



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-335 – MA2024/00381 (PAN-482741)
PROPOSAL	Section 4.55(2) modification to DA2019/01169 for mixed use development, demolition of structures, erection of 14 storey mixed use including seniors living and aged care facilities - design changes to replace seniors living and aged care facilities with residential apartments
ADDRESS	Lot 1 DP 1301874 124-126 Bull Street, Newcastle West (formerly known as 309 King Street, Newcastle West)
APPLICANT	GWH King Street Pty Ltd
OWNER	GWH King Street Pty Ltd
MOD LODGEMENT DATE	5 November 2024
ORIGINAL DA DETERMINATION DATE	9 March 2021
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as: Development that has a capital investment value of more than \$30 million.
CIV	\$189,642,610.40
CLAUSE 4.6 REQUESTS	Not applicable to a Modification Application
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Coal Mine Subsidence Compensation Act 2017</i> • <i>Roads Act 1993</i> • <i>State Environmental Planning Policy (Planning Systems) 2021.</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> • <i>Newcastle Local Environmental Plan 2012</i>

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	Assessment report and associated documents <ul style="list-style-type: none"> • Attachment A - Schedule of Conditions • Attachment B - Architectural Drawings and Design Statement • Attachment C - Landscape Plans • Attachment D - Stratum Subdivision Plan • Attachment E - Staged Construction Management Plan • Attachment F - Apartment Design Guide Assessment • Attachment G - Urban Design Review Panel Minutes (26 March 2025) • Attachment H - External Referrals • Attachment I - Design Excellence Competition Waiver Agreement • Attachment J - Traffic Impact and Supplementary Parking Assessment
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	The draft conditions have been issued to the applicant.
SCHEDULED MEETING DATE	19 May 2025
PLAN VERSION	<ul style="list-style-type: none"> • Architectural Plan set (various revisions) submitted 7 May 2025, refer to condition 1 in Attachment A for details • Landscape Plan set (Revision J), dated 9 May 2025
PREPARED BY	Eliza Arnott, Principal Development Officer (Concierge)
DATE OF REPORT	12 May 2025

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks consent for amendments to a consent granted to DA2019/01169 approved by the Hunter and Central Coast Planning Panel (HCCRPP) on 9 March 2021 (the Original Development Consent). This consent approved the following development at 124-126 Bull Street, Newcastle West (previously known as 309 King Street) for:

"Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), comprising seniors

housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon)".

The Original Development Consent was modified once (MA2023/00221, the Modified Development Consent), approved on 3 April 2024, and resulted in an additional level to Tower B, changes to the mix of seniors housing and residential apartments, increase to parking numbers, amendments to construction stages and other design modifications.

The subject modification relates to:

- Replacing Tower A's residential care facility (RCF) and independent living units (ILUs) with residential apartments, resulting in 129 apartments in Tower A (western tower) and 151 in Tower B. This is an increase of 84 apartments from the original approval and a total of 280 apartments.
- Expansion and reconfiguration of Basement Level 1 and 2 to the south-eastern corner (beneath Tower B) and additional parking on the Ground Floor Level and Level 1, totalling an increase of 112 spaces from 286 to 398.
- Three commercial tenancies on the Ground Floor Level replacing onsite services previously related to the seniors housing (administration, salon and medical centre).
- Residential apartments and associated communal facility (gym and multipurpose rooms) and 26 car parking spaces at Level 1 replacing on site services associated with the seniors housing land use (dining, theatre, village manager, games room, library).
- Amendments to the landscaping on the podium level.
- Reduction of 1 apartment on Level 1 of Tower B (approved apartment '101') and change to a 'communal facilities room'.
- Realignment of the external podium levels to align Level 3 across both towers.
- Additional residential apartments floor at Level 14, Tower A accommodating 9 apartments.
- Provision of rooftop communal area on Level 15 of Tower A and minor amendments to the approved communal area on Tower B to amend the approved awning over the north facing 'BBQ area' to be enclosed and inclusion of an enclosed 'BBQ Area South'.
- Two lifts to service Tower A replacing 4 seniors housing lift shafts and lobbies.
- Staging of the development.
- Amendments to conditions to align with the proposed modifications.

The proposed modification is considered to satisfy the substantially the same development test required under Section 4.55 of the EP&A Act.

The application was placed on public exhibition from 14 November 2024 to 28 November 2024. No submissions were received during the notification period.

A HCCRPP briefing on 18 December 2024 discussed the key issues, including whether the proposal is substantially the same development, land title and address, waste management, parking and street activation, Apartment Design Guide (the ADG) compliance, location of residential units at street level, and total gross floor area (GFA).

Key issues identified during the assessment of the application included:

1. *Density - an increase in floor space ratio (FSR) is not supported on the site. The preliminary FSR indicated for the modification appears to omit some areas that should be included in the calculation.*
2. *Landscaping - the significant amendments proposed to the Earthquake Memorial Walkway including removing planter beds and a substantial part of the water feature. The landscaping embellishments along this walkway originally acknowledged the important cultural significance of the 1989 earthquake however, the modification as lodged do not recognise the significance of this space.*
3. *Amenity - natural cross ventilation and solar access to Tower A apartments require additional work to increase amenity for occupants.*
4. *Housing diversity and social interaction - the provisions of Platinum and Silver Level apartments in Tower A should be considered in accordance with the Newcastle Development Control Plan 2023 (NDCP 2023).*
5. *Parking allocation - confirmation and clarification on the allocation of visitor parking due to the additional commercial uses at ground level.*
6. *Waste Management and Servicing - the use of King Street as a loading zone for waste servicing is not supported. The proposal is to maintain the waste servicing zone on Bull Street as approved under MA2023/00221.*

Following consideration of the matters under Section 4.15(1) and 4.55 of the EP&A Act and further amendments made to the application during the assessment, the proposed modification can be supported.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is located at 124-126 Bull Street, Newcastle West (formerly part of the site known as 309 King Street). It is legally described as Lot 1, DP 1301874. It is adjacent to the existing Wests City Club and car parking structure. It has an irregular shape and is 6.631m².

The site has street frontages to King Street (104m), Ravenshaw Street (27m) and Bull Street (136m). It shares a boundary with the Wests City Club to the east (91m). The site has a gradual slope from Bull Street to King Street with levels from RL 7m AHD in the southeast to RL 3m AHD in the north-west.

The site is accessible via two separated entry/exit driveways to Bull Street. A pedestrian ramp provides access from King Street to the existing car parking. Part of the site has been historically used as a Hunter Water depot. Demolition works commenced on the site under the Original Development Consent (DA2019/01169).

The site is zoned MU1 Mixed Use and is identified as a 'Key Site' in the 'Newcastle City Centre' and within the City Centre Heritage Conservation Area under Newcastle Local Environmental Plan 2012 ('NLEP 2012'). A site aerial is included at **Figure 1** below.

City of Newcastle's (CN) GIS system maps environmental constraints on the site including:

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

Section 4.2.1 provides an assessment of the proposal against relevant NLEP 2012 provisions.

1.2 The Locality

The wider area comprises a mix of single and double storey commercial, retail and residential development towards the Cooks Hill Heritage Conservation Area across Union Street. Bull Street has a mix of commercial and office premises, consultancies and gyms. Market town to the west of the site is a key shopping precinct for Newcastle West. Across the dual lane carriageway of King Street, north of the site is a mixture of commercial / retail premises, office space and high density including residential.

The general location is characterised by a combination of commercial and residential buildings including those under construction. Building heights range from single storey to buildings significantly taller.

NDCP 2023 identifies the site as within the 'Parry Street Character Area' and outlines its future character as follows:

Key performance criteria applying to development in the 'Parry Street Character Area' include:

- *Public domain is improved to support the evolving character of the area. Heritage items and contributory buildings and their setting are protected and conserved, including the Aboriginal cultural heritage and non-Aboriginal archaeology. A permeable street network with well-connected easily accessible streets and lanes is promoted, where pedestrian, bicycle and public transport users are prioritised over private vehicles.*
- *Street wall heights and ground level setbacks complement heritage items and contributory buildings whilst reinforcing the desired future character of Civic.*
- *Identified activity hubs, ground floor uses add to the liveliness and vitality of the street.*

New development that contributes to the night time economy of Parry Street is encouraged.

Following amendments to the proposal during the assessment, of the modified development will continue to provide high quality public domain (e.g. the publicly accessible Earthquake Memorial Walkway), consistent with the performance criteria of the Parry Street Character Area. The proposed landscaping and associated public domain works will enhance the surrounding streetscapes by fostering pedestrian movement and activating the area through the provision ground-floor commercial tenancies, with residential apartments located above.



Figure 1 Site Aerial

2. PLANNING HISTORY AND BACKGROUND

2.1 Background

Development Application - DA2019/01169

The HCCRPP determined the Original Development on 09 March 2021, pursuant to clause 2 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* (now replaced by the *State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)*) as the development had a CIV in excess of \$30 million (\$146,272,000 - estimated cost of works \$160,899,200 including GST).

DA2019/01169 was approved for the following development:

"Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (285 spaces), seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (cafe and restaurant) and retail premises (salon)." The NSW Government Architect (GA NSW) issued a design waiver for the development at that time. The waiver provided the following conditions:

"A process of design integrity is to be established to ensure the scheme retains design excellence through to completion of construction. This should include continuing review by the Newcastle City Council UDCG at regular intervals through documentation and construction stages of the projects, whenever a significant change is being considered (such as would require a Section 96 application) or at the request of the UDCG themselves, the Newcastle City Council or the proponent. A record of this process including UDCG meeting minutes and proponent's responses should be provided as part of the Development Application. A separate Independent Design

Review Panel will not be necessary, as we anticipate the UDCG can undertake that role, with our GA NSW representative Philip Pollard or Peter Webber in the role of chair of the UDCG".

Subdivision Application - DA2019/01171

A separate development application (DA2019/01171) was approved on 23 December 2023 for a one into two lot Torrens title subdivision, including rationalisation of car parking, loading and access for 'West's City' club. This separated 'West's City' club (and associated car parking) from the subject site establishing its legal description of Lot 1, DP 1301874.

Modification Application 1 - MA2023/00221

HCCRPP approved a modification application (MA2023/00221) on 3 April 2024 for the following:

- an additional level (residential) to eastern tower B;
- a reduction in the number of RCF beds (50 beds);
- increased number of ILUs (107 units);
- a reduction and reconfiguration of residential apartments (159 apartments);
- a reduction and reconfiguration of commercial premises (2 commercial tenancies);
- a reconfiguration of car parking and waste room;
- changes to parking numbers and allocation (315 car spaces);
- changes to landscaping and communal open space;
- Stratum Subdivision; and
- staging of development; and
- amended conditions.

2.2 Assessment History - The Proposed Modification

A pre-DA meeting was held on 9 September 2024 for the proposed s4.55(2) modification application and it was referred to CN's Urban Design Review Panel (UDRP). The final UDRP meeting recommendations of 26 March 2025, identified several minor items to be considered including the installation of a glass balustrade around the pool and a review of the access arrangements to the storage cages in basement car parking levels. Subject to incorporating these amendments, UDRP confirmed proposal support, finding it met design excellence.

Table 1 provides the modification application chronology including the HCCRPP's involvement:

Table 1: Chronology of the Modification Application

Date	Event
28 August 2024	Pre-Application review by the UDRP (UD2024/00429)
28 October 2024	Pre-Application review by the UDRP (UD2024/00429.01).
5 November 2024	Modification application lodged
14 November 2024	Notification of the application
19 December 2024	Modification referred to external agencies

18 December 2024	Panel briefing
29 January 2025	Review by the UDRP (UD2024/00429.02).
7 March 2025	CN's request for information (RFI) requesting the following: <ul style="list-style-type: none"> • Response to the UDRP meeting minutes. • Updates to architectural plans and documentation to include the correct GFA calculation. • Updated design statement. • Review of the waste management and servicing in accordance with previous comments. • Clarification of the parking allocation.
26 March 2025	Review by the UDRP (UD2024/00429.03).
4 April 2025	Amended plans submitted to address CN's RFI including updated Traffic Impact Assessment and Waste Management Plan.
16 April 2025	CN's RFI letter requesting the following: <ul style="list-style-type: none"> • Update documentation to reference correct site address. • Updates to architectural drawings including annotations, labelling, removal of redundant information. • Confirmation of landscaping, deep soil and communal open space areas. • Clarification of solar access analysis. • Traffic Analysis Report for Tower A in relation to lift servicing • Response to the UDRP meeting minutes. • Clarification of car parking and bicycle parking allocation. • Confirmation of staging and stratum subdivision plan amendments.
28 April 2025	Amended plans and supporting information was submitted to address CN's RFI.

2.3 Preliminary Panel Briefing

A Preliminary Briefing to the HCCRPP was held on 18 December 2024. Responses to the key matters discussed are provided in **Table 2** below and in the relevant sections of this report. CN issued RFIs to resolve key matters raised by HCCRPP, UDRP and during the assessment of the application.

Table 2: Responses to the key matters discussed in the HCCRPP

Summary of matters raised by the HCCRPP	Response
<i>Removal of the seniors housing component and whether the modification is considered substantially the same development.</i>	<p>The applicant submitted legal advice to support the proposed modification application. It was reviewed in the context of the proposed amendments and recent case law.</p> <p>This application included amendments to fundamental aspects of the design of the approved development including the waste management, the loading zone location and the landscaping embellishments to the Earthquake Memorial Walkway. During the</p>

	<p>assessment process CN raised concern with the scope of the proposed amendments.</p> <p>The application was reviewed and amended to retain the waste servicing arrangements and landscaping embellishments as approved.</p> <p>While the proposed change of use from seniors living to housing, the proposed development is considered to retain the essential and critical features of the original development and substantially the same as that originally approved. Further discussion is provided in Section 4.1 below.</p>
<i>Council should confirm land title and address arrangements following the previous subdivision.</i>	<p>At the time the Original Development Consent (DA2019/01169) was granted, the land was legally known as Lot 1 DP 826956 with a street address of 309 King Street, Newcastle West.</p> <p>This DA encompassed most of the city block bound by King Street, Union Street, Bull Street and Ravenshaw Street. The works approved related to the western half of the entire allotment with the Wests site being located on the eastern portion.</p> <p>Consent for the subdivision DA DA2019/01171 in December 2020 included (amongst other things) approval for a one into two lot Torrens Title subdivision. This is now registered, and the relevant portion of the site is now legally known as Lot 1 in DP 1301874 with a street address of 124-126 Bull Street.</p>
<i>Waste management and truck access needs to be closely assessed and should ideally be collected on site. The Panel noted there was a particular issue with the previous applications and that Council waste policies have evolved from 2021.</i>	<p>Following various RFIs from CN, the proposed waste management arrangement and servicing location were reviewed. The Applicant agreed to CN's request that all waste management services be maintained along Bull Street, consistent with the approach taken for MA2023/00221.</p> <p>The architectural drawings reflect this to align Tower A and the parking configuration with the former arrangement. Elephants Foot prepared an updated Operational Waste Management Plan. CN's Manager Service Delivery reviewed this and found the proposal satisfactory.</p>
<i>The proposed amendments need to be compared and assessed against the original approval and not as previously modified.</i>	<p>The proposed modification application was assessed against the Original Development Consent approved under DA2019/01169.</p>
<i>Consideration of public interest matters</i>	<p>The proposed modification application retains key public benefits fundamental to the approved development including:</p> <ul style="list-style-type: none"> • The publicly accessible Earthquake Memorial Walkway retains the fundamental vision and design approved under the original DA.

	<ul style="list-style-type: none"> • Additional commercial tenancies on the ground floor provide activation to King Street and Ravenshaw Street. This will generate employment opportunities. • Retention of previous waste management arrangements of Modified Development Consent (MA2023/00221) to minimise traffic/road network conflicts along King Street. • Provision of additional housing in a strategically significant location. The proposal will deliver various housing typologies to suit change needs and demands of the growing population. • Revitalisation of a significant city centre block. • Continued creation of a safe, attractive and inclusive development for future residents and visitors. <p>Having regard to the above, the proposed modification application is considered to be in the public interest.</p>
<i>Clarification of parking and street activation arrangements</i>	<p>In response to a RFI, the applicant provided clarification regarding the parking allocation and submitted an updated Traffic Impact Assessment, further discussed in Section 4.2.1 and Section 6.0.</p> <p>When compared to the Original Development Consent, the proposed modification application will include an additional commercial tenancy at ground floor fronting King Street.</p> <p>The surrounding streets' activation was a key consideration and the proposed development was amended through the assessment process to respond to UDRP comments. This included relocating commercial spaces along the King Street frontage and toward the curved corner of King and Ravenshaw Streets as well as a street awning projecting below the first floor to enhance frontages. Commercial tenancy ceiling heights were considered and UDRP supported that ensure adequate amenity and activation.</p>
<i>Cross ventilation is still low and does not meet the Apartment Design Guide (ADG) and should be further considered</i>	<p>The apartment layouts were reviewed in response to UDRP comments and CN's concerns in relation to cross ventilation. Additional windows to dwellings adjacent to indented eastern corridors were provided to increase cross ventilation in Tower A.</p> <p>The reconfiguration of the floor plate now achieves similar cross ventilation to that of the original development where 50% of Tower A apartments achieve natural cross ventilation; 63% in Tower B.</p>
<i>UDRP comments will be a key consideration in terms of amenity, design, ADG compliance and street activation</i>	<p>The ADG requirements, including winter sun and solar access were key considerations of the UDRP and the assessment. The UDRP accepted the proposed configuration noting the proposal is considered to "<i>technically satisfy the ADG requirement for light and ventilation</i>" and the proposed development is satisfactory.</p> <p>The proposal also achieves appropriate street activation through amendments in response to UDRP comments. At its meeting of 26 March 2025, the UDRP confirmed that while several minor items are to be reviewed (storage cages and securing the podium</p>

	landscaping level) it was satisfied the revised design continues to exhibit design excellence.
<i>Residential units at street level (Bull Street) can be challenging and good cross sections are required - need to understand open space and amenity</i>	Cross sections of the 2 residential units in Tower A, fronting Bull Street have been provided. The sections illustrate the extent of deep soil planting and planter boxes that assist in providing amenity and privacy to the balconies and living areas of these apartments.
<i>Extra level of car parking will need to be considered and assessed in terms of GFA calculations</i>	<p>The car parking schedule on drawing no. DA525 states the overall total vehicle spaces is 397 consisting of 371 residential (372 required), 10 commercial (10 required), and 23 visitor car spaces (56 required as a maximum), 17 motorbike bays (23 required) and 283 residential bicycle bays (280 required).</p> <p>The proposed parking increase meets the requirements and the GFA (as indicated on drawing number DA510, DA511 and DA512) was calculated in accordance with clause 4.5 of the NLEP 2012.</p>
<i>The Panel will need to understand what impacts, if any, that the noncompliance with standards result in</i>	<p>The UDRP 26 March 2025 advice confirmed the position that the proposed modification demonstrates excellent design quality. It included minor recommendations, which the UDRP felt should enhance the design.</p> <p>The modification application sufficiently incorporates UDRP recommendations and the application has satisfied their advice in respect to the previous iteration. It is now considered an appropriate design response consistent with the design quality principles in the Housing SEPP, Schedule 9.</p>
<i>Design and amenity will be a key consideration for the Panel</i>	The overall design and amenity of the development are fundamental to achieving design excellence. In the final UDRP on 26 March 2025, HCCRPP considered that subject to minor design amendments (to storage cages, securing podium communal open space, and fencing to the pool which have been revised in the latest set of plans), the proposal continues to exhibit design excellence.

3. THE PROPOSAL

3.1 Proposed Modification

The primary purpose of the modification application is to amend the approved Tower A land use from seniors housing to market residential with commercial premises on the ground floor level. In summary, the modification can be described as:

- Replacing the RCF and ILUs located in Tower A with residential apartments, resulting in 129 apartments in Tower A (western tower) and 151 in Tower B. This is an increase of 84 apartments from the original approval and an overall total of 280 apartments.

- Expansion and reconfiguration of Basement Level 1 and 2 to the south-eastern corner (beneath Tower B) and provision of additional parking on the Ground Floor Level and Level 1, totalling an increase of 112 spaces from 286 to 398.
- Replacement of Ground Floor Level onsite services associated with the seniors housing land use (administration, salon and medical centre) with three commercial tenancies.
- Replacement of Level 1 on site services associated with the seniors housing land use (dining, theatre, village manager, games room, library) with 26 car parking spaces, residential apartments and associated communal facility (gym and multipurpose rooms).
- Amendments to the landscaping on the podium level.
- Reduction of one apartment on Level 1 of Tower B (approved apartment '101') and change to a 'communal facilities room'.
- Realignment of the external podium levels to align Level 3 across both towers.
- Additional floor of residential apartments at Level 14 of Tower A to accommodate nine apartments.
- Provision of rooftop communal area on Level 15 of Tower A and minor amendments to the approved communal area on Tower B to amend the approved awning over the north facing 'BBQ area' to be enclosed and inclusion of an enclosed 'BBQ Area South'.
- Removal of the seniors housing lift shafts and lobbies and provision of two lifts to service Tower A.
- Staging of the development.
- Amendments to conditions to align with the proposed modifications.

Table 3 provides an overview of key development data for the modification application.

Table 3: Development Data

Control	Proposal
Site area	6,631m ²
GFA	33,815m ²
FSR	5.1:1
Clause 4.6 Requests	No - not applicable to modification applications
No of apartments	280
Max Height	Tower A: 53.53m (RL59.33 AHD) Tower B: 51.97m (RL 57.77 AHD)
Landscaped area	1,634m ²
Parking spaces	<ul style="list-style-type: none"> • 397 car spaces (371 for residential units, 23 for visitors with 9 of these allocated to commercial premises during peak business hours, 5 disabled parking spaces) • 17 motorbike spaces • 310 bicycle parking spaces

Table 4 below provides an overview of the amendments proposed on each level.

Table 4: Proposed Changes to Development

Floor	Change
Basement Level 2	<p>Reconfiguration and expansion in the south-eastern corner of Basement Level 2.</p> <p>The amendments comprise changes to the:</p> <ul style="list-style-type: none"> • Access ramp. • Car parking / storage cages configuration to accommodate 159 residential car spaces (a 15 space increase from 144). • Bicycle parking in each large storage cage. • Lift lobby access. • Plant and mechanical services relocated.
Basement Level 1	<p>Reconfiguration and expansion in the south-eastern corner of Basement Level 1.</p> <p>The amendments comprise changes to the:</p> <ul style="list-style-type: none"> • Access ramp. • Car parking / storage cages configuration to accommodate 153 residential car spaces (a 19 space increase from 134). • Bicycle parking in each large storage cage. • Lift lobby access. • Plant and mechanical services relocated.
Ground	<p>Reconfiguration and expansion of basement in the south-eastern corner of the Ground Floor Level.</p> <p>The amendments comprise changes to the:</p> <ul style="list-style-type: none"> • Car parking to accommodate 60 spaces (a 12 space increase from 48). • Removal of the ambulance bay. • Reconfiguration of the ramp to levels below. • Removal of seniors housing onsite services / lobby area and inclusion of 3 retail tenancies in Tower A. • Reconfiguration of services area / fire stairs in Tower A and Tower B. • Inclusion of a building manager office fronting King Street in Tower B.
Level 1	<ul style="list-style-type: none"> • Removal of RCF beds and replaced with 26 residential car spaces and associated storage cages. • Removal of seniors housing onsite services (medical centre, indoor pool etc) and replaced with communal areas including gym, residential amenity / facilities room and 2 apartments in Tower A fronting Bull Street. • Reconfiguration of outdoor communal open space including path of travel and removal of stair from King Street. • Reconfiguration of outdoor pool. • Minor amendments to Tower B including the reduction in the number of apartments by 1 and design changes to various amendments to achieve the Silver Level Liveable Housing Design Guidelines.
Level 2	<ul style="list-style-type: none"> • Change from RCF to residential apartments in Tower A.

	<ul style="list-style-type: none"> • Inclusion of 10 apartments accessed via 2 residential lifts (previously 4) in Tower A. • Amendments to the corridor circulation and outlook in Tower A. • As above, minor design changes to apartments in Tower B.
Level 3	<ul style="list-style-type: none"> • Change from RCF to residential apartments in Tower A. • Inclusion of 10 apartments accessed via 2 residential lifts (previously 4) in Tower A • Reconfiguration of floor plate to increase podium separation distances between Tower A and B. • Amendments to the corridor circulation and outlook in Tower A. • As above, minor design changes to apartments in Tower B.
Level 4	<ul style="list-style-type: none"> • Change from ILUs / RCF beds to residential apartments in Tower A. • Inclusion of 10 apartments accessed via 2 residential lifts (previously 4) in Tower A. • Amendments to the corridor circulation and outlook in Tower A. • As above, minor design changes to apartments in Tower B.
Level 5-8	<ul style="list-style-type: none"> • Change from ILUs / RCFs to residential apartments in Tower A. • Inclusion of 10 apartments accessed via 2 residential lifts (previously 4) in Tower A. • Amendments to the corridor circulation and outlook in Tower A. • As above, minor design changes to apartments in Tower B.
Level 9 and 13	<ul style="list-style-type: none"> • Change from independent living units to residential apartments in Tower A and removal of the sky dining area. • Inclusion of 9 apartments accessed via 2 residential lifts (previously 4) in Tower A. • Reconfiguration of floor plate to increase podium separation distances between Tower A and B. • Amendments to the corridor circulation and outlook in Tower A. • As above, minor design changes to apartments in Tower B.
Level 14	Inclusion of an additional level in Tower A to accommodate 9 apartments.
Level 15	<ul style="list-style-type: none"> • Inclusion of a rooftop communal area on Tower A accessed via 2 residential lifts and comprising two winter gardens, paved outdoor area and landscaping. • Minor amendments to the approved communal area on Tower B to amend the approved awning over the north facing 'BBQ area' to be enclosed and inclusion of an enclosed 'BBQ Area South'.
Level 16 (Roof)	Roof services and lift overrun raised by one level as a result of the inclusion of Level 14 to Tower A.

The proposed modifications result in several associated amendments to the conditions of consent pursuant to DA2019/01169 (as amended under MA2023/00221 on 3 April 2024), as outlined in **Table 5** below.

Table 5: Proposed Changes to Conditions

Condition No	Condition requirements	Change	CN Reason for Change
Condition 1	Approved plans and documents	Modify architectural plans	Modify to update plans to reflect proposed modification
Condition 1A	Staging	Modification to proposed staging to include the podium level landscaping, pool and communal facilities in Stage 3 instead of Stage 4.	Modify to reflect the proposed modification
Condition 2	General Terms of Approval by Subsidence Advisory NSW	Modify to reference the new General Terms of Approval	To reflect the proposed modification
Condition 3	Contributions	Modify	To reflect the updates to the apartment mix and the updated 7.12 Contributions Plan.
Condition 4	Parking Provisions	Updated reference to the amended parking, bicycle, motorbike, wash bay and service spaces.	To reflect the proposed modification
Condition 4A	Parking Provisions	Updated reference to the amended parking, bicycle, motorbike, wash bay and service spaces.	To reflect the proposed modification
Condition 7	Parking Provisions	Updated reference to the amended parking, bicycle, motorbike, wash bay and service spaces.	To reflect the proposed modification
Condition 16	Stormwater Management	Update to reference the amended stormwater management plan	To reflect the proposed modification

Condition 38	Aged care facility and independent living unit verification	Delete	To reflect the proposed modification which deletes the seniors housing land use
Condition 42	Public Art	Amended to reflect the updated cost of works	To reflect the proposed modification which amends the update cost estimate
Condition 42A	Glazing	Delete as this condition has been included/satisfied as part of the amended plans submitted with this modification.	To reflect the proposed modification which reconfigures the apartment layouts to achieve satisfactory cross ventilation.
Condition 42B	Glazing	Delete as this condition has been included/satisfied as part of the amended plans submitted with this modification.	To reflect the proposed modification which reconfigures the apartment layouts to achieve satisfactory cross ventilation.
Condition 75	Archival photography prior to demolition	Delete as this condition has been satisfied.	This condition still applies, notwithstanding it being satisfied. It will be maintained.
Condition 80	Car parking	Updated to reference the amended parking, bicycle, motorbike, wash bay and service spaces.	To reflect the proposed modification.
Condition 99	Registration of Seniors Housing Component	Delete	To reflect the proposed modification.
Condition 115	Car Parking	Updated to reference the amended parking, bicycle, motorbike, wash bay and service spaces.	To reflect the proposed modification.
Condition 119	Hours of operation - Retail	Amended to apply to all retail tenancies	To reflect the proposed modification

4. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

4.1 Section 4.55(2) of the EP&A Act

S4.55(2)(a) - Substantially the Same

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 number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the **consent if—**

(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...*

Officer Comment

In *Canterbury-Bankstown Council v Realize Architecture Pty Ltd [2024] NSWLEC 31* Chief Judge Preston CJ confirmed that in determining whether the development as modified is substantially the same development as the development originally approved, the following three steps need to be undertaken:

*“(a) **Finding the primary facts:** This involves drawing inferences of fact from the evidence of the respects in which the originally approved development would be modified. These respects include the components or features of the development that would be modified, such as height, bulk, scale, floor space, open space and use, and the impacts of the modification of those components or features of the development.*

*(b) **Interpreting the law:** This involves interpreting the words and phrases of the precondition in s 4.55(2) as to their meaning.*

*(c) **Categorising the facts found:** This involves determining whether the facts found regarding the respects in which the development would be modified fall within or without the words and phrases of the precondition in s 4.55(2). The decision-maker’s task is to determine whether the facts found fall within or without the statutory description, “according to the relative significance attached to them” by the decision-maker:”*

The Applicant's legal advice dated 24 October 2024 addresses the 3-step formula outlined as tasks above. An assessment against the 3-step formula is provided below to consider whether the proposed development is 'substantially the same development' including a qualitative and quantitative comparison.

The First Step: Finding the Primary Facts

The first step involves identifying the proposed changes to the approved development.

The primary objective of this modification is to amend the approved land use by replacing the seniors housing component in Tower A with shop top housing, aligning it with the approved land use for Tower B. The proposed market residential and ground-floor commercial uses fall within the definition of "shop top housing" under the NLEP 2012, are permissible with consent

within the zone, and represent a continuation of the mixed use development approved under the Original Development Consent.

Crucially, the proposal does not introduce a new land use but rather substitutes one form of residential accommodation (seniors housing) with another (shop top housing). While the revised use caters to the broader population, it remains consistent with the overarching intent of the original approval - to deliver a mixed use development. Therefore, the modification does not materially alter the fundamental or essential character of the approved development.

Additionally, while this modification has been assessed in the context of the Original Development Consent, it is relevant to note that the extent of seniors housing and the land use mix has been previously modified under MA2023/02211. That approval included an additional storey on Tower B and changes to the composition of the RCF and ILUs in Tower A to include additional ILUs in place of the previously approved RCFs. Notably, the increase in ILUs in Tower A aligns more closely with market residential development, particularly given the requirement for an assessment against the ADG.

Apart from the proposed change in the form of residential accommodation on the site, the modification does not substantially alter the approved building envelope. Key development metrics remain within the limits of the original consent and do not result in adverse environmental impacts. For instance, the total GFA is proposed to decrease from 36,161m² to 33,815m² (refer to **Table 6**).

Although some minor design adjustments are proposed to Tower B, the modification primarily affects Tower A with Tower B remaining largely consistent with the original approval.

Therefore, when comparing the facts of the original development and the proposed modification, the impacts are not considered to alter the essential purpose of the original consent, and the proposal can be appropriately considered under Step 1.

Table 6: Comparison of key numerical metrics of the original development and proposed development (MOD 1 has been included for clarity)

Component	Approved Development (DA2019/01169)	Approved S4.55(2) Modification Application MA2023/00221	Proposed S4.55(2) Modification Application	Comparison to original DA
Site Area	6,631m ²	6,631m ²	6,631m ²	No change
Gross Floor Area	36,161m ²	34,508m ²	33,815m ²	-2,346m ²
Floor Space Ratio	5.45:1	5.2:1	5.1:1	-6.63%
Maximum Building Height	Tower A: 45.1m (RL51.6m AHD)	Tower A: 49.11m (RL 54.940 AHD)	Tower A: 53.535m (RL59.33 AHD)	Tower A: +8.43m

	Tower B: 46.2m (RL52.70 AHD)	Tower B: 51.75m (RL57.580 AHD)	Tower B: 51.97m (RL 57.77 AHD)*	Tower B: +5.77m / 0.22m (from original DA / MOD 1)*
Commercial floor space	565m ²	417m ²	621.6m ²	+56.6m ²
Independent Living Units	82 units	107 units	0	-82
Residential Care Facility	114 beds	50 beds	0	-114
Residential apartments	166 apartments	152 apartments	280 apartments	+114
Parking	<ul style="list-style-type: none"> • 286 car parking spaces (including 11 accessible) • 168 bicycle storage spaces • 17 motorcycle • 4 external drop off points, including 2 for ambulance and 1 for mini bus • 1 internal loading bay • 1 car wash bay • End of trip facilities (5 showers, lockers) 	<ul style="list-style-type: none"> • 316 car spaces (including 3 accessible) • 259 storage cages (capable of storing bicycles) • 9 motorcycle spaces • 14 public car parking spaces • End of trip facilities 	<ul style="list-style-type: none"> • 397 car spaces (including 5 accessible) • 280 Storage cages • End of trip facilities • 17 motorbike spaces • 310 bicycle storage spaces 	+111 car spaces +112 storage cages +8 motorbike spaces
Communal open space	2,370m ²	1,995m ²	2,763m ²	+393m ²
Landscaped area	2,190m ²	2,204m ²	1,634m ²	-556m ²

* MOD 1 approved an additional storey to Tower B. This modification application results in a slight increase in building height for Tower B to rectify drafting errors in the previous Modified Development Consent.

When considering the extent of changes proposed as part of the MA, **Figures 2 - 4** below clearly indicate the proposed development does not significantly alter the building envelopes from that originally approved.

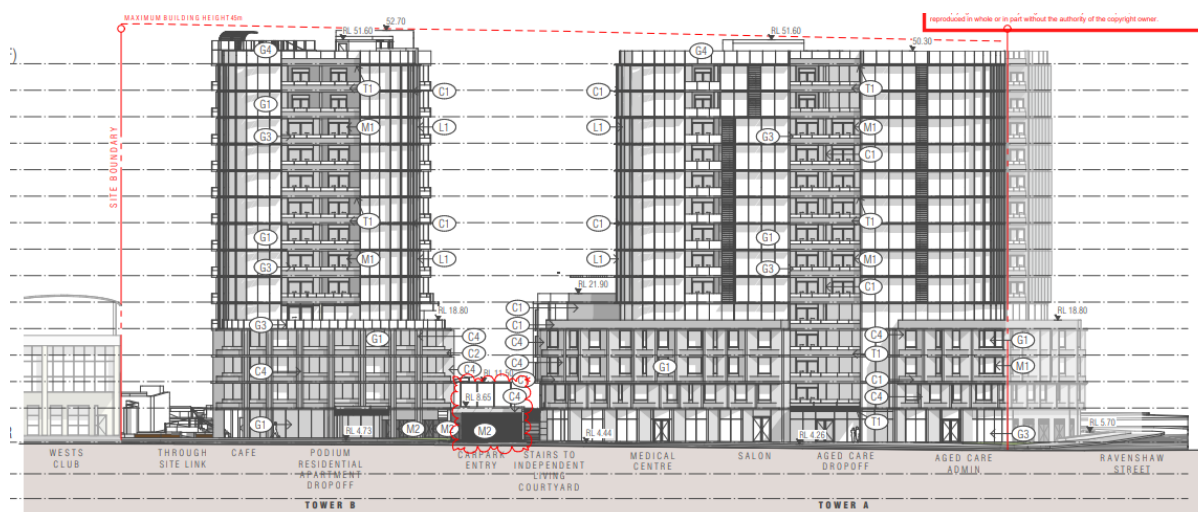


Figure 2 Excerpt of approved building envelopes per DA2019/01169 as viewed from the North Elevation



Figure 3 Excerpt of approved building envelopes per MA2023/00221 as viewed from the North Elevation



Figure 4 Excerpt of proposed building envelopes the subject of this MA as viewed from the North Elevation

The Second Step: Interpreting the Law

Traditional approaches to the relevant comparison to interpret the 'substantially the same' test in section 4.55(2)(a) of the EP&A Act is provided below to inform the process' second step.

Comparing the Quantitative Differences

Table 6 above clearly sets out the quantitative differences and gives context to the previous approvals and the proposed development. It is important to note a variation to the building height development standard for Tower B was accepted under the previous Modified Development Consent (MA2023/00221).

The Applicant's legal advice provides the following quantitative justification in relation to the proposal being 'substantially the same' development:

Quantitatively, the proposed changes do not result in a radical transformation of the originally approved development given the context of the approved development as a whole, which was for a large scale development comprising a two large towers with a shared basement car park and each tower comprising ground floor commercial uses with upper storey residential uses.⁸ Overall, the proposed modified development will maintain key quantitative elements of the original approved development:

- (a) The proposed modifications will continue to provide shared basement car parking, two towers comprising mixed uses with ground floor commercial and upper storey residential uses with a mix of apartment types.*
- (b) The increase in the height of tower A is not significant considering the scale of the originally approved tower and represents a 15% increase in height. There is also a material reduction in overall gross floor area.*
- (c) The increase in height of tower B was approved under modification application MA2023/00221 application and the proposed modification does not seek increase the height of tower B.*
- (d) The totality of the amendments will not materially transform the overall built form which would require a new development application. The modified development*

will also not be uncharacteristic or unrecognisable from the originally approved development.

(e) The earthquake memorial walk is also retained as originally approved.

The proposed modifications can be assessed under s4.55(2) as they do not result in a radical or material transformation of the originally approved development. The changes maintain the fundamental characteristics of the approved scheme, including two mixed-use towers with a shared basement, ground floor commercial uses, and upper residential levels. While Tower A sees a moderate 15% height increase, this is proportionate to the scale of the original design, and Tower B's height largely remains as approved under the previously approved scheme.

Importantly, there is a reduction in GFA, and key features retained such as the Earthquake Memorial Walkway. When considering of the proposal's key numeric data against the original development, it is considered the overall form, function and intent are retained and quantitatively the proposal can be appropriately assessed under s4.55(2) of the EP&A Act.

Comparing the Qualitative Differences

When considering the qualitative differences, while the proposal will change the approved seniors housing to shop top housing in Tower A, the proposed land uses remain a mixed use development comprising commercial floor space, a public walkway and residential accommodation above basement car parking.

The Applicant's legal advice provides the following qualitative justification in relation to the proposal being 'substantially the same' development:

Qualitatively, a comparison between the proposed modified development and the originally approved development demonstrates that the qualitative elements of the development, or the similarities of the originally approved development and the modified development, remain:

- (a) The modified development still comprises two towers with shared basement car parking. The external appearance of the building will present not materially different to the originally approved development. The modified development has the same core design elements of the original approved design and its overall character and design is retained.*
- (b) The modified development will not change the relationship of the original development to the streetscape and will maintain its overall character despite the increase in height which is significantly mitigated by the reduction in the gross floor area of tower A.*
- (c) The three storey podium in the modified development improves the presentation of the development to the streetscape. The additional communal open space is a further amenity improvement against the original design.*
- (d) The change of use from seniors living to residential apartments largely comprises internal changes that result in an insignificant overall qualitative change to the originally approved development and does not substantially change the way the building is used. A change in characterisation under the Newcastle LEP does not preclude the Panel from accepting that the proposed development remains substantially the same.*

As lodged, the proposed modification included changes to the landscaping elements along the approved Earthquake Memorial Walkway and the relocation of the bin servicing and

loading zone from the Bull Street frontage to King Street. These modifications were considered fundamental to the original approval, particularly as the design of the Earthquake Memorial Walkway was a key element contributing to the overall design excellence of the development.

Following the application assessment and in response to feedback from the UDRP, the proposed changes to waste management and landscaping along the walkway were withdrawn, and the previously approved design reinstated. Retaining these components ensures that the overall public domain presentation, including streetscape character, servicing arrangements, and the pedestrian network, remains consistent with the original approval.

Changes proposed to the building envelope do not alter the fundamental nature of the development. The use remains mixed - comprising residential, commercial, and public spaces - as originally approved and any changes to the envelope do not give rise to adverse qualitative impacts beyond those already considered in the original assessment.

Comparing the "material and essential feature" or "critical elements"

The phrase "material and essential features" or a "material and essential physical element" of the development, derives from judicial interpretations of the statutory test that the modified development be "substantially the same" as the originally approved development.

In this instance, the inherent nature of the development, as a mixed-use residential development, will not change because of the modification proposed, with key features of the original proposal retained.

The public benefits of the original scheme, including the provision of a publicly accessible Earthquake Memorial Walkway from King Street to Bull Street will continue to be delivered by the modification and includes the same landscaping embellishments as originally approved. The proposal will continue to provide additional and diverse housing typologies above an activated Bull Street and King Street ground level.

Further, the proposal will retain the 'material and essential feature' or 'critical elements' through the delivery of two towers over a mixed-use podium and basement car parking. These are considered essential features of the approved development, which remains notwithstanding the amendments to the form of residential accommodation in Tower A.

The Third Step: Categorising the facts

While the proposal will result in some quantitative and qualitative differences, these changes are not substantive to render the development not 'substantially the same' as originally approved. The legal advice prepared in relation to the 'substantially the same' test is accepted in that the proposed change in the form of residential accommodation is not a blanket reason to consider the development (as modified) as not being substantially the same as that originally approved. As such, the proposal can be appropriately assessed under s4.55(2).

S4.55(2)(b) - Consultation

Section 4.55(2)(b) requires consultation with relevant public authorities or approval bodies:

- (b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

Officer Comment

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

SANSW issued amended GTAs on 31 January 2025 for the proposed modified development.

In addition, written advice was received from Transport for NSW (TfNSW), Water NSW and Ausgrid, which were consulted on the subject modification application of which they raised no objection. Their comments are detailed in Section 5.1 of this report.

Section 4.55(2)(c)(i) and (ii)

Section 4.55(2)(c) requires notification in accordance with the relevant Community Participation Plan or Development Control Plan.

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

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

Officer Comment

Notification occurred from 14 November 2024 to 28 November 2024, in accordance with CN's Community Participation Plan. No submissions were received during the notification period.

Section 4.55(2)(d) - Submissions

Section 4.55(2)(d) requires any submissions received to be considered.

(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 (Section 4.55(2)(d)).

Officer Comment

No submissions were received during the public notification period.

4.2 Section 4.15(1) of the EP&A Act

Section 4.55(3) of the EP&A Act states:

"In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified."

An assessment against the relevant provisions of the s4.15(1) of the EP&A Act is provided in the following sections of this report.

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

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

The Original Development Consent issued on 9 March 2021 was subject to the following Environmental Planning Instruments (EPIs):

- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy No. 55 - Remediation of Land*
- *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH)*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Newcastle Local Environmental Plan 2012*

Since the original determination various EPIs have been repealed. As such, the modification application has been assessed against the current EPIs, including those outlined below, with consideration given to the repealed EPIs where relevant.

- *State Environmental Planning Policy (Sustainable Buildings) 2021*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Newcastle Local Environmental Plan 2012.*

The key matters for consideration arising from these EPIs are outlined in **Table 7** and considered in more detail below.

Table 7: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
Sustainable Buildings SEPP	The provisions of the SEPP apply to the current development proposal. The applicant submitted a valid BASIX Certificate (dated 6 November 2024) which lists the commitments to achieve appropriate building sustainability.	Y

	Relevant conditions will be amended to refer to the updated BASIX Certificate to ensure the commitments are fulfilled.	
State Environmental Planning Policy (Housing) 2021	<p>Development application (DA2019/00711) was assessed in accordance with the provisions of SEPP SH. This EPI is repealed and the proposed modification seeks to remove the seniors housing land component and replace it with shop top housing. As such, provisions relating to seniors housing in Part 5, Chapter 3 of the Housing SEPP do not apply. Assessment against Chapter 4 regarding residential apartment development is required.</p> <p>The proposal was referred to CN's UDRP prior to lodgement and during the assessment process on 4 occasions. Final UDRP advice dated 26 March 2025 supported the modified development and confirmed the development (as modified) achieves the requirements of the ADG and continues to exhibit design excellence.</p> <p>The modified development remains consistent with both the design quality principles of the policy and is consistent with the ADG requirements. Refer to detailed assessment in Attachment F of this report.</p>	Y
State Environmental Planning Policy (Planning Systems) 2021	<p>HCCRPP determined the original application on 9 March 2021, pursuant to SEPP (State and Regional Development) 2011, Schedule 7, cl. 2 as the development was for general development with a CIV in excess of \$30 million (estimated cost of works \$189,642,610.40 including GST).</p> <p>SEPP (State and Regional Development) 2011 was repealed and SEPP (Planning Systems) 2021 replaced it. Under the Planning Systems SEPP Schedule 6, cl.2, the development is identified as General development with a CIV greater than \$30 million.</p> <p>Section 275 of the 2021 EP&A Regulation states that a council must not determine an application to modify a development consent under Section 4.55(2) of the EP&A Act on behalf of a regional planning panel, if the application is of a kind specified in the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW Planning Portal on 30 June 2020. As such, the s4.55(2) modification application requires determination by the HCCRPP.</p>	Y
SEPP (Resilience & Hazards) 2021	<p>Chapter 2: Coastal Management - the modified development is consistent with the approved building footprint and is unlikely to increase the risk of coastal hazards. Further consideration of coastal management is not required under this modification application.</p> <p>Chapter 4: Remediation of Land - the development assessment considered contamination and remediation. The</p>	Y

	modified development remains consistent with the development consent and no contaminating activities have occurred since the granting of consent.	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Section 2.48(2) - Determination of development applications (electricity transmission) - the modified development remains satisfactory with referral advice received from Ausgrid on 13 January 2025 and the relevant conditions.</p> <p>Section 2.120 Impact of road noise or vibration on non-road development - No acoustic impacts are expected from the proposed deletion of the seniors housing component and expansion of shop top housing in Tower A. As mechanical plant equipment has not been identified at this stage, previous conditions will apply and the requirement for acoustic treatments to be determined prior to the issue of a Construction Certificate will apply.</p> <p>Section 2.122 - Traffic generating development - referral advice was received from TfNSW on 10 March 2025 raising no objection to the proposed modification application.</p>	Y

State Environmental Planning Policy (Housing) 2021

Development Application (DA2019/00711) was assessed in accordance with the provisions of Seniors Housing SEPP, which has been repealed and replaced by the Housing SEPP. The proposed modification will result in the replacement of the seniors housing component with shop top housing and therefore, an assessment against the SEPP SH is not required.

Further, on 14 December 2023, the NSW Government consolidated the provisions of the *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ('SEPP 65') into the Housing SEPP. This means the former provisions of SEPP 65 relating to the design of residential apartment development now sit in Chapter 4 of the Housing SEPP. Chapter 4 aims to improve the quality of residential apartment development through a consistent approach to design and assessment of new apartment development across NSW.

The nine design principles and the ADG provisions under SEPP 65 continue to operate under Chapter 4 of the Housing SEPP. As the proposed modification comprises development for the purposes of a residential flat building, the provisions of Chapter 4 apply.

A Design Statement (prepared by Fender Katsalidis dated 26 March 2025) was submitted in support of the proposed modification application.

It is noted that the subject modification application required design review by the UDRP for the purposes of NLEP 2012, Clause 7.5 (design excellence). An assessment of the current architectural drawings had regard to the UDRP 26 March 2025 advice in relation to the design principles in Schedule 9 of the Housing SEPP. The subject modification application has sufficiently incorporated the UDRP recommendations through the assessment process. As such, the development application has now satisfied UDRP advice in respect to the previous iteration and is now considered an appropriate design response consistent with the design quality principles set out in Schedule 9 of the Housing SEPP.

Adequate consideration was given to the extent the ADG applies to the subject modification application. The modification application is supported by a design statement (**Attachment B**) and a detailed assessment against the ADG (**Attachment F**).

State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 2.10 - Development on land within the coastal environment area

Chapter 2 of the Resilience and Hazards SEPP provides a strategic land use planning framework for coastal management. The site is mapped as 'coastal environment area' and therefore the SEPP applies. The proposed development, as modified, will not result in any impact greater than that of the approved application and is consistent with the provisions and intentions of Chapter 2 of the Resilience and Hazard SEPP.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of have been considered in the assessment of the modification application. Section 4.6 of Resilience and Hazards SEPP requires the consent authority to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Remediation Action Plan (RAP) was endorsed for the site under the development consent.

There are no proposed changes to the approved RAP as part of the modification application, and it will not result in any impact greater than that of the approved application. There have been no activities since the granting of development consent that require consideration.

The proposed development, as modified, is consistent with Chapter 4 Remediation of Land of the Resilience and Hazards SEPP, subject to the existing conditions of consent in relation to remediation works during construction.

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the NLEP 2012.

Zoning and Permissibility (Part 2)

The site is within the MU1 Mixed Use zone pursuant to Clause 2.2 of the NLEP 2012. The zoning map is shown at **Figure 5** below.

Under the Dictionary in Clause 4, the proposal satisfies the definition of shop top housing, a permissible use with consent in the Land Use Table in Clause 2.3. Pursuant to Clause 2.3, the development, as modified, is consistent with the following MU1 Mixed Use zone objectives:

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

The development provides a mix of commercial and residential land uses. Residential accommodation will provide housing close to employment opportunities in the city centre and the commercial tenancies will provide employment opportunities.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

The development, as modified, maintains and increases the ground floor commercial tenancies ensuring streetscape activation. The ground floor relates with the streetscape encouraging pedestrian traffic and a vibrant space. Activation of the King Street, Ravenshaw Street and Bull Street frontages was a key consideration of the modified development and the proposal is considered to provide an appropriate response, supported by the UDRP.

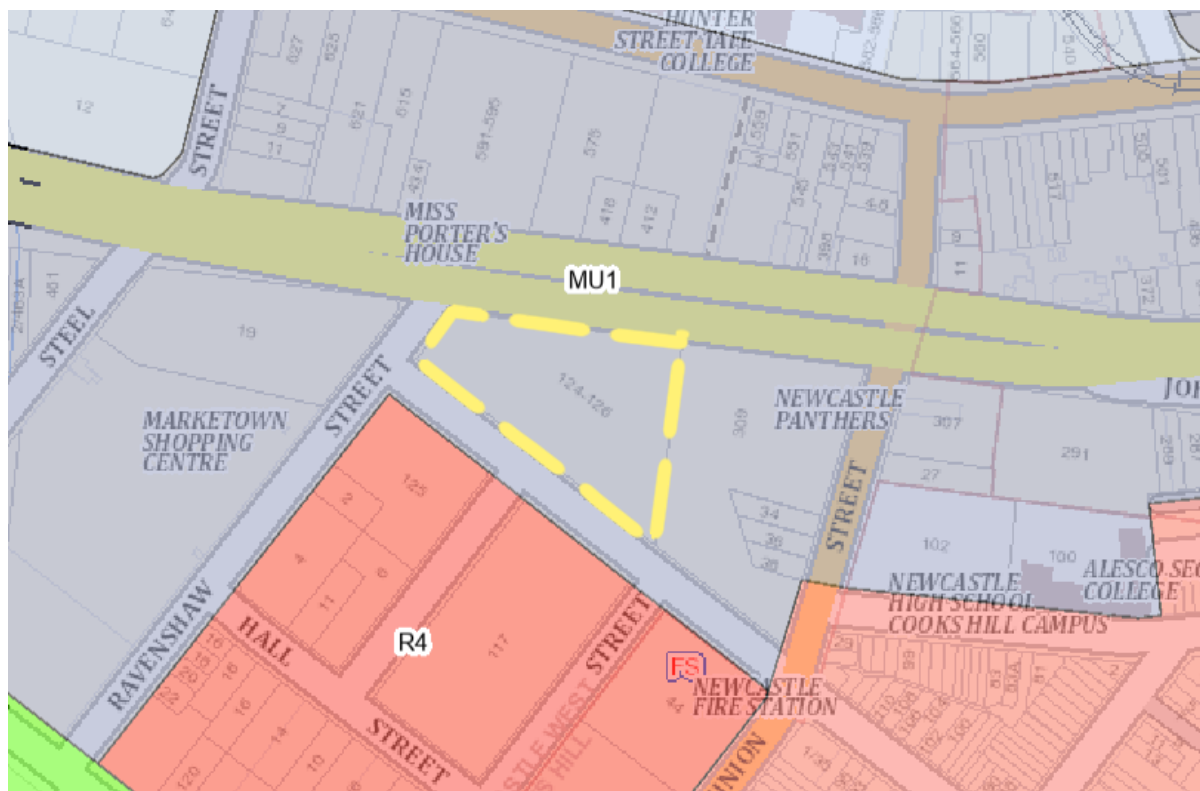


Figure 5 Land zoning map (Source: EPlanning Spatial Viewer)

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

The site and immediate area is zoned MU1 and the land opposite the site on the southern side of Bull Street is zoned R4 High Density Residential. As the proposal is for a mixed use development including commercial and residential uses, it will not result in conflicts within the MU1 zone or to the nearby R4 zone and is acceptable.

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

The proposal is consistent with the approved built form and maintains ground floor activation through the commercial tenancies along the King Street and Ravenshaw Street frontages.

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

The proposal includes an increase of commercial floor space by 56.6m², resulting in a total of 621m². The five commercial tenancies vary in size to accommodate a range of retail and commercial uses, aligning with the objectives of the MU1 zone. This mix of tenancy sizes will help support the broader commercial centre, including the nearby Markettown Shopping Centre. Given the size of the tenancies, the proposal will not impact the viability of the commercial centre.

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

NLEP 2012 contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 8** below.

The modified development does not comply with the 'Height of buildings' development standard in Part 4 of the NLEP 2012 - Clause 4.3. This is considered in the key issues section of this report.

Table 8: Consideration of the NLEP 2012 Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	45m	<p>Clause 4.3(2) of the NLEP 2012 specifies a 45m maximum height for the subject site. A 10% bonus has been applied under clause 7.5 of NLEP 2012. This equates to a maximum building height for the site of 49.5m.</p> <p>The approved development has a building height of 46.2m, including the lift overrun, building parapets, pool balustrades and stairs to the communal open space. The extent of the approved variation is 1.2m or 2.6%.</p> <p>The proposed modification seeks to amend the building height of Tower A to 53.53m (RL59.33 AHD). This results in a non-compliance of 3.93m or a 7.94% exceedance to the maximum building height of 49.5m (inclusive of the 10% design excellence bonus).</p> <p>The proposal will rectify drafting errors as approved under the previous Modified Development Consent, where a maximum building height of 51.97m is proposed for Tower B.</p> <p>Detailed discussion on the proposed maximum building height is provided below.</p>	No
FSR (CI 4.4(2))	5:1	<p>Clause 4.4(2) specifies a maximum floor space ratio of 5:1 applies to the site. The approved development has a floor space ratio of 5.45:1, a non-compliance with the standard.</p> <p>The modification application proposes a FSR of 5.1:1, a reduction in FSR to the approved development resulting from the amendments to the residential</p>	Yes

		component of the development. GFA plans indicate that proposed was calculated in accordance with clause 4.5 of NLEP 2012, refer to Attachment B .	
Heritage (CI 5.10)	<p>The site is within Newcastle City Centre Heritage Conservation Area (HCA), listed in NLEP 2012, Schedule 5 and c, 5.10 requires consideration of the proposed development on the heritage significance of Newcastle City Centre HCA.</p> <p>The site is identified as a non-contributory building within the HCA and is in the vicinity of four heritage items.</p> <p>The proposal largely relates to the replacement of seniors housing with shop top housing in Tower A and an additional storey at Level 14. These changes are substantially the same as the Original Development Consent (as amended under MA2023/0221) and will not significantly amend the scale of the development or its presence in the HCA. There are no changes which would have a detrimental impact on the significance of the listed heritage items in the vicinity of the site or their setting, which are a sufficient distance away.</p> <p>The proposed development, as modified, is consistent with the provisions of cl. 5.10 of the NLEP 2012.</p>	Yes	
Acid sulphate soils (CI 6.1)	The proposed modification application will not alter the Acid Sulfate Soil Assessment submitted with the original development application. As such, the proposal is satisfactory under clause 6.1 of the NLEP 2012.	Yes	
Earthworks (CI6.2)	No additional impacts are created in relation to associated earthworks.	Yes	
Newcastle City Centre (CI 7.1)	<p>The proposal is consistent with the intended strategic planning outcomes for the Newcastle City Centre as:</p> <ul style="list-style-type: none">• The proposed modification application will enable the revitalisation of a significant city centre block and will contribute to the economic prosperity of this portion of the City of Newcastle.• The proposed modification will deliver additional commercial premises to the City Centre and will contribute to employment and economic growth opportunities.• The modified development continues to exhibit design excellence, as commended by the UDRP, will deliver strong public benefits through the provision of a new publicly accessible walkway, additional housing and employment opportunities.• The development will contribute to the revitalisation of this portion of the city centre and will provide additional activation to Bull Street, Ravenshaw Street	Yes	

	and King Street. This will create a safe, attractive and inclusive area.	
Building Separation (CI 7.4)	<p>A minimum 24m building separation applies at 45m or higher above ground level under clause 7.4 of the NLEP 2012. The 24m requirement applies both to external sites and internally where multiple structures are proposed. From Level 14 the development proposes a minimum building separation distance of 20.66m between Tower A and Tower B. The proposed development will result in a 3.4m non-compliance with clause 7.4 of the NLEP 2012.</p> <p>Further discussion is provided below.</p>	No
Design Excellence (CI 7.5)	<p>Under cl. 7.5, NLEP 2012 the Original Development Consent triggered an architectural design competition.</p> <p>At the time of the Original Development's assessment cl. 7.5(5) specified that subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. The Government Architect NSW (delegate of the Director-General) certified in writing that a design competition was not required in this case ('Competition Waiver Agreement', 14 August 2018 - see Attachment H). An architectural design competition was not required prior to granting of original Development Consent.</p> <p>The development is to comply with the conditions of the Competition Waiver Agreement which, amongst other things, requires a process of continuing design review be established to ensure the development retains design excellence through to completion of construction. This is addressed in Condition 37, imposed on the Original Development Consent.</p> <p>CN's UDRP undertakes the functions of a design review panel for the purposes of this clause. The Competition Waiver Agreement remains applicable to the subject modification application and condition 37 of the Original Development Consent remains applicable.</p> <p>The subject modification application was referred to the UDRP twice before and twice post lodgement during the assessment phase. UDRP advice of 26 March 2025 confirmed the position the proposed modification demonstrates excellence design quality and gave some minor recommendations to further enhance the design.</p> <p>As detailed in this report, amendments were made to the proposed modification during the assessment to addresses matters CN raised, including UDRP advice. Accordingly, the modification now satisfies the UDRP advice and is an appropriate design response, consistent</p>	Yes

	<p>with clause 7.5 and the design quality principles set out in Schedule 9 of the Housing SEPP.</p> <p>Refer to Attachment F for comment in relation to Section 146 of the Housing SEPP.</p>	
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The proposal is generally consistent with the NLEP 2012. Key matters requiring further consideration are discussed below.

Clause 4.3 Height of Buildings

Clause 4.3(2) of the NLEP 2012 specifies that a 45m maximum building height applies to the subject site. The approved development has an overall building height of 46.2m, including the lift overrun, building parapets, pool balustrades and stairs to the communal open space. The extent of the approved variation is 1.2m or 2.6%.

Under clause 7.5(6) 'Design Excellence' of the NLEP 2012 a 10% bonus applies to the 45m maximum building height of clause 4.3(2). The original development sought approval for the 10% design excellence bonus and thus, a maximum building height of 49.5m applies.

HCCRPP granted development consent on 9 March 2021 to the development including the building height of 46.2m, exceeding the 45m building height development standard in multiple locations across the site. The UDRP considered the proposed development presented a well-considered built form that responded to its context and the controls for the site. The 46.2m building height was below the permitted 49.5m height (45m control plus 10% additional bonus) under subclause clause 7.5(6).

As part of the Modified Development Consent (MA2023/00221), Tower A was approved with a building height of 49.11m and Tower B was approved with a building height of 51.75m.

The development, as modified, proposes a maximum building height of 53.53m for Tower A and 51.97m for Tower B. This represents an increase of 7.94% above the 49.5m maximum height for Tower A and 4.99% for Tower B.

The previous Modified Development Consent approved an additional storey to Tower B. This modification application results in a slight increase in building height for Tower B to rectify drafting errors in the previous Modified Development Consent.

On 26 March 2025, the UDRP confirmed the proposed modification continues to exhibit design excellence, notwithstanding the proposed increase in building height (refer to **Attachment G**). Accordingly, the additional building height is considered acceptable as:

- The building scale at ground level is established by the podium which was a key feature of the approved design. The additional height will not result in any significant change in the built form relationship with the street and the podium will continue to establish a suitable interface between the building and the public domain.
- The proposed built form and massing positively contribute to the quality and transitioning nature of the area. It is considered the modified development will deliver an appropriate built form that is consistent with the desired future character, while remaining compatible with the scale of nearby developments.
- The proposed increase in height at the upper levels of the built form will result in a minor change in the building scale, that will be of low visual significance from the public domain

and will not result in adverse shadow impacts. The building scale remains appropriate for the city centre location where higher density is encouraged.

- The non-compliances largely relate to the rooftop communal area which comprises the stair and lift overruns as well as the BBQ areas. When viewed from the public domain and adjoining development, it is not considered these elements would be easily visible from the streetscape and do not alter the bulk or scale of the approved development.
- The modified development will not result in any overshadowing to key areas of public domain or result in view loss impacts. Further discussion is provided in **Section 6.0** below.

Figure 6 below indicates the 45m height plane (teal) and the 49.5m height plane (orange). It shows the proposed additional building height does not comprise substantial elements of the built form and largely relates to non-habitable components, being the plant and stair / lift overruns, balustrade and a minor portion of the communal BBQ area. The extent of change for Tower B is limited to the top of the stair / roof parapet. **Figures 7 to 9** indicate the approved building height of the original development, Modification 1 and the proposed application.

When considering the reduction in GFA from that originally approved under the more recent modification application, the proposed changes to the maximum building height for Tower A are not considered to have adverse environmental impacts and considered appropriate in the context of the site and the proposed development.

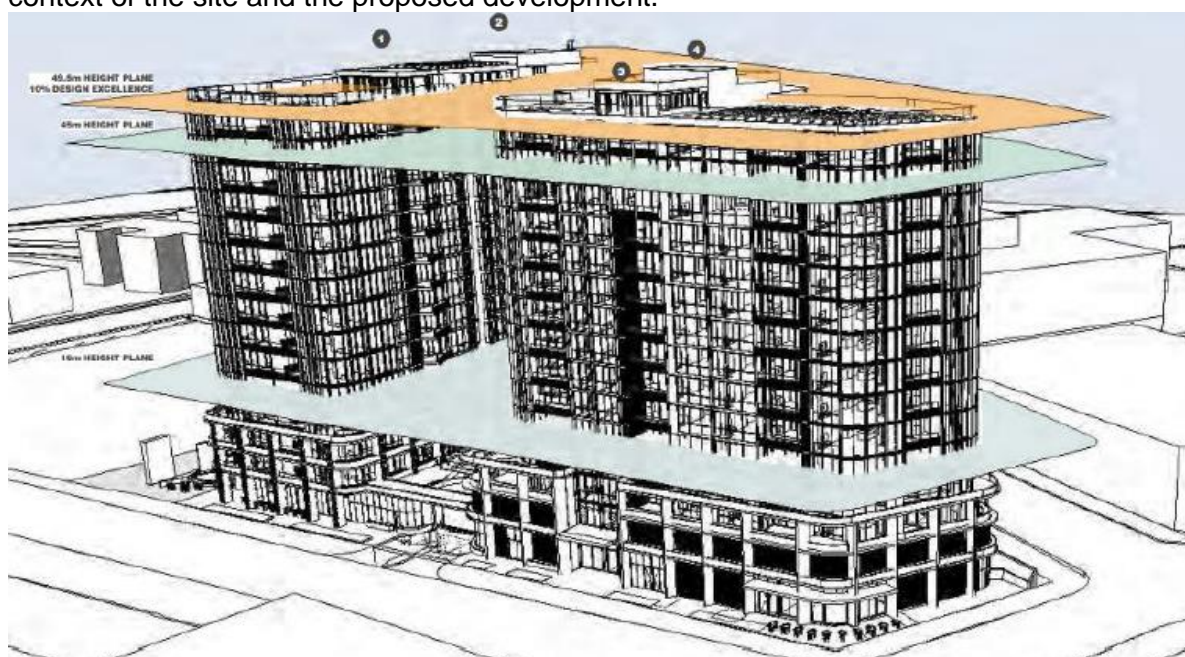


Figure 6 Height plane diagram (Source: FK)



Figure 7 Approved DA20129/01169 - Section AA indicates the 45m height plane (dashed red)

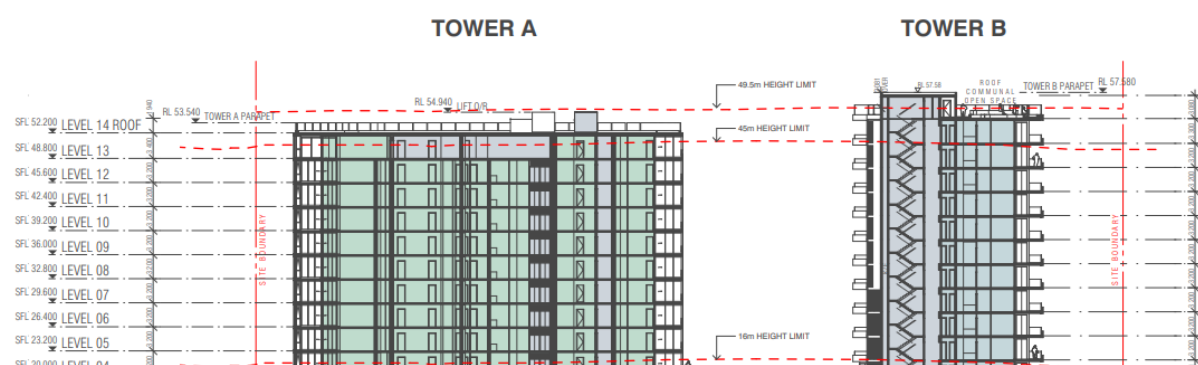


Figure 8 Approved MA2023/00221 - Section AA indicates the 45m height plane (dashed red) and the 49.5m height plane above (dashed red)

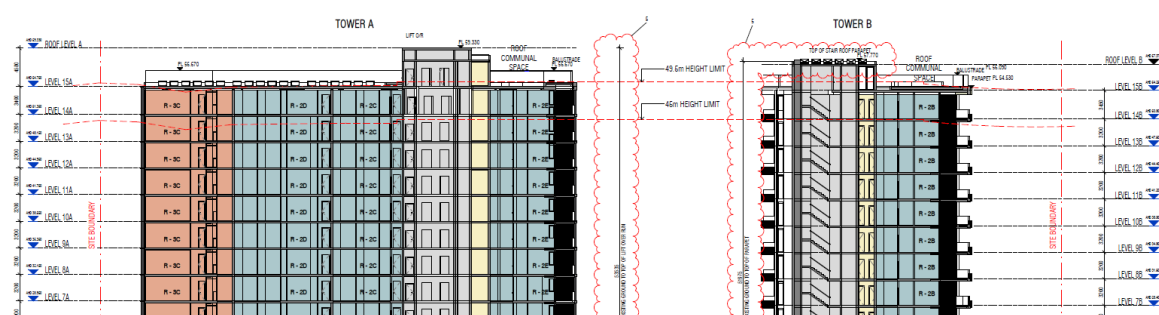


Figure 9 Section AA indicates the 45m height plane (dashed red) and the 4.95m height plane above (dashed red)

Clause 4.4 Floor Space Ratio

NLEP 2012, cl. 4.4 provides a maximum FSR of 5:1. The Original Development Consent approved a total GFA of 36,161m² and a corresponding FSR of 5.45:1. The previous Modified Development Consent (MA2023/00221) approved a GFA of 34,508m² and a FSR of 5.20:1. This is an exceedance of 0.10:1 or a 2% variation to the 5:1 FSR development standard.

As a result of the change in land use and to meet relevant ADG provisions, the proposed modification decreases the total GFA to 33,815m² with a corresponding FSR of 5.1:1. While the proposed development will increase the height of Tower A (and marginally in Tower B), the bulk and scale of the development is comparable to that originally approved and is supported. The proposal is consistent with the scale of development envisaged in this part of the city centre and is that previously approved. Finally, the proposal continues to exhibit design excellence and has CN's UDRP support (refer to **Attachment G**).

Clause 7.4 Building Separation

A minimum building separation of 24m at 45m and higher above ground level is required under cl. 7.4 of the NLEP 2012. The 24m requirement applies to external and internal buildings (where multiple structures are proposed).

The proposed development includes approximately 1 level of habitable rooms above the 45m height plane. From Level 14, the minimum building separation distance will be 20.66m between Tower A and Tower B resulting in a 3.34m non-compliance with cl. 7.4 of NLEP 2012 (refer to **Figure 10** below).

To provide appropriate amenity to residents, Tower A adopts the same architectural form as Tower B through the use of the angled balconies, staggered building layouts, and privacy screening. In addition, solar access view diagrams have been prepared which indicate the

proposed non-compliance with the building separation development standard will not adversely impact sunlight to apartments and is satisfactory.

On balance, the building separation and articulation of the proposed development are considered to achieve suitable privacy and the proposal is considered to be acceptable.

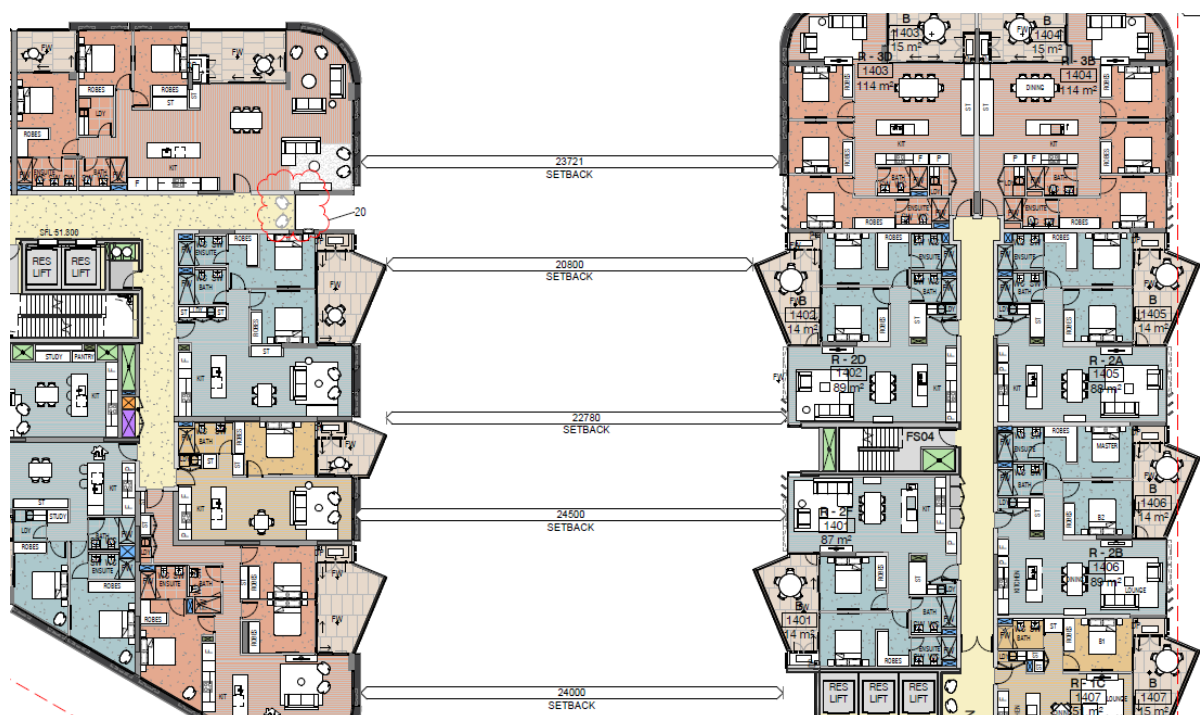


Figure 10 Building separation distances at Level 14

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

At the time the Original Development Consent (DA2019/01169) was granted, Newcastle Development Control Plan 2012 (NDCP 2012) applied to the site. It was repealed and NDCP 2023 is now the relevant plan applying to the site.

The modification application assessment considered NDCP 2023 as discussed below. It is limited to the matters relevant to the changes proposed to the approved development. Other aspects of the approved development not part of the proposed modification, were considered as part of the original assessment. Various matters relating to apartment design and amenity are included in the ADG Assessment at **Attachment F**.

Notwithstanding the above, in assessing the changes proposed to the approved development, reference will be made to NDCP 2012 provisions where relevant.

Section C1 - Traffic, Parking and Access

Traffic Generation

An addendum Traffic Impact Assessment (TIA) by Intersect Traffic (refer to **Attachment J**) was submitted with the modification application to address the change from seniors housing to shop top housing. This report indicates the proposed development will generate an estimated AM peak of 162 vehicles per hour compared to the previous AM peak of 124 vehicles per hour. In the PM period, the proposal will generate 125 vehicles per hour compared to the previous 105 vehicles per hour.

The TIA demonstrates increase in the traffic generation during the AM and PM peak periods, will have minimal impact on the overall road traffic on King Street and the access arrangements to the site will assist reducing traffic generation (refer to further discussion below). The TIA states the adjoining Union Street traffic signals remain at a serviceable level with the increase.

Therefore, given the above and in consultation with TfNSW, the proposed modification is acceptable.

Parking

The TIA and Supplementary Parking Assessment prepared by CJP Consulting Engineers (refer to **Attachment J**) assessed the proposed modification and car parking requirements. The proposal includes a total of 397 car parking spaces within the Basement Level 1 and 2 and the Ground Floor Level. It is noted, to establish car parking rates for the site, the current NDCP 2023 has been used.

The increase in the car parking numbers from the approved 286 spaces (386 approved under the modified development consent) to 397 spaces is generally due to replacing the seniors housing component in Tower A with shop top housing. **Table 10** provides a breakdown of the overall development and its compliance with the NDCP 2023 provisions.

Table : NDCP 2023 Parking Requirements and Proposed Modification

Proposed Use	DCP Parking Rate	GFA / No. Units / car spaces		No. of Spaces Required	No. of Spaces Proposed	DCP Compliance and Comments
<div>CAR PARKING</div> <div>(Max rates apply for Car Parking)</div> <div>Total Onsite Parking - 397</div>						
Commercial - 5 Units	No Set rates however 1 per 60m ² As per original approval	621m ²		10	10	Complies Proposed to be co-used as visitor car parking after business hours
Residential	(Max. Rate)	Tower A	Tower B			
- studio / 1 bedroom	1	14	20	34	33	Complies
- 2 bedroom	1	73	81	154	154	Complies
- 3+ bedroom	2	42	50	184	184	Complies
Total for Residential		129	151	372	371	Complies
- Residential visitor parking	No minimum rates with a max of 1 space per 5 dwellings	Total of 280 residential Units		0 (min.) 56 (max) Requires site specific analysis	14 full time visitor car spaces. 9 commercial car spaces to be used after business	Acceptable on merit Rate of approximately 1 visitor space per 12 residential units, totaling 23 spaces.

				hours Total 23 spaces	Meets previous MA approval. Co-share of commercial parking is supported
BICYCLE PARKING					
Commercial Units and Visitor Use	1 per 15 staff (assumed 2 per unit) 1 space per 7 dwellings (min Class C) for residential visitors	Staff No's are variable 280	10 (commercial) 40 Residential Visitors	27 (5 x EV Charging) (Class B)	Acceptable on merit Additional parking can be provided with public domain areas for casual visitors
Residential Units	1 space per dwelling (Class A or B)	280	280	283 (Class A and B)	Complies
Total				310	Acceptable on merit
MOTORBIKE PARKING					
Commercial, Residential and Visitor Combined	1 space per 20 car spaces	397	20	17	Acceptable on merit
Total				17	
OTHER PARKING					
Service/Loading Bay	1		1	1	Complies
Wash Bay	1		1	1	Complies

In summary:

- A total of 371 car parking spaces are identified and allocated to residential units.
- A total of 9 car parking spaces are proposed for use by commercial/retail units.
- The 1 SRV Service/Delivery Bay will be used by commercial units and can also be used for residential purposes for loading and unloading.
- A total of 14 full time visitor car parking spaces, of which, 4 spaces are designed as disabled visitor car parking spaces under AS2890.6. The 9 commercial/retail car spaces are proposed to be used as visitor car parking spaces after business hours, consistent with the previous approval. CN supports this approach.

- While the submitted drawings indicate the visitor car parking spread across different levels, a condition will be imposed on any determination requiring the 14 visitor spaces to be provided within the Ground Floor level. This will allow visitors to directly access the parking, with appropriate management and security. The 14 visitor spaces will be available at Phase 2 of the development, to meet demand when Tower B is delivered.

The 23 visitor car parking spaces represent a rate of 1 space per 12 units generally consistent with other city centre developments as the CJP Consulting Engineers Supplementary Parking Assessment Report states, generally aligned with the earlier Modified Development Consent. Based on the TIA and Supplementary Parking Assessment, the proposed development meets the car parking requirements.

Staged Construction

The construction staging is proposed to be amended as part of this modification application.

The submitted Phasing Plans indicate the car parking in Basements 1, 2 and the Ground Floor level will be delivered as part of Phase 2 (Basement to Podium). This Phase will deliver 371 spaces (including 12 visitor), 295 bicycle parking spaces and 17 motorbike spaces. Tower B will be delivered in Phase 3 and therefore, will be provided with adequate vehicular parking.

Phase 4 will comprise the delivery of Tower A, including the Level 1 car park which comprises 24 residential spaces, 2 visitor car parks and 15 bicycle spaces. Phase 4 is expected to be delivered as the last part of the development. It is anticipated the Phase 4 works will have minor overall impacts on the provision of car parking in the context of the development.

The proposed modification and associated updates to the construction phasing will not impact the required car parking availability for partial occupation and use. Therefore, the proposed construction delivery is acceptable.

Access

The driveway location is retained on King Street, consistent with the previous approval MA2023/00221. All the off-street parking will be accessed via the proposed driveway. Small Rigid Vehicles (SRV) are the largest vehicles to access the development with 3.5m height clearances. Sightline distance requirements at the driveway and pedestrian sightlines are generally designed in accordance with Australian Standards.

Submitted vehicular access design and grades allow for two-way traffic flows, with entry and exit flows separated by the proposed median.

The approved development for the adjoining Wests site includes the removal of the existing driveway access from King Street, with vehicular access located on Bull Street. This change will assist in the distribution of traffic due to future developments.

The proposed access arrangements have been designed in accordance with the relevant Australian Standards and are acceptable.

Section C4 - Stormwater

Minor amendments are proposed to the stormwater management to reflect the proposed modification. However, the key features of the stormwater design remain unchanged including the detention and reuse tank, basement pump out system, and stormwater treatment system.

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

A second 5 KL rainwater tank is proposed for the Roof Level for stormwater reuse in the Roof Level landscaped area, providing a total of 75m³ stormwater reuse.

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

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

The principles of Water Sensitive Urban Design (WSUD) and the requirements of NDCP 2023 were applied to the development. The design is generally consistent with the previously consent. The submitted stormwater plans and supporting documents demonstrated the development will not impact on the downstream stormwater system and is considered sustainable. It is recommended existing conditions be amended to reflect the revised built form and the minor amendments to stormwater management.

Section C6 - Waste Management

The proposed modification will maintain the waste servicing and access arrangements as approved under MA2023/0221. This included the loading zone on Bull Street, which received in principle support from the Newcastle City Traffic Committee (NCTC) on 16 November 2020.

Detailed design of the Loading Zone will form part of the Section 138 Roads Act application process. An updated Operational Waste Management Plan prepared by Elephants Foot was submitted with the modification application.

Section C12 - Open Space and Landscaping

The modified development includes minor design changes to the podium and rooftop communal areas. These modifications primarily relate to the changes to the building design and land use. Importantly, the proposal will increase the provision of communal open space and retain the landscaping embellishments along the Earthquake Memorial Walkway which were fundamental to the design excellence of the proposed development.

As indicated on the landscape plans, the proposal demonstrates high quality useable spaces to complement the proposed built form and the public domain. The landscaping and deep soil provision is a reasonable outcome for the inner city location.

Section C13 - Liveable Housing

The original development application and modification 1 to the proposed development were approved before NDCP 2023 introduced Section C13 Liveable Housing. The proposal will not provide platinum level apartments, it will include 20% of dwellings designed to silver level in accordance with the Liveable Housing Guideline. This is considered acceptable in the context of the Original Development Consent and UDRP has support (refer to **Attachment G**).

The proposal includes various accessible design features to meet *Disability Discrimination Act 1992* (DDA) requirements and align with the objectives of the Section C13:

- 57 apartments across both towers meet the silver level requirements, comprising a mix of 1 bedroom, 2 bedroom and 3 bedroom apartments.
- DDA access on the ground floor level carpark with direct access into each lift lobby.
- Communal facilities on Level 1 with direct access to the outdoor common open space and pool area.
- Access to the rooftop space.
- DDA bathrooms included on Ground Floor, Level 1 and the rooftop.
- Provision of auto sliding door to common areas for ease of movement.

Section D3 - Residential Development

This section applies to the proposal however, the ADG prevails over the controls for the design of residential apartment development as set out in section 149 of the Housing SEPP. Building separation distances and setbacks are generally compliant with the ADG requirements.

Residential solar access and natural ventilation outcomes have been determined to be satisfactory as detailed within the ADG Assessment at **Attachment F**.

Section D4 - Commercial

This section encourages commercial development that attracts pedestrian traffic and activates street frontages. The commercial uses on the development's Ground Floor level will provide an active street frontage to King Street and Ravenshaw Street and the Earthquake Memorial Walkway frontages, through encouraging and improving pedestrian movement and activation.

The proposed modifications to Tower A have considered the ceiling heights and location of the commercial uses at the Ground Floor level ensuring appropriate amenity and the viability of these spaces.

Section E5 - Newcastle City Centre

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

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

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

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

There are no provisions of the EP&A Reg 2021 relevant to the consideration of the proposed modification application under review.

4.2.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered.

In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

As discussed in the final UDRP Minutes (refer to **Attachment G**), the UDRP supports the proposal and considers that it provides "*a well considered and presented scheme and that the architectural, urban design and landscape is of a high standard.*" Further, as discussed in the ADG Assessment at **Attachment F**, the proposal achieves adequate amenity to all apartments and adequately responds to the design principals and Chapter 4 of the Housing SEPP.

The height of building development standards is exceeded by the proposed modification. This variation was considered in the context of adjoining and potential future development. The development has minimal impacts on surrounding development and is acceptable.

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

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

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

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

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

4.2.3 Section 4.15(1)(c) - Suitability of the site

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

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

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

The non-compliance sought to the building height and building separation development standards of NLEP 2012 are acceptable having regard to the built form and potential impacts. CN's UDRP reviewed the proposed development during the assessment and supported it.

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

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

4.2.4 Section 4.15(1)(d) - Public Submissions

No submissions were received from the advertising of the modification application.

4.2.5 Section 4.15(1)(e) - Public interest

No public interest issues arise due to the proposed modifications to the approved development. A comprehensive assessment illustrated no significant adverse ecological impacts, heritage impacts or traffic impacts. The modified proposal does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.

The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. It provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

The proposal is in the public interest given it will address the need for housing well located to essential services and transport nodes and provides street activation.

The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

4.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 10** below.

Table 9: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by another person with the consent of the owner of the land.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the 2021 EP&A Regulation.	Y

Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2) to allow design changes and amendments to conditions and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are no significant changes to the external building form or features. Any other impacts were considered in the original proposal, which was supported by Council.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	A biodiversity assessment report is not required.	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does involve BASIX development and an updated BASIX Certificate has been provided.	Y
Penrith Lakes Development Corporation (CI 101)	The proposed modification does not relate to the Penrith Lakes Development Corporation.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification involves residential apartment development and a qualified designer statement has been provided.	Y

Mining and petroleum development consents (CI 102)	The proposed modification does not involve mining and petroleum development consents.	N/A
Notification and exhibition requirements (CI 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application was referred to relevant concurrence and approval bodies as outlined in Section 4.1 of this Report.	Y

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The original development application was Integrated Development (s4.46). As per clause 109 of the EP&A Regulation, a copy of the modification application was referred to Subsidence Advisory NSW as integrated development. General Terms of Approval were issued on 31 January 2025.

Referral to other agencies was undertaken. There are no outstanding issues arising from the concurrence and referral requirements subject to the imposition of the recommended conditions being imposed, refer to **Table 11**.

Table 10: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Electricity supply authority	S2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The modification proposal comprises development to be carried out within 5m of an exposed overhead power line. Written advice from Ausgrid was received on 13 January 2025 (refer to Attachment 1) which provided recommendations to satisfy the Ausgrid requirements.	Y
Transport for NSW	S2.122 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Written advice from TfNSW received 10 March 2025 had reviewed the information provided and raised no requirements for the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network.	Y

Urban Design Review Panel (UDRP)	CI7.5(6) NLEP 2012	UDRP reviewed the modification application was by the, who operate under a charter stating that they undertake the functions of a design review panel for the purposes of Clause 7.6(6) of the NLEP 2012. UDRP reviewed the modification application on 4 occasions and determined that the proposal continues to exhibit design excellence in accordance with clause 7.5(6) of the NLEP 2012 (refer to Attachment G).	Y
Integrated Development (s4.46 of the EP&A Act)			
Water NSW	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Comments provided by Water NSW and GTAs issued (refer to Attachment I).	Y
Mines Subsidence NSW	<i>Section 22 of Coal Mine Subsidence Compensation Act 2017</i>	The original development application was referred as an integrated development as approval was required from SA NSW. The modification application was referred to the SA NSW for comment and conditional approval has been granted via 'General Terms of Approval (Attachment I)'. This satisfies the requirement for approval of SA NSW under Section 22 of the Coal Mine Subsidence Compensation Act 2017.	Y

5.2 Council Referrals

The modification application was referred internally for technical review as outlined **Table 12**. The outstanding issues raised in the referral responses are considered in the Key Issues section of this report.

Table 11: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the modification application in relation to stormwater management, traffic, parking and access.	Y

	Outcome: Satisfactory subject to standard conditions imposed on any consent granted. Further discussion on traffic and parking is provided below.	
Traffic	<p>Council's Traffic Engineering Officer reviewed the proposal and raised concerns in relation to the waste management and proposed relocation of the loading zone from Bull Street to King Street.</p> <p>Outcome: The proposed modification has been amended to retain the approved waste management and servicing arrangements as supported by the Newcastle Traffic Committee as part of MA2023/00221.</p>	Y
Waste	<p>Council's Manager Service Delivery reviewed the proposal and raised concerns about the waste management and proposed relocation of the loading zone from Bull Street to King Street.</p> <p>Outcome: The proposed modification was amended to retain the approved waste management and servicing arrangements as supported by the Newcastle Traffic Committee as part of MA2023/00221.</p>	Y

5.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Participation Plan from 14 November 2024 until 28 November 2024.

No submissions were received.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1 Land Use

The HCCRPP raised concerns regarding the proposed change in use from seniors housing to shop top housing, noting seniors housing was a key element of the original approval and part of the intended housing mix on the site. The Applicant contends the change is driven by prevailing market conditions and difficulties attracting interest from seniors housing operators.

The proposed amendment was carefully assessed. Seniors housing is an important land use to support an ageing population. The revised proposal is acceptable for the following reasons:

- The amendment involves a shift from one permissible residential use to another and continues to deliver residential accommodation - albeit not exclusively for seniors.
- The proposal will provide various housing typologies (1-, 2- and 3-bedroom units), including a number of Silver Level apartments, which cater to diverse housing needs.
- Delivering well-designed housing on this strategically located site will contribute to addressing the current housing shortage.

- The proposal maintains appropriate levels of landscaping, open space, and amenity, both within the site and in the surrounding public domain.
- The amendment enhances ground floor activation providing additional commercial tenancies fronting King Street and Ravenshaw Street, for an improved public domain.

In addition, the Legal Advice provided by the applicant has been reviewed in the context of the proposed amendments and recent case law. When it was originally lodged, the modification included amendments to fundamental aspects of the design of the approved development including the waste management and location of the loading zone and the landscaping embellishments to the Earthquake Memorial Walkway. As part of the assessment process, CN raised concern with the scope of the proposed amendments.

The application was reviewed and amended to retain the waste servicing arrangements and landscaping embellishments as approved.

While the proposed change of use from seniors living to market residential housing is proposed, the proposed development retains the essential and critical features of the original development and is considered substantially the same as that originally approved.

Having regard to the above considerations, the proposed modification is deemed acceptable.

6.2 Building Height

The proposed modification seeks consent for a maximum building height of 53.53m for Tower A and 51.97m for Tower B. This is an increase of 7.94% and 4.99% respectively above the maximum 49.5m building height (inclusive of 10% design excellence). It is noted the previous Modified Development Consent approved an additional storey on Tower A with a maximum building height of 51.75m.

The proposed development will increase the height of Tower A (and marginally in Tower B), the bulk and scale of the development is comparable to that approved under the Original Development Consent (and as amended under the Modified Development Consent) and is supported. The proposal is consistent with the scale of development envisaged in this part of the city centre. Finally, the proposal continues to exhibit design excellence and is supported by CN's UDRP (refer to **Attachment G**).

View Impacts

The proposed increase in the maximum building height is not considered to result in adverse view impacts or view loss. Under NDCP 2023, Section E5 the site does not contain any 'key views' or 'vistas' and therefore, the proposed modification is considered to be acceptable.

Overshadowing

Shadow diagrams were submitted demonstrating the impact of the overshadowing within and beyond the subject site. As shown in **Figure 11** below, the overshadowing impacts are predominately limited to commercial development surrounding the site. When comparing the proposed modification to the original development, the shadow impacts are negligible.

The proposed modified development has been suitably laid out with regard to the general orientation and aspect. Due to the general orientation of the site, north-south, the overshadowing impact to adjoining buildings is minimised to an acceptable level within the tight urban context.

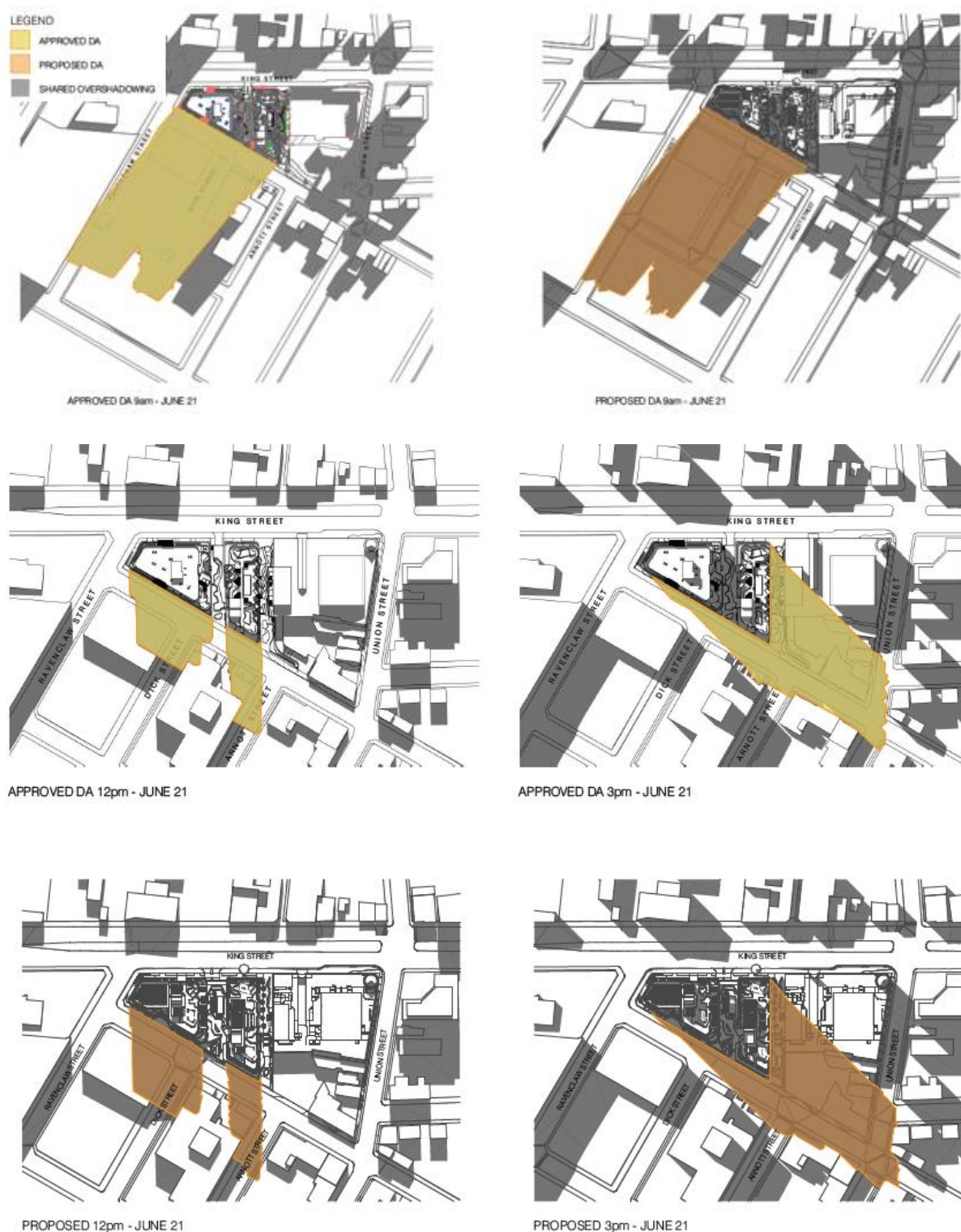


Figure 11 Winter Solstice (June 21) overshadowing analysis (approved DA yellow and proposed modification orange)

6.3 Amenity

The proposal has been reviewed against the ADG and the Housing SEPP 2021. It meets key design quality principles, including orientation, solar access, and visual privacy. The UDRP endorsed the design, confirming it meets design excellence requirements. Some variations, such as building separation distances, were assessed on merit and found acceptable given the site's location and overall design response. Refer to the Design Verification Statement at **Attachment B** and the ADG Assessment at **Attachment F**.

6.4 Traffic Generation and Parking

As outlined in **Section 4.2.1** above, the proposed development is expected to generate additional traffic during the AM and PM peak periods - an increase of approximately 38 vehicles per hour in the morning and 20 vehicles per hour in the evening when compared to the Original Development Consent. However, this level of increase is not anticipated to have adverse impacts on the surrounding road network. Similarly, while onsite car parking will increase, the proposed parking provision complies with the requirements of NDCP 2023 and is appropriate for the shop top housing use. It is noted TfNSW raised no objections to the proposed modification. The proposal is acceptable in terms of traffic generation and parking.

7. CONCLUSION

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

The key issues outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended conditions at **Attachment A**.

8. RECOMMENDATION

It is recommended:

- That Modification Application MA2024/00381 for changes to the approved use, dwelling numbers, parking, floor plan and elevations at 124-126 Bull Street, Newcastle West be APPROVED pursuant to Section 4.55(2) of the EP&A Act subject to the recommended conditions attached to this report at **Attachment A**; and
- Pursuant to Clause 118 of the 2021 EP&A Regulation, a notice of determination is to be prepared by CN following the HCCRPP's determination of this modification application.

The following attachments are provided:

- **Attachment A** - Schedule of Conditions
- **Attachment B** - Architectural Drawings and Design Statement
- **Attachment C** - Landscape Plans
- **Attachment D** - Stratum Subdivision Plan
- **Attachment E** - Staged Construction Management Plan
- **Attachment F** - ADG Assessment
- **Attachment G** - UDRP Minutes (26 March 2025)
- **Attachment H** - GTAs by SA NSW
- **Attachment I** - Design Excellence Competition Waiver Agreement
- **Attachment J** - Traffic Impact and Supplementary Parking Assessment