of 5%. The FSR allocation for Block 1 increases from 4:1 to 4.19:1, which equates to an FSR increase of 4.75%;**
- The GFA allocation for Block 2 increased by 1,245m² from 11,709m² to 12,954m² inclusive of carparking GFA at 196m². This equates to a GFA increase of 10.6% on Block 2. The FSR allocation for Block 2 increases from 3.2:1 to 3.55:1, which equates to an FSR increase of 11%. Excluding carparking, the total GFA is 12,758m² (+1049m²) which equates to a GFA increase of 9% and an FSR of 3.5:1 (+9%). (NB. already approved and not part of this modification);
- The approximate car parking provision across the site is to be increased by 63 spaces from 553 spaces to 616 spaces. This equates to an 11% increase in the approved approximate car parking provision;
- **The building envelopes and heights remain unchanged for Stages 3 and 4 and the majority of Stage 1, with the exception of the former David Jones building, and is within the approved height range of Stage 1 and the overall Concept DA of two (2) to 11 storeys;**
- The proposed increase in height for Stage 2 remains within the approved building height range of two (2) to 11 storeys. The maximum approved height for Stage 2 remains unchanged at eight (8) storeys. The building heights for Stage 2 have increased up to 8.1m, to the lift overrun for the southern part of the Block above the Lyrique Theatre/Masonic Hall;
- The approved **street wall heights** are determined by Conditions 12 and 13 of the consent. **The street wall heights for most of Block 1 remain unchanged, with the exception of the former David Jones building.** A comprehensive assessment of the appropriateness of the modified street wall heights and upper level setbacks is provided in Section 5.8.3. The street wall heights remain unchanged for Stages 3 and 4.
- For Stage 2, the street wall heights for the southern part of the block remain largely unchanged from the approved street wall heights. The modifications to the approved street wall heights relate to the northern part of Stage 2, where a variable street wall height of 23m to 26m is proposed in lieu of the 18m DCP compliant street wall height as required by Condition 13. A comprehensive assessment of the appropriateness of the modified street wall heights for Stage 2 was included in the SoS prepared by SJB Planning and submitted with the previously approved Concept Modification Application;
- The through-site link between Perkins and Wolfe Street and Wolfe and Thorn Streets has been maintained. The width of the laneway at ground level continues to satisfy Condition 44 of the Concept Approval which specifies a minimum width of 5m for the through-site links on private land. **Note: However the through-site link on Block 1 between Perkins and Wolfe Street now includes some obstructions to this 5m width (columns to rear extension to David Jones Building).**

- *The vehicle access arrangements on Stages 1, 3 and 4 remain unchanged. The basement car parking access on Stage 2 has been relocated from the through site link to Thorn Street to maximise the pedestrian amenity of the laneway, consistent with the principles of the Concept DA;*
- *The heritage and contributory buildings identified in the SOHI are to be adaptively reused;*
- *The retail, commercial and residential uses are to be maintained. **The introduction of a hotel use within the former David Jones building in Stage 1, in lieu of shop-top housing, and the inclusion of hotel, motel and serviced apartment uses** across the Concept DA, are consistent with the uses that are permitted and anticipated within the B4 Mixed Use zone and of themselves could arguably fall within the definition of commercial premises. The use of the former David Jones building as a commercial hotel is more in keeping with its historic uses as commercial premises; and*
- *There is a distribution of land uses within Block 2 which is to be slightly modified. The existing heritage listed building at 98-102 King Street is proposed to be used for residential purposes, instead of commercial purposes, consistent with its historic use and the CMP. Residential uses are proposed above the Lyrique Theatre/ Masonic Hall to facilitate their restoration and adaptive reuse of the heritage building.*

Qualitative Assessment

The modifications retain the essential elements of the Concept Approval as outlined below:

- *A mixed use development comprising retail, residential and commercial uses across four (4) stages. The inclusion of hotels, motels and serviced apartments as an additional potential use across the site and redistribution of some of the land uses within Stage 2 does not radically change the approved use;*
- *The delivery of a through-site link between Perkins and Wolfe Street and Wolfe and Thorn Streets;*
- *The provision of ancillary on-site car parking within basement levels;*
- *Adaptive reuse of existing and contributory heritage buildings and elements across the four blocks. The modifications to envelopes and heights of the heritage listed former David Jones building, Lyrique Theatre/Masonic Hall, the Royal Exchange, former Soul Pattinsons and terrace buildings on King Street, were informed by the CMPs prepared by City Plan Heritage as part of the Stage 1 DA, Stage 2 DA (as required by the conditions of the Concept Approval), and the approved SOHI prepared by TKD; and*
- *A built form of two (2) to 11 storeys across the four (4) blocks.*
- *Note: The allocation of car parking spaces within Block 1 (and subsequently across the four block site) is altered.*

The proposed modifications do not materially alter the impacts of the approved concept DA in relation to view loss and overshadowing (refer Section 8 of this report). The essential elements of the Concept Approval included adaptive reuse of contributory and heritage items. These adaptive reuses are to be directly informed by a detailed CMP. Accordingly, the proposed Modification Application does not fundamentally change the essential elements of the Concept Approval.

The Concept Approval as sought to be modified is considered to maintain the essential elements of the original approval.”

Comment: the nature of Concept development applications contemplate some change to subsequent development applications in particular, when relying on further detailed studies such as Conservation Management Plans and view analysis. On one hand it is difficult to come to terms

(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

with the significant difference in the built form (increased heights, upper level setbacks) and resultant FSR for concept plans, while on the other hand it is acknowledged that the supporting documents (principally Heritage Impact Assessment/Strategy) do not preclude this possibility either, and support adaptive reuse of these buildings and additional/new building elements, provided the recommendations are met.

The additional height proposed can reasonably facilitate the proposed development in terms of heritage considerations. In addition, there are no significant impacts (overshadowing, traffic, parking etc). Therefore, the modification process is supported. The overall argument by the applicant that the modifications retain the essential elements of the Concept Approval (eg. overall land use, through site link, 2-4 storeys across the entire development; adaptive reuse of heritage buildings etc) is accepted on this basis.

not, within 21 days after being consulted, objected to the modification of that consent, and

Refer to Section 6 of this report. Satisfied.

(c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Refer to Section 5 of this report. Satisfied.

(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.

Refer to Section 7 of this report. Satisfied.

(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."

Refer to Section 7 of this report. Satisfied.

5. Consultation

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

Nine (9) submissions were received specifically referencing both DAs (ie this modification application and the Stage 1/Block 1 DA-2019/01150 relating to the former David Jones building). Hence all the matters raised in the Concept DA and DA-2019/01150 submissions are summarised in this report. Unless specifically indicated below, each submission raised the same issues listed. Two of the submissions were received by Newcastle Inner Residents Alliance (NICRA) and Newcastle East Residents Group (NERG).

Modification process: Not substantially the same as existing approved DA

- Significantly changed - departs from a residential and commercial development to a hotel/serviced apartments/bar etc.
- Introduction of this use will change the amenity to the detriment of wider community.
- Numerous and ongoing modifications make a mockery of the approval process (fourth DA for the Stage 1 site).

- No longer recognisable as the development originally approved.
- Increased impacts in terms of noise and traffic.
- Previous modifications whittle away initial intent.
- The present approval is already substantially different to original approval.

Erodes credibility of JRPP

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

Building Setbacks (6m) not complied with

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

Increased FSR

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

Increased Building Heights

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

Heritage Impacts

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

Impacts of Rooftop Bar

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

Narrowing of public laneway

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

Inadequate Public Exhibition Process of DAs

- Public access to the documents during exhibition process was excessive (volume of hard copies) and/or inadequate (not available online for much of the exhibition time) and involved a lack of due process.
- Extensions of time granted by Council for some to make submissions was inadequate and should have been universal (not only to those who requested).

- Future residents of the building under construction within the Iris site will be the most impacted but were not notified.
- A fresh and clear development application supported by documentation relative to the final concept should be submitted.

Failure to Comply with Construction Management Requirements (NICRA submission)

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

6. Referrals

Approval Authorities - Integrated Development

The staged development is not identified as 'Integrated Development' pursuant to Section 4.46 of the EPA Act 1979 as it does not grant approval to any works, with such works being the subject of the various stages of the project.

No internal or external referrals were made for the modification to the staged concept development application.

Referrals were made to relevant Authorities and Council specialist staff for the Development Application DA-2019/01150 for the adaptive reuse of the former David Jones Building and additions. Refer to the separate report to be considered concurrently for referrals that have some relevance to this modification application and the Concept approval (namely with respect to parking and traffic numbers, urban design and heritage issues).

7. Strategic Context

No change to consistency of the development with the following plans (ie. to that reported to the JRPP in the previous modification to staged concept development application):

- Draft Greater Newcastle Metropolitan Plan 2036
- Hunter Regional Plan (2036)
- Local Planning Strategy (2015)

8. Section 4.15 Considerations

The previous assessment of the approved Concept DA (DA2017/00701, determined by the JRPP, and DA2017/00701.01 determined by Council) are still largely relevant to the current revised concept staged DA as there have been no major changes to the planning controls for the site. It is not necessary to revisit the already-assessed aspects of the revised staged concept application that have not changed. The previous assessment and most conditions of development consent are considered to still be relevant and/or will require edits/amendments as per **Attachment A**. To avoid duplication, this assessment report is largely limited to matters relating to the proposed changes to the concept DA as compared to the approved Staged Concept Plan (DA2017/00701).

(a)(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

Not applicable.

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

State Environmental Planning Policy (State and Regional Development) 2011

The original Concept Approval DA-2017/00701 was identified as 'regional development' in accordance with Part 4 of the SEPP (State and Regional Development) 2011, as the proposal is listed within (the then) Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million (the total development value was estimated to be \$211,775,587).

This Section 4.55(2) modification is referred to the Panel in accordance with Clause 21 of the SEPP under Part 4 'Regionally Significant Development' (noting the concurrent DA for physical work relating to the former David Jones Building within Block 1 (Building B) is also captured as 'regionally significant development', irrespective of its value, as the concept Application was previously captured under Schedule 7 of SEPP (State and Regional Development) and the EP&A Act and Regulations:

21 Concept development applications If—

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

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

Hence, both this section 4.55(2) application and DA-2019/01150 will both need to be determined by the JRPP.

Other State Environmental Planning Policies

No other SEPPs are triggered by the proposed modification, including:

- *State Environmental Planning Policy 55 (Remediation of Land) – no change*
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – does not apply to hotels, and as there are no physical works for the staged concept DA. However, this is broadly considered and applies to the ability for the existing approved apartment buildings to remain compliant with the proposed modification of Building B to a hotel. An assessment of SEPP 65 is provided in relation other shop-top housing buildings (A, C and D) within Stage 1 with respect to the hotel proposal. In summary, there are additional variations to ADG requirements (Building Separation and a minor reduction in Communal Open Space areas for Block 1). However, an assessment of this identified the variations to be acceptable, subject to some privacy measures to Building C.*
- *State Environmental State Environmental Planning Policy (Infrastructure) 2007: Division 17 'Roads and Traffic' is not applicable and therefore referral to the Roads and Maritime Services (RMS) is not required. Column 1 of the Table to Schedule 3 'Traffic generating development to be referred to the RMS by Clause 104 'Traffic Generating Development' confirms that, where there is an enlargement or extension of an existing premises only the additional size or capacity should be considered for the purpose of determining whether referral to the RMS is required. The area of retail premises has increased by 158m² for the Stage 1 development, as a result of the inclusion of the restaurant and bar areas of the hotel within this calculation. However, this increase does not trigger the referral requirements for Block 1 or across the whole precinct. There is also no additional parking and there is a reduction in the number of residential apartments.*

Newcastle Local Environmental Plan 2012 (NLEP 2012)

This assessment only addresses provisions of NLEP 2012 that are relevant to the modification, noting that some additional relevant clauses to the original (approved) concept application would have been addressed already at the time of the current approved proposal.

Clauses 2.1 to 2.3: Zoning and Land Use Table

The subject property is included within the B4 Mixed Use zone under the provisions of NLEP 2012. The objectives of the B4 zone are:

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

The original Concept Proposal sought approval for building envelopes and height, indicative land use mix and floor space allocation for the following types of development, as defined by NLEP 2012:

Block 1: *'Shop top housing'* (basement parking, ground level retail, with upper level residential and parking);

Block 2: *'Commercial premises'* (ground and upper level commercial) and *'dwelling house'* (existing terraces); and *'Shop top housing'* (basement and ground level parking, ground level retail, with upper level residential);

Block 3: *'Shop top housing'* (Basement parking, ground level retail, with upper level residential); and *'Commercial Premises'* (ground level retail with upper level commercial);

Block 4: *'Shop top housing'* (Basement parking, ground level retail, with upper level residential); and *'Residential flat building'* (ground level parking, with upper level residential/parking).

A subsequent modification (DA-2017/00701.01), approved by JRPP on 28 February 2019 considered the inclusion of 'hotel or motel accommodation' and 'serviced apartments' as additional uses for the entire four-block Newcastle East End precinct. It was noted that these uses are permitted within the B4 Mixed Use zone and were considered to be complimentary uses to the locality and other intended uses. It was also noted when considering this, that the merit assessment of these uses will occur at the time of individual development applications, including the differences in the car parking generated by these uses.

Zone Objectives and Permissibility

The proposed use of Building B within Block 1/Stage 1 as a hotel accommodation (and ancillary uses) are consistent with the B4 Mixed Use zone objectives and are permitted.

The introduction of the proposed 'hotel accommodation' land use within the former David Jones building is permitted. This use is proposed in lieu of 'shop-top housing' and is consistent with the B4 objectives as it will contribute to a greater mix of land uses within the Newcastle East End, is within an accessible location and will increase vitality and viability of the precinct.

Clause 4.3: Height of Buildings

This clause limits buildings heights to that shown on the current 'Height of Buildings' Map (refer **Figure 2**). The 'Height of Buildings' Map specifies permissible building heights across the four-block site, ranging from 24m to 27m (vertical height as measured from existing ground level), and a range of site-specific building heights utilising an RL height (to Australian Height Datum) ranging from RL20 to RL 42m AHD.

With respect to the site of subject development within Block 1, the applicable maximum heights are RL29 at north-eastern corner (Former DJ's building/Building B) and 24m vertical height to the immediate south (being the mid-block link and indicated in light pink 'S' on the LEP Height of Buildings Map. The proposed modification complies with the Height of Buildings Map (and this clause) as the proposed roof top addition is at a maximum of RL 29 and the southern infill addition does not exceed 24m above ground level at that point of the site.

Figure 2: Extract of Height of Buildings Map showing permissible heights applying to the subject site (HOB_004G effective 21/6/2019 to date; and HOB_004K effective 9/11/2018 to date Block 1 shown in blue (Former DJS Building B in yellow), Blocks 2, 3 and 4 shown in red



In addition to the height controls within NLEP 2012 'Height of Buildings Map', pursuant to Clause 4.3, there are also height limits imposed within Condition 6 of the Development Consent for the Newcastle East Precinct DA-2017/00701 (sought to be modified by this application) which has statutory effect. [Section 4.24 of the EPA Act 1979 (Status of staged development applications and consents) confirms that the "*while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.*"

Effectively, this requires future development applications for each stage of the development to remain consistent with the approved Concept Proposal (including height). There is a complex background to the building height controls for the precinct, in particular relating to Blocks 2 and 3 (explained in the previous report/s to the JRPP for the Stage 2/Block 2 proposals in March 2019). To simplify this issue, this section of the report discusses the building height matters for the proposed modification to the Concept Plan subject site only (being the former David Jones building "B") within Block 1.

The concurrent development application DA-2019/01150 varies from the Concept Proposal Envelope Plan and so modification to the Concept Proposal is proposed. The proposed modification applies to the plans for the north-western corner of Block 1 only (former David Jones building location and adjacent through walkway).

The current approved Concept DA Envelope Plan indicates a maximum building height of RL33.50m and no height for the walkway (refer left of **Figure 3**). The proposed modified Envelope Plan indicates a (reduced) maximum building height of RL29 which extends partly over the walkway width (refer right of Figure 3). This extended footprint on the plan is to accommodate the in-fill southern extension proposed by DA-2019/01150. This is consistent with the 'Height of

Buildings Map'. Refer to discussion later in this report under the heading 'Street wall heights and built form'.

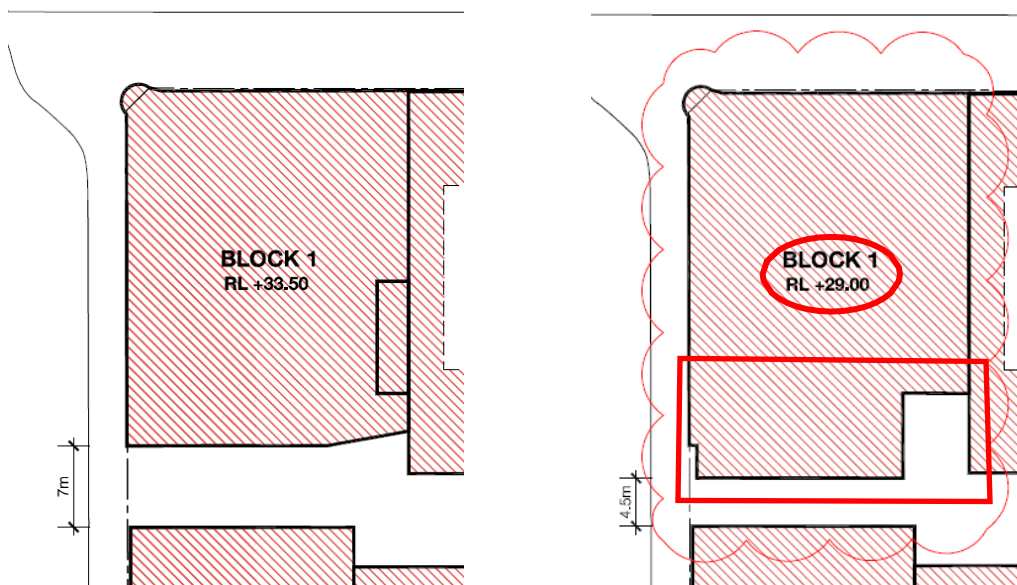
The Building Envelope Plan is required to be modified (even to be lowered in building height) as Section 4.24(2) of the EP&A Act provides:

"While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site."

Relevantly, Justice Preston (in *Uniting Church in Australia Property Trust (NSW) v Parramatta City Council* [2018] NSWLEC 158 para 44) found:

"If the concept proposals for the development of the site are building envelopes, any development consent to those building envelopes will fix the envelope within which any building can be erected. Any further development application could not seek consent to erect a building that would be inconsistent with the building envelope approved by the consent granted on the determination of the concept development application. A building could be inconsistent if it exceeds the approved building envelope, but equally it could be inconsistent if it is less than the approved building envelope. A building of 20 storeys is inconsistent with an approved building envelope of 15 storeys, but so too a building of 10 storeys is inconsistent with an approved building envelope of 15 storeys."

Figure 3: At left: As-approved Envelope Plan (Dwg DA-2901/Rev02, SJB, 2017)
At right: Proposed modification to Envelope Plan (Dwg DA-2901/Rev03, SJB, 2019)



Clause 4.4: 'Floor Space Ratio (FSR)' & Clause 4.5 'Calculation of FSR and site area'

Clause 4.4 limits the FSR of a development to that shown on the FSR Map. The FSR Map indicates that a maximum FSR of 4:1 is permissible on the site (total site area 16,608m²). The approved Concept development application (as amended) permits specific FSR's for each block: Block 1: 4:1; Block 2: 3.55:1; Block 3: 3.3:1; Block 4: 4:1, with an average across the site being: 3.75:1 (based on a GFA 62,375m²).

The proposed modification seeks an increase to the GFA from 61,130m² to 63,617m², resulting in an increased FSR for Block 1 from 4:1 to 4.19:1, (26,224m² to 27,466m²) and an overall increase of the entire site to 3.83:1 (from 3.75:1). The proposed modified density for the overall site complies with the FSR development standard of NLEP 2012, however the increased GFA results in Block 1 exceeding the FSR of 4:1 for the land.

While the proposed FSR for Block 1 does not comply, a Clause 4.6 'Exception to Development Standards' statement is not required for the Concept Application (as no physical works are proposed). However, the applicant has provided the following justification for the non-compliance (Statement of Support, p44-45).

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

- *The proposal satisfies the objectives of the B4 Mixed Use zone and the objectives of the FSR standard (refer below);*
 - *.....the density of development is appropriate for the site and is not inconsistent with the density of development in the Newcastle East;*
 - *The building density, bulk and scale respects the heritage significance of the building, site and locality. The contemporary, well-designed additions that accommodate the additional floor space, are integrated with the building to avoid dominating its status as a landmark corner building*
- *The proposal complies with the building height standard and is consistent with the objectives of the height standard as outlined above;*
- *The proposal does not adversely impact on the heritage significance of the site, conservation area or individual items as detailed in the HIS (accompanying the modification);*
- *The variation to the standard does not contribute to adverse amenity impacts in terms of overshadowing, visual impacts or view loss;*
- *The scale of the proposed development is consistent with the desired scale of the surrounding development and streetscape, which is further reinforced by the compliance with the height standard;*
- *The built form outcome responds to the heritage building and streetscape context. It has responded to the site specific outcomes of the approved Stage 1 CMP prepared by City Plan Heritage, and provides the opportunity for the revitalisation and adaptive reuse of the significant heritage items and elements located on site;*
- *The proposal does not adversely impact on the heritage significance of the site, conservation area or individual items as detailed in the Addendum HIS (accompanying the DA);*
- *The variation to the standard does not contribute to unreasonable traffic generation or other environmental impacts. An assessment of the potential traffic impacts accompanies the application;*
- *The proposed development is generally compliant with the controls, or the intent of the controls, contained in the NDCP 2012; and*
- *The FSR is the outcome of a proposal that exhibits design excellence and satisfies the design excellence criteria contained within Clause 7.5 of NLEP 2012. The density and scale of the proposal has been the subject of design excellence process that has been undertaken for the Hotel DA. The evolution of the design through this process informed the scale, location and form of the additional floor area, in so as to complement and be sympathetic to the streetscape and heritage fabric of the former David Jones building, while facilitating its adaptive reuse for a hotel."*

The above reasons are reflected in the applicant's Clause 4.6 'Exception to Development Standards' statement accompanying the development application DA-2019/01150 for the former David Jones building and associated increases the GFA/FSR. Refer to the discussion in the

separate/concurrent assessment report for that application which indicates the reasons to be acceptable and are supported.

Clause 5.10 Heritage Conservation

The site that is the subject of the concept proposal contains four heritage items of local significance listed within NLEP 2012 and the whole site is located within the Newcastle City Centre Heritage Conservation Area (Item C4). There is no alteration to the previously- assessed approved concept as it applies to heritage conservation, with the exception that the current modification application seeks changes to the FSR and building envelope controls within the DCP (street wall heights and building heights, the latter being principally lower) within Block 1 and specifically the listed heritage items (former David Jones Building). The original Stage 1 DA works approved adaptive reuse of this building but not the additional GFA and building envelope resulting from the rooftop and southern additions.

There are no changes to the already-assessed aspects of the concept development application with respect to historical archaeology and Aboriginal archaeology. A discussion on the impacts of the proposed modifications on heritage conservation within Block 1 and the former David Jones Building are addressed at Section 8 of this report. This discussion confirms the provisions of this clause have been met/can be satisfied.

Part 7: Additional Local Provisions - Newcastle City Centre

This part applies to the erection of new buildings (and is hence addressed in the subsequent DAs for each stage). However, *Clause 7.1 Objectives of Part* is considered to have been met as it contributes to the economic revitalisation of the Newcastle East End precinct within a historic building that will be adaptively re-used to assist with this increased vitality. The hotel use will promote tourism and employment opportunities and is located within an accessible area with public transport linkages in addition to proximity to other city centre amenities.

(a)(iii) any development control plans Newcastle Development Control Plan 2012

Newcastle Development Control Plan 2012 (DCP) is the applicable Development Control Plan which comprises several Sections. Section 6.01 'Newcastle City Centre', is the most relevant part of the DCP relating to the built form outcomes of the precinct. An overview of the relevant DCP matters were addressed in the previous reports to the JRPP on the previous approved Concept DA-2017/00701.

To avoid repetition, only the key relevant headings and/or differences to this previous approved Concept DA are discussed in this section. The key issues within each section, where relevant, are discussed within the relevant heading under 'the likely impacts of the development' section later in this report, including NDCP Section 7.03 'Traffic, Parking and Access.'

NDCP 2012 - Section 6.01 'Newcastle City Centre'

A brief response to each of the relevant Elements/chapters contained within Section 6.01 (Newcastle City Centre - Locality Specific Provisions) is provided below:

Part 6.01.02 Character Areas - East End

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

The following Principles apply to the East End Precinct:

1. *Hunter Street continues to be the main retail spine of the area, supported by a range of complimentary uses, including residential, commercial, entertainment and dining.*
2. *Hunter Street is recognised and enhanced as a major pedestrian space and an informal*

meeting place.

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

Discussion of the ability to meet the principles and desired future character for this precinct is contained in the following sections of this report which address land use, views, heritage and circulations spaces.

Section 6.01.04 Key Precincts - Hunter Street Mall

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

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

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

The approved Concept Plan and Stage 1 DA incorporate a through site connection, extending from Perkins Street in the west to Wolfe Street in the east. This link extends between building A and B in the west and between Building D and the existing Telstra building in the east (at a width

of 6.1m). The as-approved location of this link is consistent with the location of the through site link identified in Figure 6.01-29 of this chapter (reproduced in Figure 14 later in this report) and 'Acceptable Solution' 2(a) of the DCP. However, rather than a straight link, the laneways converge into a circular open court which is to be activated by adjacent retail outlets at ground level.

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

B2 - Significant Views

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

B3 - Building Form

This clause requires that *"Building form integrates with existing heritage character and retains contributory buildings"* and that development be articulated to reflect the fine grain of the precinct and that existing contributory character buildings be retained and adaptively re-used.

The proposal retains a heritage building and adaptively reuses the building for a hotel. A further discussion of compliance with clause B3 with respect to heritage issues is contained in the section 4.15(1)(b) assessment.

Section 6.01.03 - General Controls

A1 - Street Wall Heights

The required street wall height along Perkins and Hunter Streets is 22m, with any development above the street wall height is set back a minimum of 6m. Conditions 12 and 13 of the Concept Plan reflect this control.

The street wall height of new buildings may vary if the desired future character is to maintain the existing street wall height of neighbouring buildings, such as heritage streetscapes. The existing building has a street wall height of 22-25m (the higher being the corner element).

Variation is proposed to this control and Conditions 12 and 13 of the Concept DA (exceeds street wall height and less than 6m) and is discussed in detail within the Section 4.15(1)(b) assessment of this report.

A2- Building Setbacks

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

A3 - Building Separation

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

A4 - Building Depth and Bulk

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

A6 - Heritage Buildings

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

B1 - Access Network

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

B2- Views and Vistas

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

B3- Active Street Frontages

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

B6 - Sun Access to Public Spaces

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

Section 94A Development Contributions Plan 2009

As no works are proposed by the concept DA, a levy will be payable to each future DA Stage of the development in accordance with this Plan.

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

Not applicable.

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

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

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

Not applicable.

(b) the likely impacts of the development

All likely impacts of the previous approved Staged Concept DAs (DA-2017/00701) were addressed/discussed in the previous reports to the JRPP. A list of the headings within those reports are provided below. There is no change to these aspects of the concept development (except for minor comments provided, where relevant).

- Aboriginal and Archaeological Heritage;
- European Heritage (except for comments on revised heights and street wall heights for Block 1. refer to Discussion under heading 'Heritage' and 'Street Wall Heights and Building Form' below)
- Public Domain and Publicly Accessible Private Land (additional discussion on the reconfiguration of the through site link within Block 1 are discussed below).
- Acoustic Impacts (additional discussion on the impacts of the proposed hotel use are discussed below)

- Construction Management
- Service Infrastructure
- Flood Management
- Contamination
- Geotechnical Constraints
- Mine Subsidence

To avoid repetition, only the key relevant headings and/or differences to the previous approved Staged Concept DA are discussed in this section with respect to the current DA, and includes relevant comments from Council's specialist officers, including a response to issues raised in submissions.

Street Wall Heights and Building Form

Figure 6.01-29 (Hunter Street Mall Precinct Plan) contained in Section 6.01.04 of the DCP confirms the maximum street wall heights that are required within the Newcastle East precinct. Performance criteria B3 for this precinct states *"Building form integrates with existing heritage character and retains contributory buildings."* This Figure indicates that street wall heights of 22m are required (where Building B is located). The 'acceptable solutions' relating to this control states *"Street wall heights ensure a minimum of two hours of sunlight is achieved between 9am and 3pm mid winter"*, in addition to the requirements for *"large scale new development (to be) articulated so that large expanses of building form are broken down into smaller elements to relate to the fine grain of the precinct."*

Section 6.01.03 of the DCP confirms that street wall heights are *"an important element to ensure a consistent building scale in streets that have a mix of uses, heritage items and final development"*. They provide an *"appropriate street-width to building height ratio"*. Clause A1.1 confirms that any development above street wall heights must have a minimum setback of 6m.

The following conditions of the Development Consent for the Concept DA-2017/00701.01 also apply to the proposed street wall heights and building envelope (setbacks above street wall height and heritage items):

Conditions 12 and 13 of the Concept DA approval stipulates the following

"12) Where the building envelope is above a retained heritage facade, then it shall be set back in accordance with Newcastle DCP 2012, being 6 metres, unless otherwise justified or approved through a separate development consent for separate stage of the concept development area."

13) With the exception of the Thorn Street and Laing Street frontages of Block 3, where the building envelope exceeds the maximum street wall height identified in the Newcastle DCP 2012, then the section of any building above that height shall be set back in accordance with the DCP, being 6metres, unless otherwise justified or approved through a separate development consent for separate stage of the concept development area".

It is noted that the development application for Stage 1/Block 1 (DA-2017/700) sought a variation to the street wall heights and 6m setbacks to Building A (Corner King and Perkins Streets) and Building D (Wolfe Street) which was supported and approved.

Proposed Modification to Block 1 Street Wall Height and Setbacks

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

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

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

The variations sought to the street wall height and setbacks within Block 1 (Building B) have been considered as part of the detailed assessment of the concurrently lodged DA- 2019/01150. Refer to the separate report in relation to this DA, in addition to comments under the heading 'Heritage' below. In summary, the report recommends that the proposed street wall heights and built form and massing are appropriate. In this regard, the proposal is an appropriate outcome for the site and the variation to the street wall heights for this portion of Block 1 are supported.

View Analysis and Impacts

The matter of view impacts was addressed in detail in the assessment of the initial Concept DA and Stage 1 DA for the specific buildings on Block 1. An assessment of the proposed changes to the building envelope and additions to Building B are detailed in the assessment report to the JRPP for the concurrently lodged DA-2019/01150. This confirms that the minor increases to Building B will be largely imperceptible in terms of impact on views from that already approved within Block 1. Hence, the proposal is considered to be acceptable.

Heritage

Schedule 5, Part 1 of Newcastle Local Environmental Plan 2012 lists the entire site is located within the Newcastle City Centre Heritage Conservation Area and is also a locally-significant Item 407 'Former David Jones (commercial building)'. Several heritage items are located in the vicinity of the site.

The approved Stage 1 proposal involved the adaptive reuse of the heritage listed former David Jones building (Building B) for shop top housing, including demolition of some building elements. It also involved the retention of heritage facades on Wolfe and Hunter Streets with vertical additions (Buildings D and C) and demolition of the remaining structures. The application detailed assessment of the concurrently lodged DA-2019/01150.

The separate report for the development application for the adaptive reuse of Building B as a hotel and associated additions (DA-2019/01150), which is to be considered concurrently, provides a detailed assessment of heritage impacts and considerations, including consideration of the submitted detailed Heritage Impact Statement (HIS) for that DA.

While the impacts of the physical works associated with Building B (and other items in the vicinity) are not addressed by the modification to the Concept DA, the overall built form impacts to the heritage significance of the precinct are an important consideration as embedded in the planning controls and Concept DA conditions. These are also addressed in the separate report for DA-

2019/01150.

An Addendum HIS, by City Plan accompanies the modification application and assesses the potential heritage impacts arising from the amendments to the height, building envelope and GFA of the former David Jones building within Stage 1 (which have arisen from the design evolution process undertaken for the Hotel DA).

The Statement of Support (SJB Planning p47-48) summarises the key findings of the assessment of the potential heritage impacts arising from the proposed modifications, which are reproduced in part below:

"Increase in GFA and FSR Across the Concept DA site and Stage 1

- *The increase in total GFA for the Concept DA is a marginal change when considering the overall bulk and scale of the development proposed for the whole Newcastle East End Precinct. It will not have any adverse impact on the established heritage significance and identified contributory values of the buildings within the Precinct or the Newcastle City Centre Heritage Conservation Area;*
- *The marginal increase in gross FSR will have no adverse impact on the heritage values of the Precinct;*
- *The increases in GFA and FSR have been distributed across Block 1 in a proportional and appropriate scale. Therefore, the impact of the increased GFA and the FSR for Block 1 is considered acceptable and is in line with the site specific CMP policies in relation to the future development opportunities for the Block. It is considered a minor variation to the allowable FSR of 4:1 under NLEP 2012 while allowing opportunity for an increased benefit by providing additional floor space associated for the hotel adaptive reuse that will assist in appreciation of the heritage values and public visitation of the former David Jones building by wider community.*

Amendment to Building Heights and Envelopes of the Former David Jones Building

- *While the proposal will involve the addition of a rooftop extension to the heritage item, the extension is considered modest in scale and will not be prominently visible from within the immediate streetscape. As such, the streetscape heritage values and prominence of the heritage item will be retained. In addition, the proposed extension has been sufficiently setback to the north and north western corners, creating terrace areas behind the parapet. These setbacks will also further assist in minimising the visual impact of the rooftop addition on the streetscape presentation of the heritage item; and*
- *The proposed increase in the building envelope above the former David Jones building is in line with the CMP recommendations and allows for the building to remain clearly visible with appropriate setbacks from Hunter and Perkins Street.*

Variation to 6m Setbacks Above Street Wall Heights and Heritage Facades (Conditions 12 and 13 Concept DA Consent and NDCP 2012)

- *The proposed setback of 4m to Hunter Street and the northern portion of Perkins Street and 0m to Perkins Street above the D. Mitchell & Co. Warehouse building element of the former David Jones building, this prevents the need to further extend the height of the rooftop extension. Furthermore, during the design development phase, SJB Architects prepared diagrams to illustrate the visual impact of an increased building envelopes with a compliant 6m upper level setback and the proposed setback. These diagrams were presented to the meeting with Council's Urban Design Consultative Group (UDCG) There was marginal difference between the compliant 6m setback and proposed setbacks in terms of visibility of the building envelope addition from various view corridors including the Hunter Street and Perkins Street approaches, and from the Cathedral Park over the rooftop of the existing building; and*
- *There is minor change to the overall bulk of the building when compared with the existing*

roofscape and height and views from the Cathedral Park and the neighbouring heritage items.

Treatment and Width of the Western End of the Laneway Between Perkins and Wolfe Streets A new slender addition is proposed to southern side of the former David Jones building (D. Mitchell & Co. Warehouse building component) to allow for hotel entry and efficient hotel floor layout. This has reduced the width of the laneway at the western end. The southern addition extends up to the parapet height of the existing building hence retaining the low scale and plain design with a flat roofline. The glass-line of the southern addition will be slightly setback from the significant façade in order to minimise its prominence. The proposed southern addition is considered to be a well designed and sympathetic infill that respects and reflects the dominant features of the adjoining heritage façade while being a subservient to the heritage item and its streetscape context.

Land Uses

No impact on the heritage values of the site will occur from this change in the nominated land use. This will still ensure the adaptive reuse of the former David Jones building and will result in a positive adaptive reuse heritage outcome as the hotel use will increase public appreciation and access to all areas of the heritage item.

On the basis of the above, the Addendum HIS makes the following conclusion:

“The proposed amendments are considered consistent with heritage best practice guidelines and the recommendations of the HIS submitted with the approved Staged Concept DA. The intent of the original approved Staged Concept DA and subsequent amendments has been maintained and further enhanced through development parameters established under the HIS report. Furthermore, the changes have been devised with consideration of the CMP for Block 1 prepared by CPH.”

Having regard to the above considerations, in addition to the comments and assessment for the concurrent development application for Building B (refer separate report), it is considered that the proposed modification does not result in unreasonable heritage impacts. Furthermore, the submitted modifications and Building B design amendments address the comments which were incorporated in formal advice to the applicant provided by Council’s consultant heritage adviser in the pre-lodgement design process.

Overshadowing

Overshadowing impacts of the originally intended building envelopes were considered for the approved Concept DA. Altered overshadowing occurs as a result of the proposed alterations to Building B, which is detailed in the separate assessment report for the hotel use. In summary, this assessment concludes that the comparative change between the level of overshadowing cast by the approved Stage 1 application and the proposed additions to Building B is minimal and is acceptable.

Public Domain & Publicly Accessible Private Land & Funding Arrangements

There will be no change to all aspects of public domain improvements, which will be funded by the developer at each stage of work at each frontage of the development sites.

The proposal maintains the mid-block connection between Perkins and Wolfe Street within Block 1, however configuration at the western (Perkins Street) end is altered as a result of the southern “infill” addition to Building B and hence require amendments to the Concept Plans. The modifications to the laneway are to enable:

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

Jones car park. The width of the laneway will be 7.7m to glass-line of Building A relative to the approved width of 7.9m; and

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

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

An assessment of the proposed changes to this part of the through-block link is detailed in the assessment report to the JRPP for the concurrently lodged DA-2019/01150. This assessment identified that, while pedestrian access will still be available, the southern infill extension will further increase the sense of enclosure of this already confined publicly accessible area. The increased number of hotel rooms (ten) that the infill extension provides is at the expense of the openness of the lane, which will arguably reduce the amenity for users of the lane, in particular patrons of the outdoor eating premises that appear to be intended for this location. However, as the intent of Condition 45 and the planning controls are met, in addition to the overall acceptance of the design by the UDCG, on balance the modification is considered to be acceptable.

Traffic, Parking & Access

Traffic Impacts, vehicle access locations and parking arrangements were key matters considered during the assessment of the initial Newcastle East Stage 1 Development Application (DA2017/00700) and for the concurrent Concept Development Application (DA- 2017/00701). Generous concessions were granted with respect to on-site parking for retail staff parking and visitors on the basis of the city centre location, proximity to transport and existing Council-owned carpark located at King Street.

The approved parking provision for the development was based on the following (reflected in Condition 19 of the Concept development consent):

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

The same approach to the provision of parking is proposed for the proposed revised Concept and the for Stage 1 development application incorporating the hotel (DA-2019/01150 - refer separate report for detail and associated conditions). It is noted that no additional parking is proposed to be provided on-site for any of the stages within the Concept application, with the proponent only proposing re-allocation of spaces for the Stage 1 development based on the reduction in the number of residential apartments and the inclusion of the hotel use. The re- allocation of spaces for the Stage 1 development is discussed in the separate report for the Stage 1 development.

The Block 1 development will continue to provide 273 parking spaces, whilst the overall Stage 1 development will continue to provide 616 spaces. Accordingly, the level of carparking provided for the four (4) stages of the Concept proposal is considered to be satisfactory. Further, the number of bicycle and motorcycle parking spaces will be unchanged.

In addition, the proposal will not alter vehicle access arrangements to the site with all access for Stage 1 located off King Street to customer /resident parking and a designated loading service dock. Access for Stages 2-4 is also unchanged. Servicing will also utilise the approved loading dock for Stage 1 off King Street. CN's Development Officer (Engineering) is also satisfied that the traffic generated by the proposed hotel will not have an adverse impact on the local road network. A proposed short-term parking across the front of the site in Hunter Street will allow for shared hotel guest drop off / pickup operations.

(c) the suitability of the site for development

The report for the previous Concept DA confirmed that the site is suitable for the proposed staged development, subject to the submission of further detailed investigations, documentation and strategies to comprehensively address contamination, mine subsidence, geotechnical constraints, retaining wall construction, acid sulphate soils, groundwater and flooding in conjunction with each stage of the development.

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

Section 4 of this report contains a summary of the issues raised within public submissions (mostly relevant to the DA for Building B), however concerns with the numerous and ongoing modifications to the concept plans (ie. relevant to this application) are noted and considered to be valid. However, the planning legislation enables this process to occur, subject to consideration of required matters, as indicated in the following excerpt of Section 4.24 of the EP& A Act relating to concept development applications and consents:

(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.

(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application

In this instance, it has been identified that concept plans do contemplate some detailed change in subsequent stages of the development of the site. In this instance increases to the FSR, and street wall height, and reduced upper level setbacks (can be considered to be '*substantially the same development as the development for which consent was originally granted*' and resultant impacts from these modifications are reasonable in the context of the wider four-block development of the Newcastle East site.

A response to the concerns raised regarding building height and heritage, being matters relevant to the concept plan modifications, is contained in Section 8 of this report.

(e) the public interest

The Concept Proposal (proposed to be modified) will facilitate the achievement of CN's vision for the Hunter Street Mall as contained within the DCP (Section 6.01). The modifications will maintain the ability to deliver the urban design outcomes contemplated by the strategy. On balance, it is considered that the overall economic and social benefits of the modifications to enable the adaptive reuse of the former David Jones building (and additions) for the purposes of a hotel are in the public interest.

9. Conclusion

The proposed modifications to the approved Concept Proposal apply to Building B (heritage listed former David Jones Building) within Block 1 only which are detailed in a concurrent Development Application for development works (DA-2019/01150).

The modification to the approved Concept Proposal, while containing the fundamental principles of the development does not, nor is it required to, provide the level of detail that is necessary to allow for complete assessment of the proposed development works for Stage 1. Therefore, this report should be read in conjunction with the separate report for DA-2019/1150 which assesses

the development with respect to the detailed controls of NLEP 2012, the DCP and relevant state environmental planning policies.

The proposed modifications to the approved concept DA with respect to Building B within Block 2 principally relate to an increase to the street wall height and reduced setbacks above the street wall height/heritage building, reduced building separation between Buildings A and B and related matters. Detailed assessment of these aspects has been undertaken as part of (and concurrent to) DA-2019/01150 and found to be acceptable, including impacts to solar access, privacy, views, acoustic amenity, streetscape appearance, pedestrian amenity and heritage significance. The proposed modified parking arrangements/provision for Block 1 remain consistent with the approved concept plan (in terms of car parking numbers), although a reallocation of parking for the proposed uses will be required.

Detailed consideration of Section 4.55 'Modification of Consents' is provided in this report, and it is considered that the modifications to the approved concept plan are substantially the same development as the development for which consent was originally granted.

On balance, it is considered that the modifications to the approved Concept Proposal (limited to Building B within Block 1) will achieve the overall built form and heritage outcomes anticipated for this precinct and will promote the revitalisation of the East End of Newcastle. Accordingly, approval of the proposed modifications to the Concept Proposal is recommended.

10. Recommendation

That the Hunter & Central Coast Joint Regional Planning Panel grant consent to DA- 2017/701.02, subject to the conditions contained in **Appendix A**.

APPENDICES

Appendix A: Recommended conditions of consent.

Appendix B: List of the documents submitted with the application for assessment.:

Appendix C: Concept Proposals, including overall site Concept Proposal, indicative floor plans, building envelope elevations, sections, public access plan, staging plan and FSR Plan (SJB Architects)

Appendix D: Comparative Diagrams

Appendix E: View Analysis (SJB Planning)