



City of  
Newcastle



## CITY OF NEWCASTLE

# Extraordinary Development Applications Committee

Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that an Extraordinary Development Applications Committee Meeting will be held on:

**DATE:** Tuesday 28 July 2020

**TIME:** Following the Ordinary Council Meeting

**VENUE:** Video conferencing platform Zoom

J Bath  
Chief Executive Officer

**City Administration Centre  
12 Stewart Avenue  
NEWCASTLE WEST NSW 2302**

22 July 2020

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**EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE**  
**28 July 2020**

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**DEVELOPMENT APPLICATIONS**

**ITEM-23**                    **EDAC 28/07/20 - DA2017/01376 - 495-501 HUNTER STREET & 364 KING STREET, NEWCASTLE - DEMOLITION OF BUILDINGS, ERECTION OF FIFTEEN STOREY MIXED USE DEVELOPMENT WITH THREE RETAIL/COMMERCIAL TENANCIES, 87 RESIDENTIAL UNITS, CAR PARKING AND SITE WORKS**

**APPLICANT:**                **MONTEATH AND POWYS**  
**OWNER:**                    **INTERRELATE LIMITED**  
**NOTE BY:**                  **GOVERNANCE**  
**CONTACT:**                **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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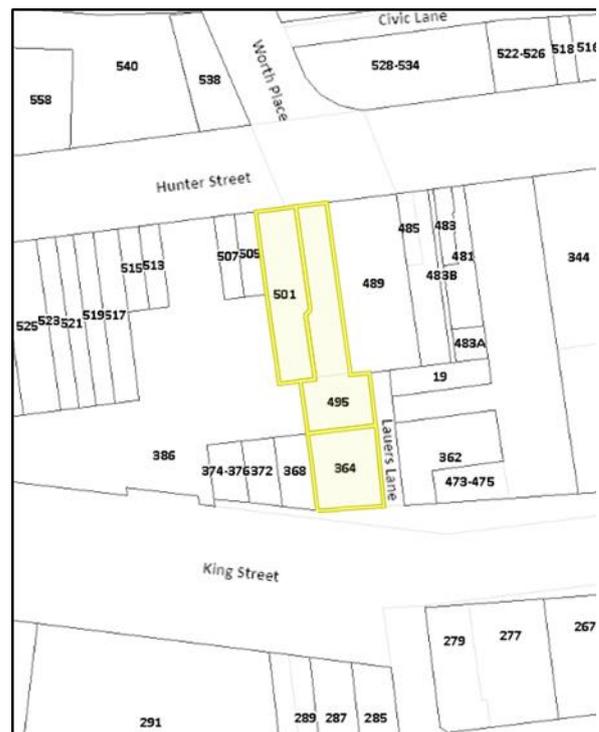
**PART I**

**PURPOSE**

An application has been received seeking consent for demolition of buildings and the erection of a mixed-use development, consisting of three retail / commercial tenancies, 83 residential apartments, associated car parking, landscaping and site works at 495-501 Hunter Street and 364 King Street Newcastle.

The submitted application was assigned to Amanda Gale, Senior Development Officer, for assessment.

The application is referred to the Development Applications Committee for determination as the construction value of the proposed development (\$19,862,513) exceeds the staff delegation limit of \$10M. The application has also received over 25 submissions.



**Subject Land: 495-501 Hunter Street & 364 King Street Newcastle**

A copy of the plans for the proposed development is appended at **Attachment A**.

A number of amendments to the original proposal have been made at various stages, with the application publicly notified and re-notified in accordance with City of Newcastle’s (CN) Public Participation Policy.

A total of 83 submissions (inclusive of 20 after closing of exhibition periods) have been received in response during the four rounds of notification.

The key concerns raised by objectors have included:

- i) Building form and scale
- ii) Building height
- iii) Building setbacks and separation distances
- iv) Traffic, parking and access
- v) Visual and acoustic amenity
- vi) Anti-social behaviour
- vii) Consistent street wall heights
- viii) Solar access and residential amenity
- ix) View loss
- x) Overdevelopment of the site
- xi) Precedent

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

The proposal was first considered at the Public Voice Committee Meeting held in July 2019. The proposal was then referred to the Public Voice Committee Meeting again in February 2020 due to the submission of amendments, re-notification and the time difference between the Public Voice Committee Meeting held in July 2019.

### **Issues**

1. Compliance with the 'design principles' contained within State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65) and objectives of the Apartment Design Guide, in particular relating to separation / setbacks, residential amenity and overall design excellence.
2. Suitability of the development with respect to relevant provisions of Newcastle Local Environmental Plan 2012 (NLEP 2012) and Newcastle Development Control Plan 2012 (NDCP 2012), in particular relating to street wall heights, setbacks and amenity.

### **Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

**RECOMMENDATION**

- A. That DA2017/01376 for demolition of buildings and erection of a mixed-use development including three commercial / retail tenancies and 83 residential apartments, associated car parking and site works at 495-501 Hunter Street and 364 King Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**Political Donation / Gift Declaration**

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

**PART II**

**1.0 THE SUBJECT SITE**

The subject property comprises four allotments including Lot 1 DP 67823 and Lot 1 DP 87872, Lot 851 DP 578844, known as No.495-501 Hunter Street and Lot 1 DP 1010094, known as No.364 King Street Newcastle. The property is irregular in shape with frontages to Hunter Street (20m), King Street (19m) and Lauers Lane (off King Street). The site is located in the Civic Precinct of the Newcastle City Centre, which is also part of the Newcastle City Centre Heritage Conservation Area.

The site area is 1,821.11m<sup>2</sup> with current users primarily being small scale commercial premises, apart from Lot 851 (No.501 Hunter Street), which is vacant land. The site is bounded by forms of development that include newer tower blocks and older mid-level development, with mixed commercial / residential land uses.

The adjoining property to the east known as Worth Place Apartments was built prior to the introduction of SEPP 65 and the Apartment Design Guide and is located in close proximity to boundaries. The proposal will build to an existing portion of blank wall located on the eastern boundary of these apartments.

The adjoining property to the west known as Sky residences (currently under construction) was approved by the Joint Regional Planning Panel under different height limit requirements (90m height limit) than that of the current Local Environmental Plan 2012 (45m height limit). The Sky residences development contains up to 19 storeys.

The site is relatively flat, with a minor fall of approximately one metre from King Street towards Hunter Street. Vehicular access to the combined site is via Lauers Lane (off King Street). No vehicular access exists on Hunter Street or King Street frontages.

## **2.0 THE PROPOSAL**

The application seeks consent for demolition and erection of a mixed-use development consisting of (Hunter Street tower 14-storey and King Street tower 10-storey with partial rooftop communal area), comprising:

- a) Three retail / commercial premises at ground level (King Street frontage - one x 41m<sup>2</sup>, one x 58m<sup>2</sup> and Hunter Street frontage - one x 177m<sup>2</sup>)
- b) Three levels of car parking, including ground floor accessible parking and loading bay (a total of 99 vehicles -including minimum 12 visitor parking spaces and 5 retail spaces, 5 motorbike spaces and 86 bicycle parking and 4 visitor bicycle spaces)
- c) 83 residential apartments (Level 1 – 13): 16 x one-bedroom units (19%), 56 x two-bedroom units (67%) and 11 x three-bedroom units (13%)
- d) Two communal open space areas: Level 3 podium on Hunter Street end and partial rooftop on King Street end
- e) Landscaping works

Pedestrian entry into the development is provided from Hunter Street and Lauers Lane, via existing and new footpaths. The residential entry and lobby of each tower is accessed via a new pedestrian passageway. The lobbies are all proposed as accessible and clearly marked with building articulation.

The building is designed in a north-south orientation with all apartments designed with open plan layouts and balconies off living areas. In addition, each apartment has access to the common space at the podium on Level 3 at the Hunter Street end. The common area is landscaped which includes paving and seating forming an accessible area for open space and recreational use. Given the density of development the proposal also includes a common room for passive use. An amendment made during the assessment included the addition of a small communal open space area provided on the rooftop of the King Street tower.

Accessible access to each floor is proposed and fire stairs are provided for ingress and egress. The central parking floors incorporate resident parking, visitor parking, motorcycle and storage, refuse room and services areas.

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The original proposal has been amended, with earlier amendments during the assessment process including:

- i. Provision of an awning to the King Street frontage
- ii. Widening of Lauers Lane to provide sufficient access and also a dedicated pedestrian footpath along Lauers Lane
- iii. Additional landscaping with changes to planter boxes and landscaping on podium Level 3
- iv. Provision of adjustable screens on balconies
- v. Widening of the King Street lobby
- vi. Addressed the interface of the podium addressing the Hunter Street frontage
- vii. Air conditioning locations have been revised and now provide for a central chilled water system located on the roof
- viii. Lift overruns were located between the two top storey residences and are now not seen
- ix. Solar access requirements have been provided with certification
- x. Removal of the pedestrian link between Hunter St and King St
- xi. Reduction in overall maximum height of the building (Hunter St tower), to comply with the 45 metre height limit for the site (by removal of one storey – 2.48m exceedance previously)
- xii. Increased setbacks along the eastern side boundary (common boundary to No.489 Hunter St – Worth Place Apartments and Lauers Lane)
- xiii. Reduction in setbacks along the western side boundary (common boundary to No.509 Hunter St – Sky Residences development under construction)

More recent amendments to the proposal occurred in March 2020. The amendments were notified and reviewed by the Urban Design Consultative Group (UDCG) and included:

- i. Reduction in apartment numbers – now 83 (was 87 and originally 92), comprising 16 x 1-bedroom, 56 x 2-bedroom and 11 x 3-bedroom apartments
- ii. An additional 500mm setback along the Lauers Lane dedication (now 1.5m)
- iii. Amendments to carparking arrangements, with a total of 99 vehicle spaces provided
- iv. Hunter Street building outline revised to reduce the overall width and increase the setback by approx. 1.5m along the Sky residences setback
- v. Reducing 3-bedroom apartments to 2-bedroom apartments along this western boundary
- vi. King Street building outline revised to increase the setback along Lauers Lane and increase sightlines from Worth Place Apartments
- vii. Reducing 2-bedroom apartments to 1-bedroom apartments along this eastern boundary
- viii. King Street awning extended
- ix. Landscaping increased to widen and increase depth of planters. This change developed as part of the previously revised landscaping plans prepared by Urban Sanctum and submitted to CN prior to Public Voice (2020)

More recent amendments made in response to assessment requests for information and in response to the May 2020 renotification and UDCG May 2020 advice and include:

- x. Security gate added to Unit K103 courtyard
- xi. Security gate added along western common area
- xii. Western facade of Hunter St Building updated
- xiii. Removable wall added to western carpark wall on ground floor
- xiv. Modified landscape area to reflect landscape architect plans
- xv. Addition of planter box outside bathroom of unit H303
- xvi. Revised balconies to the north western Hunter Street building units
- xvii. Unit H1103 revised and reduced balcony and minor revision to layout
- xviii. Revised balcony and minor revision to unit H1203 layout and provide privacy blades

### **Public Voice Committee**

The proposal was first considered at the Public Voice Committee Meeting held on 16 July 2019. Concerns conveyed during this process from the elected Councillors included:

- i. scale and density of development
- ii. separation non-compliance
- iii. adverse amenity impacts on adjoining properties

Amended plans in response to issues raised in the assessment and at the Public Voice Committee Meeting held in July 2019 were lodged in October 2019. The amended proposal was considered again by the UDCG in November 2019.

The application was referred again to the Public Voice Committee Meeting held on 18 February 2020.

Further amendments were made in March 2020. The last round of re-notification was undertaken and amended plans reviewed by the UDCG in May 2020. In response further amendments were made. The current amended plans lodged in June 2020 are the subject of this assessment and report to the Development Applications Committee (DAC) for determination. A copy of the current amended plans is appended at **Attachment A**.

Given the proposal has been to the Public Voice Committee twice and more recently on 18 February 2020, it is not considered necessary to refer the matter back to the Public Voice Committee.

The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to **Attachment C**).

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Public Participation Policy. A total of 23 submissions were received in response (inclusive of eight late submissions).

The proposal was amended and re-notified on a number of occasions. The second round of re-notification resulted in a total of 15 submissions received (inclusive of 4 late submissions). The third round of re-notification resulted in a total of eight submissions received.

Further amendments were made in March 2020 and the application was re-notified, closing on 7 May 2020. A total of 37 submissions were received in response (inclusive of 8 late submissions) expressing continued concerns regarding the proposal.

The current amended plans lodged in June 2020 were not re-notified. The plans were amended in response to the submissions received in the last round of re-notification and the UDCG advice in May 2020. Given the number of times the application has now been publicly notified, further re-notification of the current plans is not warranted.

The concerns raised by the objectors received during public exhibition processes are summarised below. Note, the proposal now complies with the 45m height limit for the site under the development standards contained within the NLEP 2012.

#### **a) Statutory and Policy issues**

- i) Objectives of the zone – scale / character of development
- ii) Non-compliance with NDCP 2012

#### **b) Amenity Issues**

- i) Acoustic
- ii) Amenity / views
- iii) Building setbacks
- iv) Solar access
- v) Visual impact
- vi) Wind
- vii) Security / safety

#### **c) Design and Aesthetic Issues**

- i) Building setbacks
- ii) Building height
- iii) Hunter Street facade
- iv) Heritage

**d) Traffic and Parking Issues**

- i) Traffic and vehicular access – width of Lauers Lane
- ii) Parking

**e) Miscellaneous**

- i) Economic and property values

Conclusions drawn from submissions were that the overall built form, massing and bulk and scale of the development is considered to be an inappropriate response on a site that is constrained due to its physical site characteristics. The positioning of development on adjoining properties provides a further constraint that this proposal has not adequately responded to, to ensure a reasonable level of amenity / well-being is maintained for these adjoining properties. The opportunity of realising the full development potential relative to maximum height limit and floor space ratio limit is not a reasonable reality for such a constrained site. The development may to an extent achieve adequate amenity for its future occupants, however significant adverse impacts will result on adjoining properties, particularly Worth Place apartments and its lower levels of apartments. If supported, will set an unacceptable and undesirable precedent for future developments of this type within the city or broader areas. Inadequate setbacks and separation distances between properties which represents an over development of the site and contrary to the SEPP 65 - Apartment Design Guide requirements.

The objector's' concerns are addressed under the relevant matters for consideration in the following section of this report.

**4.0 INTEGRATED DEVELOPMENT**

The proposal is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*. Approval is required from Subsidence Advisory NSW under the *Mine Subsidence Compensation Act 1961* and the application was originally lodged with stamped plans, approved by Subsidence Advisory NSW.

**5.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

**5.1 Provisions of any environmental planning instrument**

**State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

SEPP 55 requires that where land is contaminated, the consent authority must be 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.

CN's records are limited regarding site history and as the redevelopment of the site is for a more sensitive land use, a preliminary site investigation was required to be carried out on the site in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*'.

CN's Environment Protection Officer has provided the following assessment comments in relation to the proposal:

*A Preliminary Site Investigation was submitted, prepared by Douglas Partners dated August 2018 and notes section 14.2.1 addresses the contamination status of the premises. Six soil samples were analysed and all found to be below the relevant criteria for health investigation and screening levels, and environmental investigation levels for the adopted commercial land use. As such, Regulatory Services has no objection to the proposal based on contamination.*

*The site was found to be acceptable for the proposed redevelopment consistent with the provisions of the SEPP and CN requirements. If the proposal were to be approved, CN's standard conditions of consent addressing classified waste removal / disposal are recommended to be imposed on any consent granted.*

The proposal is considered acceptable in accordance with the SEPP subject to recommended conditions contained within the Draft Schedule of Conditions in **Attachment B**.

### **State Environmental Planning Policy (Coastal Management) 2018**

The Coastal Management State Environmental Planning Policy (SEPP) came into effect on 3 April 2018. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 (the Act).

The site is located in the '*Coastal Environment Area*' as mapped under the Coastal Management SEPP. The amended Statement of Environmental Effects (SEE) submitted with the application has given due consideration to the SEPP and its aims and objectives and matters for consideration.

The development is not considered to have a significant impact on the coastal zone. Access to public areas within the coastal use area will not be adversely impacted by the proposed development and the proposal is consistent with the SEPP.

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

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the ISEPP.

The proposal was required to be referred to Ausgrid in accordance with Clause 45(2) of the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

The site has a frontage to a classified regional road (King Street – MR188). Schedule 3 of the ISEPP relates to traffic generating development and requires certain applications to be referred to Transport NSW (formerly Roads and Maritime Services).

The development is considered to be '*traffic generating*'. The application was referred to Transport NSW (formerly RMS) and written advice was received dated 17 April 2018 raising no objections to the proposal and providing matters for CN consideration during the assessment of the application.

As detailed in this assessment report, it is considered that the proposal is consistent with the ISEPP and satisfactory in relation to identified ISEPP matters.

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

**State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The SEPP was introduced in August 2017. This SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the state through the appropriate preservation of trees and other vegetation.

The site is within a well-established city centre location. This application does not seek consent for the removal of any trees on the site.

**State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)**

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel and the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

CN's UDCG reviewed the application a number of times including, prior to lodgement of the development application in February 2016. Since lodgement, the application has been considered by the UDCG in February 2018, June 2018, February 2019 and November 2019.

The application was referred to the UDCG for their final advice on 27 May 2020 (March plan set). The current amended plans were lodged in June 2020 in response to the last advice of the UDCG in May 2020 and last round of public notification.

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A summary of the UDCG's advice in relation to the ten design principles is provided in the table below.

Design Quality Principles	Design Response / Assessment
<p><b>1. Context and Neighbourhood Character</b></p> <p><u>UDCG - 21/02/2018</u>                      The proposal seeks to accommodate all vehicle parking above ground, within the podium of the development, which has been increased by a floor, to three storeys since the 2016 pre-DA submission. This is largely to accommodate the increased parking required for the additional units. The interface between the proposal and the existing two-storey street front development on its eastern and western sides on Hunter Street is poorly resolved.</p> <p>The UDCG's previous strong recommendation for every effort to be made to amalgamate the subject site with the two lots on its western side (on Hunter Street) has not been taken up, and under the DA proposal, these sites will be left isolated and without vehicular access for servicing.</p> <p><u>UDCG - 20/06/2018</u>                      The adjacent smaller sites to the west of the Hunter Street frontage have not been consolidated in the development.</p> <p>A dedicated 1.0m setback has been provided to Lauers Lane improving the relationship of the eastern elevation to the narrow lane width.</p> <p>The Hunter Street podium remains a floor higher than that of the adjacent sites. The design does not address the consequential amenity impacts on the neighbouring property and the visual impacts of the higher podium from the street. The relatively recent nature of the neighbouring building to the east means that its podium height will almost certainly remain unchanged, and similarly the adjoining site to the west</p>	<p><u>Applicant Response</u>                      The UDCG comments regarding potential provision of access for isolated sites No.505 &amp; 507 Hunter Street is noted. The proposal has been revised to include a collapsible wall within the western wall of ground level carparking, for future potential vehicular access to these sites, subject to future negotiations and approval.</p> <p><u>Officer comments</u>                      The proposal is located within the Civic Precinct within the City Centre.</p> <p>The site is relatively narrow and its location within the context of adjoining (existing and under construction) developments places an additional burden on the site for redevelopment.</p> <p>It is reasonable to expect the site will be redeveloped, to a scale commensurate within the zone and surrounding properties. This needs to be balanced with the merits of the design ensuring a reasonable level of amenity is achieved both on site and for surrounding properties in this city centre location.</p> <p><i>Isolated lots / amalgamation</i>                      There are a number of lots that will potentially be isolated in developing the site. A key focus has been on the lots fronting Hunter Street (No.505 &amp; 507 Hunter Street). Whilst no documentation has been submitted demonstrating attempts to secure any of the adjoining sites fronting King Street, 3D mass modelling has been provided which shows the development potential that will exist for these sites.</p> <p>In relation to No.505 &amp; 507 Hunter Street, more recent documentation was</p>

appears likely not to be redeveloped in the near future. Since a higher four-storey podium would be permissible and consistent with the DCP, the three storeys as proposed could be accepted subject to:

a) minimizing the adverse overshadowing and other impacts on the adjoining development at 498 Hunter Street by:

- i) relocating the parapet wall at Level 3 away from the common boundary by approximately 3.0m to reduce overshadowing and visual impact on residential units in the neighbouring property.
- ii) making the relocated wall approximately 1.6m in height to prevent overlooking.
- iii) Designing the full length of the common open space along the northern side to accommodate only landscaping and pathway, and not any communal activities.

b) returning the brick finish proposed to the Hunter Street elevation along the exposed eastern and western side elevations of the new podium, as well as carefully articulating the side facades.

UDCG – 20/02/2019

Reduction in the number of units has enabled a minor adjustment of the elevation to King Street introducing a small setback to Level 4.

Re-modelling of building façade has provided better cohesion with the existing streetscape.

UDCG – 20/11/2019

Current amendments have relocated sections of both the Hunter and King Street towers toward the west in order to increase separation distances from adjoining buildings on the eastern side,

provided which demonstrates reasonable attempts to purchase these lots without success. A market appraisal was provided in March 2020 which determined (based on more recent sales) the properties combined value was approx. \$925,000. A recent approach to purchase the lots was undertaken and the owner advised they may consider selling for \$2.4 million. Plans were also provided by the applicant of a potential Hunter Street scheme.

Noting that the site is zoned B4 Mixed Use and is not identified with a Minimum Lot Size development standard under the NLEP 2012. Section 3.03 – Residential Development under NDCP 2012 outlines the principles to be considered for isolated lots but does not strictly apply to this application given the section excludes mixed use or shop top housing developments.

Section 3.03 also requires a minimum width of frontage of 15m in the B4 Mixed Use Zone for a residential flat building. No.505 & 507 Hunter Street has an existing combined frontage of 12.2m (combined site area 300m<sup>2</sup>).

Based on earlier information submitted and more recent information, it is considered the planning principles regarding isolated lots have been appropriately considered.

Whilst not necessarily a direct consideration, there are also other sites that would have benefited from amalgamation given existing lot configuration, potentially even more so than with the subject site.

These two sites with direct frontage to Hunter Street are considered to remain viable and able to be developed for an appropriate use permissible within the zone, of a scale not unlike that which

as well as from potential developments along the eastern side of Lauers Lane.

With a reduction of a storey height from the Hunter Street tower the application is basically compliant with height and FSR.

The Panel was advised that offers to purchase adjacent sites to the west have been made, without success.

Portions of both towers have been relocated toward the western side boundary, but this would tend to exacerbate the visual impact of inadequate separation.

UDCG – 27/05/20

In relation to the adjoining ‘isolated’ sites to the west fronting Hunter Street (No.505 and No.507) the applicant provided CN with documentation demonstrating unsuccessful attempts to purchase this site and integrate it with the subject site. This is unfortunate but has to be accepted. The potential for these sites to be developed independently is restricted, and it appears that their height would probably be limited to 4 or possibly 5 storeys.

CN might consider whether a requirement to provide vehicular access to the adjacent property via the proposed car park might be appropriate for future access.

would have been expected given their size and width of frontage.

The proposal is considered to have suitably addressed the NSW Land and Environment Court – Planning Principles for isolated lots.

*Design / separation and setbacks*

Any redevelopment of the site to a scale and built form consistent with surrounding development and appropriate within this city centre location is unlikely to achieve full numerical compliance with separation / setbacks recommended within the ADG or required under NDCP 2012, due to the site characteristics and external constraints.

Amendments made over time have contributed positively to design refinement and have in large responded to the advice of the UDCG.

Amendments as discussed in this report and through the UDCG advice included an increase in setbacks off Lauers Lane, modification of design / unit layouts within the King Street tower, reduction in the Level 3 podium height as it relates to the eastern boundary and interface with Worth Place apartments. Podium wall height reduced to 1.6m high as taken from adjoining terrace level directly on the boundary from Worth Place apartments down the eastern side common boundary. Removal of communal open space along the eastern side boundary on Level 3 podium, by relocating planter boxes / landscaping, reduction of this communal area for use more as landscaping and circulation space to / from the communal room and onto the main communal area along the Hunter Street frontage.

Note: A small section of the eastern boundary where it meets the Hunter Street boundary (corner) requires

	<p>landscaping to be continued. This will address the potential for privacy impacts on the adjoining apartments (if you were to look back and into the Hunter Street facade / terrace / balconies of these Worth Place apartments).</p> <p>A condition is recommended to require this landscaping treatment be extended. This will also assist visually with providing some relief to the building form when approaching the site from the east along Hunter Street.</p> <p>More recent amendments have improved the spatial and visual separation between buildings on properties in this location through some further design refinement increasing setbacks along the western boundary where possible, reducing the spatial massing of the building in this section and improving the relationship and interface between properties. This in turn results in an improvement in residential amenity for both properties (the site and Sky residences).</p> <p>3D views and flythrough together with photomontages of the current amended proposal assists in demonstrating that the development is reasonable within the context of the site and surrounding properties.</p> <p>The applicant's response is acknowledged that the current height of building is reasonable from a skyline perspective compared to adjoining properties when viewed from the public domain. In respect to bulk it is also acknowledged that the proposal is narrow when compared to the Sky residences development which does contribute to a balanced scale.</p> <p>The current amended plans (June 2020) have responded to the UDCG's request for future access provisions to be made for No.505 and 507 Hunter Street by including a collapsible wall (within</p>
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	<p>western wall) in the ground level carparking area.</p> <p>Any future vehicular access arrangements through this property will require future negotiations between property owners and relevant approval from CN.</p> <p>Lot 505 &amp; 507 do not currently have legal / physical vehicular access off Hunter Street, so if amalgamation is not achievable, then this development does not in itself change the existing constraint over these lots. The potential option to secure future vehicular access through the site subject to approval is a positive response in the absence of the lack of potential for amalgamation.</p>
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDCG - 21/02/2018</u></p> <p>The DA proposal is for two towers. The northern 15-storey tower facing Hunter Street abuts the Worth Place Apartments for their full height corresponding to Level 13. At this level, a narrow roof deck is created which serves the two-storey apartment adjacent. The nil setback to the common eastern boundary also extends approximately 4m closer to Hunter Street than the corresponding wall of Worth Place Apartments, thereby restricting the neighbouring balconies to a narrow single aspect. Further towards Hunter Street, the eastern wall of the tower is articulated to allow narrow window openings to bedrooms that are directed away from the boundary. The long, narrow space created between the existing Worth Place tower and the proposed varies in width from an average of less than 10m to a narrow aperture of just 7.6m and is some 23m deep (as scaled). It extends the full height of the buildings. This space is likely to feel canyon like, and quite possibly, oppressive. Though north facing the space is so deep, tall and narrow, that winter sun will only reach the existing and</p>	<p><u>Applicant's Response</u></p> <p>A number of amendments to the proposed design over time have been made in response to both staff assessment and UDCG advice.</p> <p>In relation to the ADG, it is not intended to be and should not be applied as a set of strict development standards, as referenced in Planning Circular PS17-001. The proposal has been well considered and the objectives of the ADG have been used to assist in the design of the proposal.</p> <p>Concerns have been raised about setbacks and privacy along the interface of Worth Place Apartments and the Sky Residences. Privacy screens have been provided throughout the development where considered necessary, in particular sliding louvre screens are included on the north facing King St building units, as shown on the east elevation (Drawing DA13). The living areas of these apartments are also positioned toward the east and not directly towards Worth Place Apartments.</p>

proposed apartment living areas and decks for a very short period of the day. In the absence of wind studies, it is impossible to predict whether habitable spaces facing into this void will be impacted by unusual draughts or other related issues. The extent of hard surfaces and the narrowness of the void are also likely to bring adverse acoustic privacy conditions.

The second proposed tower facing King Street is set at nil setback from the street and establishes a nil-setback boundary wall on its western side for the depth of one apartment (approximately 12 metres). The King Street block is set back approximately 1m on its eastern side from Lauers Lane and has a separation of only 12m from the proposed Hunter tower on the subject site. The King tower rises up a full 9 storeys before being set slightly back from King Street by approximately 1 metre for the tenth and eleventh levels. This arrangement does not comply with the DCP and is not supported.

The separation distances between the subject two towers is substantially less than the ADG recommendation for buildings of the proposed height (24m required, but 12m proposed). Likewise, the separation between the subject towers and their existing neighbour to the east (Worth Place) are substantially below the ADG distances.

The Hunter Tower is unacceptably close to the approved building known as “the Icon” to its west, and the King tower is substantially closer to potential development on the eastern side of Lauers Lane than ADG recommendations. While the applicant provided a possible development scenario that would involve setting a development on the eastern side of Lauers Lane back from the laneway, the UDCG considered that the proposed disproportionate setbacks of the King

Regarding setbacks and building separation, reference is made to the Land and Environment Court (L&EC) Planning Principle: Protection of visual privacy as contained in *Meriton v Sydney City Council [2004]* NSWLEC 313. Contrary to the assertion made in submissions, this planning principle is applicable to the proposed development and provides guidance by the Court on the assessment of setbacks and privacy which may not strictly meet the numerical requirements of the ADG or another development control or standard having regard to the density of the area and appropriate design responses.

It is considered the revised design has given more than sufficient regard to this principle and incorporated a number of design mitigation measures. It is also recognised that the site is located within a CBD setting undergoing change (which includes an increase in density) that is well supported by locally adopted strategic documents.

As part of the architectural revisions in March 2020, the overall width of the Hunter St building and the King St building have reduced with a subsequent increase in building setbacks along the side boundaries. In the latest revised plans June 2020, the balconies of the north west apartments have been reduced to be in line with the column as per UDCG advice May 2020. The latest plans have also realigned the balcony of Hunter St Unit 1203 to increase privacy for residents of the Sky Residences. This balcony has also been aligned so that it does not extend past the building line of adjacent balconies of Sky Apartments.

Officer comments

The development now complies with the maximum height limit of 45m (by removing one level from the Hunter Street tower.

tower (only 1m) and what would be required on any future neighbour across Laurers Lane, was inequitable and therefore unacceptable, *unless* there were to be an actual approval for such development on that site.

The UDCG noted that while the architect had been able to reduce some of the visual privacy impacts between the proposal and its current and future neighbours, the ADG recommendations are also based upon consideration of other important aspects, including: acoustic privacy, solar access and bulk and scale concerns.

UDCG - 20/06/2018

The applicant's drawings indicate a maximum (parapet) height of 50.5m and top roof level of 50.40m, thus exceeding the allowable height of 48.80m. Whilst the excess height is limited to the set-back top floor of the Hunter Street tower, it is not associated with any common areas or other communal amenity and cannot be supported.

Relocation of air conditioning plant from the eastern side of the Hunter Street tower has reduced noise impacts on the existing building to the east.

The lack of a setback to the King Street elevation above podium height remains unacceptable. It is essential for the tower component to be setback by approximately 6.0m above the fourth level in accordance with DCP 2012.

UDCG – 20/02/2019

Amended drawings have now provided a tapered, narrow setback at level 4 above the King Street podium of the order of 2m although not dimensioned. This remains significantly less than the 6m DCP requirement, but at least would somewhat improve the pedestrian scale in the street. The submission provides diagrams illustrating that this would be consistent with approved development

Further consideration could have been given to removing further levels from the Hunter Street tower to assist in improving the relationship and massing with Worth Place apartments (No.489 Hunter St) along the eastern side boundary. This reduced massing / bulk and scale would have further contributed to improving outlook and increase in light and ventilation for all properties and those to the west and south (fronting King St).

The applicant's response is acknowledged in summary below.

*Amended architectural plans (October 2019) seen a reduction by one storey, achieving height compliance.*

*The proposal continues to be consistent with the maximum floor space ratio limit (below 5:1 limit).*

*UDCG advice of 20 February 2019 suggested that the height exceedance could possibly be acceptable taking into account the much lower height of the southern King St tower, and that the development is compliant with floor space ratio limit, provided no unacceptable impact on views from adjoining properties.*

*Amended plans (March 2020) seen a reduction in overall width of the Hunter Street building and the King Street building, with an increase in setbacks along the western and eastern (Lauers Lane) side boundaries.*

*This reduction in building width aids in CN's request to reduce the massing / bulk and scale and improve outlook and increases light and ventilation to surrounding developments.*

*The Hunter St building form acts to improve the skyline compared to a steep drop in the built form when viewed from the public domain. Specifically looking*

on sites to the immediate east. (Drawing S01). Subject to CN confirmation of this information, it is considered that the setback as now proposed could be accepted.

Separation distance from existing sites to the eastern side of Lauers Lane remain highly problematic. The submission includes diagrams (Drawings S02-S03) which indicate how ADG separation distances might be achieved, but these place the large majority of the burden of setbacks from the Lane on the undeveloped sites on the opposite (eastern) side of the Lane. This argument could only be accepted *if* there was a current development proposal by the owner(s) of those sites which both consolidated the sites and demonstrated that a viable and acceptable outcome could be achieved with the setbacks indicated, and that this was imminent. In the absence of such documentation, the setbacks should be shared equitably between developments on the two sides of the Lane, as measured from the centreline of the Lane.

The maximum parapet height of the northern tower block remains at 50.4m, continuing to exceed the allowable height of 48.80m. As previously noted, this is limited to the setback top floor of the Hunter Street tower but is still not associated with any common areas or community amenity. The height could possibly be acceptable taking into account the much lower height of the southern tower block, and the fact that the development overall is stated to be compliant with the 5:1 LEP control, provided that it can be demonstrated that the non-compliant height will not cause any unacceptable impacts on views from other adjacent or nearby properties, including the approved, but not yet constructed development immediately to the west.

UDCG – 20/11/2019

*south from Honeysuckle and Hunter Street. Regarding bulk, the proposal is narrow in regard to the future Sky residences and provides a balanced scale.*

Both the plans (March 2020) and latest plans (June 2020) do not include further reduction in number of storeys than from previously amended. Whilst further reduction in height would potentially have contributed to an extent to lessen the overall bulk, scale and massing on the site and its relationship with adjoining properties, this would have only occurred at the higher levels, as it would have been unreasonable to expect a reduction in storeys down to say that of the existing Worth Place Apartments or lower.

The applicant's response is acknowledged that the current height of building is reasonable from a skyline perspective compared to adjoining properties when viewed from the public domain. In respect to bulk it is also acknowledged that the proposal is narrow when compared to Sky residences development which does contribute to a balanced scale.

Various amendments have been made during the assessment process over time which have all positively contributed to reasonable bulk, scale and building form, and included:

- Various amendments to the podium open space and landscape areas to improve both internal and external amenity.
- Inclusion of a communal open space area on the rooftop of the King St building.
- Compliance with the height limit.
- Further reduction in building width and bulk and increased setbacks in various locations along boundaries including the latest amendments which seen further

Whilst relocation of tower forms above podium level has increased setbacks to the eastern side, the relocation has reduced setback of the Hunter Street tower from the western side boundary to less than 2m in some areas and for the overall length of the front apartments to a maximum of 2.183m. The applicant's observation that setbacks compliant with the ADG would compromise commercial viability of the site are appreciated. However, due to the proximity of the 19-storey tower at No.509 Hunter Street to the west, the Panel is concerned about the spatial, visual and acoustic separation from this development. Whilst the setback from Hunter Street frontage and the setback from the common boundary as proposed for the southern section of the tower (approx. 6m) are acceptable, the setback of the northern part is unacceptable. The key concern is the negative impacts on No.509, particularly in relation to outlook and views towards the north-east. It is considered that it would surely be reasonable to require setback of the northern section of the tower to match that of No.509 at approximately 7 metres.

In relation to the King Street building, the amended setback from Lauers Lane applies only to the northern component, and there provides a maximum of only 6.247m from the centre of the lane, approx. half the 12m recommended by the ADG to achieve 24m separation between this and potential future development on the opposite side of the lane. The southern component remains with a separation of only 5.555m to the centre of the lane. The full length of the eastern façade has habitable rooms and balconies facing directly to the east.

UDCG – 27/05/20

The height of both tower blocks are now compliant with the maximum permissible under the LEP, and acceptable within their high-rise context. The podium and

increases in setback within a section of the western boundary and offset from Lauers Lane.

- Provision for upgrade of the existing laneway services to support both the existing developments and future development on the opposite side of the lane along with improved outlook and reduced massing relative to the southern side of Worth Place apartments.
- Various aspects of design refinement to assist in providing amenity for future residents and those of adjoining properties.

The development as amended, taking into account the design response to the UDCG comments to date and a balanced consideration of the site, its physical constraints and the constraints imposed by those adjoining properties is considered acceptable.

The UDCG advice in May 2020 recommended a number of changes be made that would then result in the development being acceptable if CN were to support the proposal. These have all been addressed, apart from the suggestion that the western side setback should match that of Sky Residences, at minimum 7m from the boundary.

The proposed western side setback to the boundary varies from 3.1 to 6.2m. This proposed setback with the minimum 7m setback provided by Sky Residences is considered to achieve an acceptable combined separation.

The proposed eastern side setback to the boundary to Worth Place Apartments also varies from 4.3 to 9.3m, which is considered acceptable and supported by UDCG.

Whilst the setbacks to both boundaries and across sites are below the recommended separation distances

<p>both street facade heights are also compliant.</p> <p>The following further amendments are now proposed: -</p> <p>(a) King Street block</p> <ul style="list-style-type: none"> <li>i) An additional setback of 0.5m along the Lauers Lane footpath dedication</li> <li>ii) Additional minor setbacks from the site boundary of the eastern wall above ground level</li> </ul> <p>It is considered that these increases would result in separation distances from potential future development on the eastern side of the Lane being acceptable, although still less than ADG recommendations.</p>	<p>within the ADG, there is considered sufficient separation to maintain a reasonable level of amenity expected within this city centre location.</p> <p>Additional design features, such as screening, blades, window orientation and balcony placement also assists in maintaining amenity both within the site and in relation to adjoining properties.</p> <p>It is unreasonable to expect redevelopment of this site to bear the full burden for adjoining properties, particularly when these sites have also achieved less separation than that recommended based on the individual merits of the proposals at the time. It is acknowledged that Worth Place Apartments were constructed, prior to the introduction of ADG. However, constructing this residential flat building in such close proximity to boundaries, has also in itself compromised their site and the subject site.</p> <p>Updated 3D Elevational Views, Flythrough and photomontages have been submitted in support of the current amended plans (June 2020). On review this information further demonstrates the reasonableness of bulk and scale and massing across the site within its context and when viewed from the public domain and adjoining properties.</p> <p>The development is now considered of appropriate scale and massing within the context of the site and surrounding development.</p>
<p><b>Principle 3: Density</b></p> <p><u>UDCG - 21/02/2018</u></p> <p>The applicant indicated compliance with the maximum FSR. This has not as yet been checked by CN officers. However, given the narrow, constrained nature of the site and the proposal to accommodate all car parking above ground, it was considered unlikely that</p>	<p><u>Applicant response</u></p> <p>The current proposal has seen a further reduction in FSR 3.7:1 (originally 4.25:1) which complies with the maximum FSR development standard of 5:1 under NLEP 2012. This FSR development standard also reflects the city centre location and future context of this central urban environment.</p>

<p>numeric FSR would be the limiting factor for development on the site.</p> <p>Given the concerns raised by the UDCG at the pre-DA submission, the subsequent proposal including additional units representing an increase in apartment numbers of in excess of 50%, would tend to suggest that the proposal is an overdevelopment for the site.</p> <p><u>UDCG - 20/02/2019</u> Council briefing notes indicate the FSR appears to comply.</p> <p><u>UDCG – 20/11/2019</u> FSR is scheduled at 4.25:1 (Drawing GFA04) – compliant with the 5:1 NLEP 2012 control.</p> <p><u>UDCG – 27/05/2020</u> Compliant and acceptable.</p>	<p>UDCG have advised the density as being acceptable.</p> <p><u>Officers' comments</u> The proposal is considered acceptable in this regard in terms of numerical compliance and the overall merits of density and scale of development.</p> <p>Amendments made over time seen a reduction in apartment numbers (originally 92, now 83) in order to resolve issues and find a balanced scale of development appropriate within its context.</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDCG - 21/02/2018</u> No measures beyond minimum BASIX requirements were highlighted in the presentation, but the roof plan appears to indicate the inclusion of solar PV panels.</p> <p><u>UDCG - 20/06/2018</u> No additional sustainability provisions were presented to the UDCG.</p> <p><u>UDCG – 20/02/2019</u> No change.</p> <p><u>UDCG – 20/11/2019</u> Compliant</p> <p><u>UDCG – 27/05/20</u> The proposal is significantly impacting on solar access for a number of the lower east-facing units that are currently under construction at No.509 Hunter St.</p>	<p><u>Applicant Response</u> A current BASIX Certificate has been submitted with the application.</p> <p>Concerns of the UDCG are noted regarding solar access. Updated shadow diagrams have been prepared in conjunction with the revised architectural plans.</p> <p>Submissions raised concerns regarding solar access, over shadowing and ventilation. A number of submissions from developments approximately 75m east of the site were received raising concerns with solar access to their existing developments.</p> <p>Under the Planning Principle for 'Sunlight' (The Benevolent Society v Waverley Council [2010] NSWLEC 1082 at 133-144), an argument to protect, maintain and claim sunlight in this dense urban setting with an FSR of 5:1 and a height limit of 45m should not be given as much weight as if the development was located in a low-density location.</p>

In this regard, the proposal has provided a design which is sensitive in relation to existing and future development.

A Solar Access and Ventilation Two Expert Opinion prepared by Steve King was provided with the application. The Expert Opinion provides analysis and justification of the proposal and concludes that the proposed building complies with the ADG Design criteria for Solar Access. The Expert Opinion assessment of ventilation concludes that all habitable rooms have access to natural ventilation.

As a result, the proposal meets the objectives of the ADG for solar access and ventilation. Access to natural ventilation addresses the objectives of the ADG in relation to building depths.

Accompanying the current amended plans and documentation, a letter prepared by Scott Walsh (Walsh Analysis) dated 24 June 2020 concludes that the proposed building complies with the ADG Design criterion for solar access.

The provided shadow diagrams indicate that the shadows on 21 June cast toward the south west side of their location and also indicate minimum impacts on any shadows that are already currently experienced in their location.

Officer Comments

The applicant's response is acknowledged. Overshadowing plans (April 2020) were provided with hourly shadows cast on the 21 June. A Solar Access schedule (with and without the development) was provided, specifically relating to the Sky Residences under construction (western side). Both plans and schedule demonstrate that overshadowing will be acceptable in the context of the site, its orientation and the dense urban environment within this

	<p>location. An acceptable level of solar access will be maintained for these adjoining properties.</p> <p>The design is considered reasonable in relation to solar access provision within the development and maintaining reasonable levels of solar access to adjoining properties in the context of the site and city centre urban environment.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDCG - 21/02/2018</u> The level of documentation is considered inadequate for a development of this scale and value.</p> <p>The podium level of the development is primarily hard paved, with what appear to be narrow garden beds intended to separate private areas from common areas. The overall impression will be of hard surfaces. No indication is given of any planter volumes, and the only section provided is a generic one marked “not to scale”. It is very unlikely, given the minimal planter widths indicated, that tree canopies such as those shown on the plan will ever be achieved. All trees are located such that they overhang adjacent properties for a substantial proportion of their indicated canopy. Tree placement should be accommodated fully within the subject site.</p> <p><u>UDCG - 20/06/2018</u> Roofs seen from above should be established as green rooftops.</p> <p>Whilst depths of soil to planter beds on the podium level have now been indicated, the lack of detailed documentation of landscaping remains an issue particularly in relation to tree canopies shown up to 50% over adjacent sites on the roof / site plans.</p> <p><u>20/02/2019</u></p>	<p><u>Applicant Response</u> In response to requests for information in March, landscaping has been increased to widen and increase depth of planters. This change was developed as part of the previously updated landscape plans submitted and dated January 2020.</p> <p>CN requested further information and consideration be given to an increase in landscaping.</p> <p>CN’s previously requested that soft landscaping should be achieved in line with ADG requirements (25% of the site area).</p> <p>As noted in our response dated 2 October 2019, the ADG is not intended to be, and should not be applied as a set of strict development standards.</p> <p>In relation to landscaping, the objective of Part 3D1 – ‘Communal and public open space’ is ‘<i>an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</i>’.</p> <p>Part 3D-1 also note that where communal open space cannot be provided at ground level, it should be provided on a podium or roof. Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones or in a dense urban area, they should demonstrate how they meet the objectives.</p>

Location of planting and spread of tree canopies have now been shown on an indicative landscape layout.

A detailed landscape plan, showing species of plantings and all soil depths and volumes should be submitted. It is noted that the ADG nominated 7% of the overall site area dedicated to deep soil plantings has not been achieved, with no deep soil proposed. While the CBD location may be argued to make provision of deep soil planting difficult, this shortfall makes it imperative that good quality landscaping is provided on structure. The ADG recommends a minimum area of soft landscaping equivalent to 25% of the total site area. The actual areas need to be stated and should not be significantly less than the ADG recommendation.

UDCG – 20/11/2019

No updated Landscape Plan was provided, and previous requests by the UDCG for information in respect to the ADG recommended soil volumes for plantings remain unaddressed. The overall landscape area quoted as 37% of site area, but this figure includes substantial areas of hard paving which are excluded from ADG landscape consideration. The proposal provides only 11% of actual landscape area, taking into account both communal and private open space areas. This proportion is substantially below the ADG recommendation and is considered to be unsatisfactory. Furthermore, most planters that are provided, are quite narrow and relatively low as depicted on architectural plans, meaning capacity for any usefully scaled soft landscape is greatly reduced due to minimal soil volumes, with proportionally high surface areas. The latter results also in excessive watering requirements.

UDCG – 27/05/20

The site is located in a CBD setting with an allowable FSR of 5:1. It is further noted that the development has provided a well landscaped podium and also a roof top garden located on the King St building providing approximately 37% of the site area as communal open space.

In addition to landscaped open communal open space, a common room at podium level and common open space on the King St building rooftop inclusive of accessible WC on Level 10 with lift access to the roof. All units are provided adequate balconies.

The site is located approximately 220m west of Newcastle Civic Park and approximately 250m south of Worth Place Park West. The Worth Place Park is also supported by the Hunter and Central Coast Development Corporation – Honeysuckle Foreshore Public Domain Plan (January 2019).

Officer's comment

As outlined within the applicant's response dated 9 April 2020 amended landscaping plans were provided in January 2020 in response to both the UDCG's and CN's concerns.

The amended landscaping plan (January 2020) has also resolved the UDCG concerns relating to planters located on the podium (Level 3) being narrow and relatively low. The planter boxes on both the eastern and western side of the Hunter Street building have been widened with an increased depth.

Given the size of the site, the location within the city centre, relevant factors for consideration within the Apartment Design Guide, the extent of communal and private open space with integrated landscaping within these areas is considered to achieve an appropriate response to the requirements for landscaping within this mixed use development. The extent of landscaping

The following issues relating to the podium landscape design must be addressed:

- (a) The pathway adjacent to the western boundary and the northern block is quite narrow due to the inadequate side setback and is immediately adjacent to habitable rooms and balconies. This is not acceptable.
- (b) As depicted in the architectural documentation, the common space on the eastern side appears to be a potential access route to the northern podium outdoor communal area but is also unacceptably close to habitable rooms and balconies of Unit H303. The Landscape plan for this area is different to the architectural plan DA04, and partially addresses this issue. However, further consideration is needed of this area to include an attractive access path to the north, adequately distanced from the units, as well as substantial landscaping.
- (c) The light well / courtyard on the western boundary adjacent to the King Street units could be directly looked into and over from the adjoining pathway, raising visual privacy and noise issues for bedrooms opposite and below. The pathway must be redesigned to ensure adequate screening by way of planting or other devices.
- d) At the western and eastern ends of the northern communal space, the balustrades are immediately on the common boundary, so that

within this development if well maintained will also be of benefit when viewed from adjoining properties and within the public domain. Also contributing toward maintaining a reasonable level of residential amenity both internally and externally on adjoining properties.

It is noted that continuing the landscaping strip along the eastern boundary (right along to where it meets the Hunter Street front boundary) would be beneficial for amenity of the adjoining property, not unlike what was achieved by increasing landscaping and offsetting the communal open space areas running the full extent of this eastern section of the Level 3 podium.

The current plans show the corner section at podium level 3 communal open space extended to the boundary without any offsetting or landscaping. This was also raised within a submission received relating to the need to extend this for the full length of the eastern boundary if the proposal was to be supported. It has also previously been raised by UDCG in their advice.

A condition is recommended to off-set this communal open space area and extend this landscape design to the boundary with Hunter Street.

The revised plans have included a security gate along the western boundary to restrict access past habitable rooms for maintenance purposes. The current amended plans (June 2020) are now also consistent with the landscaping plans (Jan 2020) which have increased landscaping in this location. The revised plans have added an additional planter box outside the bathroom of unit H303 at podium level. A security gate has also been added to unit K103 courtyard, where previously direct unsecured access could be obtained via the lobby in this location.

<p>there would be no privacy separation from the adjoining site should it be developed. As noted in the panel's previous feedback, an appropriate setback including a more substantial landscape screening should be provided to all podium boundary perimeter walls.</p>	<p>The revised proposal is now considered to have provided sufficient landscaping for this scale of development within the city centre location. Placement of landscaping is considered to achieve the desired outcome of visual relief, shade and amenity benefits both within the site and surrounding properties and in context with this urban city centre environment.</p>
<p><b>Principle 6: Amenity</b></p> <p><u>UDCG - 21/02/2018</u></p> <p>The UDCG was not provided with any information or diagrams supporting compliance or otherwise with solar access requirements and cross ventilation. Both were considered to be likely to be problematic given the reduced separations and orientation of apartments.</p> <p>The inadequate separation distances raised under the <i>Built Form and Scale</i> heading above will inevitably have significant adverse impacts in respect to privacy (particularly acoustic privacy), solar access and aspect. The amenity for both the units in the eastern half of the Hunter block and its neighbour to the east (Worth Place) is likely to be severely impacted by the narrow, tall void created by the limited setbacks proposed.</p> <p>Units in the King block in the podium level particularly will have poor amenity, with some bedrooms gaining ventilation from a 2-storey light well, which does not comply with ADG recommendations.</p> <p>The podium-level common area between the Hunter and King towers is in deep shade for all of the cooler months and will have limited amenity. It, and the various walkways around the podium, are also likely to adversely impact adjacent apartments due to limited separation between hard-paved common areas and</p>	<p><u>Applicant Response</u></p> <p>Comments from the UDCG relating to the King St building outline specifically building setbacks and views have been discussed under 'Built Form and Scale'.</p> <p>The UDCG identified concern with the interface (visual and acoustic privacy) of the podium level apartments and communal spaces. A number of amendments have previously been undertaken in response to UDCG and public submission in architectural amendments made in February and March 2019.</p> <p>In summary, revisions have been undertaken in the form of providing a pergola along the eastern side of the Hunter St building (as suggested by UDCG), additional planters, landscaping and the removal of a sky light near the interface of Worth Place Apartments. The design also includes a detachable screen panel fence along the side of the podium area. Other design mitigations include the offset floor levels between the two buildings.</p> <p>Outstanding issues of the UDCG relating to privacy and safety have been addressed.</p> <p>The proposal has incorporated numerous measures to ensure privacy and amenity for residents of the proposal and the residents of surrounding development. Design responses include the well-considered positioning of</p>

private open spaces, as well as nearby private internal areas.

UDCG - 20/06/2018

The provision of winter gardens to the south-east corner of King Street frontage has achieved 70% solar access for the development.

A footpath awning should be provided to the King Street frontage, preferably returning along the Lauers Lane elevation.

Additional screening has been provided to the eastern side of the development adjacent to the podium level of Worth Place.

Whilst the provision of only a single elevator is legally permissible, this is highly problematic for residents with any mobility issues in the upper floors of the 11-storey King Street tower, because a single lift will inevitably on occasions be out of action for servicing or repairs. The provision of a second elevator is strongly recommended.

Adjustable screens to the balconies should be provided, in particular to corner balconies, for protection from wind as well as giving privacy to residents.

Amenity Impacts on Neighbouring 498 Hunter Street

See Comments above under 1. Context and Neighbourhood Character.

As well as relocating the communal facilities the design should be amended to resolve these concerns.

UDCG – 20/02/2019

Awnings have now been provided to the King Street frontage and along the Lauers Lane footpath. The proposed gaps between the awning over the King Street entry and the adjacent awnings

bedrooms, living areas and balconies to avoid overlooking. Design responses also include the use of skewed and high-level ribbon windows in conjunction with privacy screens and louvers.

Concerns raised by UDCG and submissions were raised regarding setbacks and privacy along the interface of Worth Place Apartments and the Sky residences.

Privacy screens have been provided where considered necessary throughout the development. In particular, sliding louvre screens have been included on the north facing King St building units, as shown on the east elevation on Architectural plans DA13. The living areas of these apartments are also positioned towards the east and not directly towards Worth Place Apartments.

In respect to setbacks and building separation, reference is made to the Land and Environment Court’s Planning Principle: Protection of visual privacy, as contained in Meriton v Sydney City Council [2004] NSWLEC 313. This planning principle is applicable and provides guidance by the Court on the assessment of setbacks and privacy which may not strictly meet the numerical requirements of the ADG or another development control or standard having regard to the density of the area and appropriate design responses. In addressing the principle it is also recognised that the site is located within a CBD setting undergoing change (which includes an increase in density) that is well supported by locally adopted strategic documents.

As part of the amendments in March 2020, the overall width of the Hunter St building and the King St building have been reduced, subsequently increasing setbacks along the side boundaries. The latest revised

over the footpath should be removed so that there is unbroken protection for pedestrians along the full frontage of the site.

Amendments to the King Street entry have improved the lobby.

There would be privacy and amenity issues with apartments facing north onto the small northwest lightwell and carpark / communal area. [Apts. K102 K202 & K302]. The ADG specifically excludes lightwells as a source of light and ventilation to habitable spaces. The applicant at the meeting undertook to mitigate the situation somewhat by removal of a car bay to each floor of the carpark to widen the lightwell and to set back and increase the density of planting at the communal deck level. The slab at the foot of the light well should be landscaped and appropriately finished to provide an acceptable outlook to the adjacent habitable rooms.

A small and potentially very attractive common area has now been provided to the rooftop of the King Street building.

Sliding privacy screens and blades have been provided to outer balconies.

The King Street tower remains with a single lift, and although an additional lift is not a legal requirement, this remains problematic because of inevitable out-of-service times during the life of any lift, and the many stair flights to be climbed by residents above the lower levels of this 11-storey tower. It is strongly recommended that at the very least, management arrangements are required to be put in place to permit access from the northern tower lifts at level 3 across the podium to access the southern tower stairs.

Access from carparking to apartments in the Hunter Street frontage of the podium requires long travel distances and would

plans in June 2020, the balconies of the north west apartments have been reduced to be in line with the column as suggested by UDCG May 2020 advice. These amendments also included realignment of the balcony of Hunter St unit 1203 to increase privacy for residents of the Sky residences.

Officer's comments

The development as amended, taking into account the design response to the majority of the UDCG comments to date and a balanced consideration of the site, its physical constraints and the constraints imposed by those adjoining properties is considered acceptable. The current proposal is considered appropriate within the context of the site and location within the city centre. A proposal that reaches the potential maximum height and floor space ratio limits is not always a reasonable expectation or reality, unless the design appropriately responds to its neighbours, and the current design appears to respond appropriately to ensure a reasonable level of amenity, expected in this city centre location is achieved.

The current proposal has responded by further increasing the setback (particularly on the Hunter Street portion of this tower by 1.5m and this is discussed below. Further setback off the King Street tower (via Lauers Lane) by 500mm has also been proposed and is discussed below.

These changes have assisted in contributing to reduced massing / bulk and scale and improved amenity through greater separation between buildings however, to a lesser extent than potentially a further reduction in the number of storeys would have realised.

However, in considering the requirements of the ADG, a guide only, the design and separation distances also provided on adjoining properties, though

be improved by provision of a direct access route through to the stair lobby.

UDCG – 20/11/2019

The following issues remain: -

1. The relocation of segments of both the Hunter and King Street towers toward the western side boundary would result in some improvement in acoustic and visual privacy in relation to existing and future buildings to the east, although these remain problematic in relation to the King Street tower.
2. With respect to the King Street tower the applicant identified modifications to apartment layouts as a means of addressing the lack of compliant setback to the building. These comprise changes in plan layout and screening of eastern side windows and south-eastern decks utilizing sliding louver screens and glass louvers. The panel does not support the glass louvers unless of obscure glazing. However, the amenity of apartments in the subject development would remain unacceptable due to inadequate separation, and as well would unduly compromise the development potential of site(s) on the opposite eastern side of Lauers Lane.
3. With respect to the Hunter Street tower, the changes would improve the amenity of east-facing apartments and these could now be accepted, and those along the western side would also be reasonable in relation to the subject development itself, but the reduced separation would unacceptably impact on views and outlook from the neighbouring

in part to a lesser extent, the site challenges, the reasonable expectation of being able to develop one's property and public benefits of redevelopment the current amended proposal on balance is considered acceptable.

A Solar Access and Ventilation Two Expert Opinion has been submitted with the application. This opinion concludes the proposal complies with the ADG design criterion for solar access within the site. It concludes that all habitable rooms have access to natural ventilation.

As part of the revised plans / documentation, further letter advice was received, and this opinion was that the proposed development complies with the ADG design criterion for solar access.

As previously mentioned, a collapsible wall (within the western wall of the car park) has been include as per the UDCG recommendations, for possible future vehicular access to No.505 & 507 Hunter Street, in the absence of amalgamation of these sites.

<p>property under construction at No.509.</p> <p>4. Interfaces of the podium level apartments with the surrounding thoroughfares and communal spaces at the same level compromise visual and acoustic privacy, due to minimal separation distances, and lack of adequate landscape buffering.</p> <p><u>UDCG – 27/05/20</u> There are a range of concerns in relation to privacy, and safety.</p> <p>See the issues raised under ‘Built Form’ and ‘Landscape’ which need to be resolved.</p> <p>Due to the close proximity of the King St tower to its larger Hunter Street counterpart, which is well below the 24m separation total required by the ADG for buildings of this height, apartments in the King St tower have primarily been orientated towards the south and the east, and as a consequence their living spaces and balconies generally have poor solar access.</p> <p>In other respects, amenity is satisfactory.</p> <p>If the adjoining isolated sites to the west are redeveloped, it would be desirable for vehicle access to be provided via the subject site, to avoid further footpath crossings, and maximise activation of their street frontages.</p>	
<p><b>Principle 7: Safety</b></p> <p><u>UDCG - 21/02/2018</u> The pedestrian walkway accessing the Hunter block elevators usefully also accesses King Street via Lauers Lane. However, the route discourages pedestrians right at the junction of the vehicle accesses to both the subject development and its eastern neighbour (Worth Place apartments). Furthermore,</p>	<p><u>Officer comments</u> As discussed within this assessment report, a Crime Prevention through Environmental Design (CPTED) was submitted with the application.</p> <p>The development in its design has achieved an acceptable level of safety and security for the site and surrounding properties.</p>

<p>drivers exiting Worth Place apartments' car park would have no sight line to a pedestrian exiting this pedestrian accessway. If a pedestrian were to step off the very tiny area of footpath available, onto the roadway, the situation would be potentially very dangerous. The pedestrian entry to The King Block is also located in Lauers Lane. Though not as concerning as the previously described interface, the very narrow pedestrian footpath proposed adjacent to the roadway is far from ideal in terms of pedestrian safety. Both residential entry routes have corners and recesses that prevent good internal sight lines for casual surveillance, and the King Block lobby is very small.</p> <p><u>UDCG - 20/06/2018</u> Deletion of the pedestrian link through to King Street has improved safety issues and is supported.</p> <p><u>UDCG – 20/02/2019</u> No additional comments.</p> <p><u>UDCG – 20/11/2019</u> No additional comments.</p> <p><u>UDCG – 27/05/20</u> The Courtyard outside Unit 103 is accessible to the common corridor and should be secured to prevent non-residents of this unit accessing its windows.</p> <p>See also comments above under "Landscape".</p>	<p>The recommendations of the UDCG in May 2020 have been suitably satisfied. As specifically referenced in the UDCG advice, a security gate to unit K103 courtyard has been provided in the current revised plans.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDCG - 21/02/2018</u> The proposed apartment mix is satisfactory.</p> <p><u>UDCG - 20/06/2018</u></p>	<p><u>Officer comments</u> The development provides for an acceptable mix of apartment types across the site.</p> <p>The current amended proposal has addressed UDCG comments in relation to King Street lobby.</p>

The UDCG recommends widening of the King Street lobby to accommodate seating near the lift.

It is highly desirable that separate communal areas and facilities to be provided for residents of each tower block.

a) The northern block as designed has a north-facing communal area on the podium. Whilst this would provide good facilities for all residents in the development, its location raises amenity issues in relation to both the immediate adjacent and immediately above apartments in the development. Noise from the communal area would on occasions be very intrusive and disruptive for residents in these apartments which are protected and separated only by a low wall and planting.

Almost equally concerning are similar impacts on the adjoining residential development to the east - 489 Hunter Street - even with measures recommended above under Principle No. 1 "Context and Neighbourhood Character".

b) Although this issue was not raised in previous reviews, it is of serious concern. It is recommended that the community facilities serving this northern block should be relocated to the roof level. These should include a small enclosed room with kitchenette facilities and toilet, potentially opening to an attractive small terrace.

Note that the Panel is supportive of some height excess above the NLEP 2012 control, provided this accommodates *only* communal facilities which are setback from the perimeter of the building and do not have any adverse impacts on amenity of nearby properties, particularly in relation to overshadowing or views.

An additional rooftop communal open space has been provided on the King Street tower, with lift access.

Amendments have been made to the Level 3 podium communal open space area to reduce the potential for visual and acoustic privacy impacts to the amenity of the adjoining properties. Changes have reduced these potential impacts, and whilst separation remains below ADG recommendations, a reasonable setback in the context of the site and adjoining development and appropriate mitigation measures has resulted in achieving a reasonable level of amenity across sites.

<p>c) Similar communal facilities should also be provided to serve residents of the southern block.</p> <p><u>UDCG – 20/02/2019</u> Communal areas and lobby seating have now been provided to both blocks, and these would resolve previous concerns in this respect.</p> <p><u>UDCG – 20/11/2019</u> No additional comments.</p> <p><u>UDCG – 27/05/20</u> No comments.</p>	
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDCG - 21/02/2018</u> The podium street wall height on Hunter Street should take into account adjacent development and the six heritage listed shopfronts further to the west of the site. The street-wall height and setbacks on King Street should also comply with the DCP. Projecting elements cantilevered over the footpath are likely to be visually overbearing and should be deleted.</p> <p>The greatest concern in respect to the aesthetics relates to the bulk and scale of the proposal, and the lack of adequate separations between the towers, (existing, approved and proposed). The 3D animation shown to the UDCG confirmed concerns that the proposal would, from many directions, form a visually continuous mass of tall development with no visible spaces between 5 substantial blocks.</p> <p><u>UDCG - 20/06/2018</u> Whilst the UDCG acknowledges the incorporation of improvements to the scheme, the disparity in height of the podium to Hunter Street and the lack of setback to the above podium levels facing King Street would detract from the aesthetic quality and streetscape cohesion of the design. In other</p>	<p><u>Applicant Response</u> Photomontages have been submitted with the application consistent with the current amended plans.</p> <p>Comments of the UDCG raised concern with the treatment of the western wall of the podium. The treatment of the western wall has been considered and revised in the submitted information. A revised material finishes scheme consistent with the current amended plans has also been submitted with the application.</p> <p><u>Officer comments</u> 3D Elevational Views have been provided, together with a Fly through which assists in demonstrating the acceptable bulk and scale and massing across the site, relative to surrounding development in this location.</p> <p>Photomontages have also been prepared and submitted with the application.</p> <p>Treatments of the visually exposed western wall at both Hunter Street and King Street ends have been considered and resolved in the amended plans.</p> <p>Revised material finishes have also been provided with the amended plans and</p>

respects, the detailed architectural character of the design would be acceptable.

UDCG – 20/02/2019

A small setback above podium level to King Street has now been provided, see comment above under 'Built Form'.

Further design development of the Hunter Street frontage should be undertaken to address the disparity of the podium height relative to adjacent building frontages.

Generally, the detailed design and architectural character of the development would now be of reasonable quality.

UDCG – 20/11/2019

The architectural form, materials, finishes and character of the proposed development itself would be reasonable and acceptable.

However, the proposed relocation of part of the Hunter Street tower would exacerbate an already spatially uncomfortable juxtaposition with the neighbouring development currently under construction, as well as their collective visual prominence. No three-dimensional contextual renderings or montages were provided with the revised scheme, which could have demonstrated the acceptability or otherwise of their visual impact from key viewpoints.

UDCG – 27/05/20

No photo montages were provided of the revised scheme, which is a requirement of SEPP65. While some indication of the appearance of the buildings can be gleaned from elevations, the contextual relationship of the proposal with its surroundings and the streetscapes of both King and Hunter Streets is crucial to a good outcome. The surrounding forms are quite complex, and multiple three-dimensional contextual illustrations of

are considered an acceptable response to the concerns raised by the UDCG in relation to aesthetics.

<p>the development, as seen from street level, are crucial to assessing the form.</p> <p>From the information available, the UDCG felt that the forms, particularly the proximity of large scaled buildings in close proximity, were of concern, as were the many privacy devices necessarily attached to windows to avoid direct overlooking of neighbouring residences in close proximity.</p> <p>The western wall of the podium structure will be highly visible above the smaller scaled adjacent buildings in King and Hunter Streets. No information has been provided in respect to the treatment of these walls, and it is recommended that as they are likely to remain visually exposed for possibly an extended period, careful consideration be given to providing a visually attractive, vandal resistant finish.</p>	
<p><b>Amendments Required to Achieve Design Quality</b></p> <p><u>UDCG - 21/02/2108</u> The issues identified above have been carried over to the current DA. The key issues with the proposal are substantive site planning matters and the underlying design brief, which does not recognise the limitations and constraints of the site.</p> <p>The new towers may exacerbate wind-tunnel affects in the immediate vicinity, which should be the subject of detailed investigation.</p> <p><u>UDCG - 20/06/2018</u> The issues of proximity to adjacent towers and the expectation that setback requirements under the ADG are met by future surrounding developments remain obstacles to design quality, although with successive detailed amendments the proposal could now be accepted in this respect.</p> <p><u>UDCG – 20/02/2019</u></p>	<p><u>Officer comments</u> The amended proposal is considered to adequately address key areas raised by the UDCG specifically in relation to Built Form, Landscape, Amenity and Aesthetics.</p>

<p>The minimal setback of the southern tower block from the eastern (Lauers Lane) frontage is unacceptable for the reasons discussed above under 'Built Form'.</p> <p><u>UDCG – 20/11/2019</u> The issues raised above under Built Form, Landscape, Amenity and Aesthetics remain to be resolved. Many of these could well be satisfied with further detailed design, but the <i>critical issues</i> are the inadequate and unacceptable separation distances between</p> <ol style="list-style-type: none"> <li>1. The Hunter Street tower and the neighbouring property at No.509.</li> <li>2. The King Street tower and potential future development to the east on the opposite side of Lauers Lane.</li> </ol> <p><u>UDCG – 27/05/20</u> Concerns raised under Built Form relating to boundary setbacks, and the range of detailed matters raised under Landscape, Safety and Aesthetics must be addressed, requiring further design development. This is likely to involve some moderate loss of yield.</p>	
<p><b>Summary Recommendation</b></p> <p><u>UDCG - 21/02/2018</u> The development cannot be supported for the reasons outlined under the headings above.</p> <p><u>UDCG - 20/06/2018</u> Amendments have addressed some of the issues previously raised but the application cannot be supported unless further matters are resolved.</p> <p>At minimum the application should incorporate the following:</p> <ol style="list-style-type: none"> <li>1. Setback of the King Street tower block from the street frontage above four-storey podium in</li> </ol>	<p><u>Officer comments</u> Based on a number of amendments made during the development assessment process and resolution of suggested conditions to be addressed moving forward with any final design, it is considered that the development has come a long way since originally proposed and presents a development that is now considered a more reasonable and acceptable response to site context, the challenges presented by adjoining development and its city centre location.</p> <p>The recommended changes by the UDCG dated 27 May 2020 have been incorporated in the final design.</p>

<p>accordance with DCP requirements.</p> <ol style="list-style-type: none"> <li>2. Provision of a street awning to King Street, desirably returning along Lauers Lane.</li> <li>3. Resolution of the interface between the northern part of the podium addressing Hunter Street, and adjacent buildings in relation to amenity and visual impacts.</li> <li>4. The northern tower block to comply with the LEP height control, with the exception only of communal facilities.</li> <li>5. Relocation of the communal area on the northern podium to the top of the northern tower block, potentially at rooftop level. The King Street tower block should similarly be provided with roof-top communal facilities.</li> <li>6. Greater landscape detail including provision of 'green roof-tops' and provision of planting able to mature substantially within the site boundary.</li> <li>7. Provision of adjustable screens to corner balconies and to other areas of balconies to provide reasonable privacy.</li> <li>8. Widening of the King Street lobby to accommodate a small seating area.</li> </ol> <p><u>UDCG – 20/02/2019</u>          Whilst amendments have now resolved the majority of issues previously raised one of the prime outstanding issues remains, the inadequate separation distances across Lauers Lane.</p> <p>In addition, the detailed issues which should be addressed are:</p>	
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1. Greater cohesion of the Hunter Street frontage with adjacent frontages.
2. Implementation of the agreed widening and screening of the lightwell to the northeast corner of the King Street Block.
3. Demonstration of view impacts arising from the exceeding of the height controls.
4. Landscape architect's considered design, and demonstration of reasonable compliance with the ADG.

UDCG – 20/11/2019

For the reasons summarised above, the application cannot be supported by the panel.

27/05/20

The proposal is not considered to exhibit design excellence and remains problematic in a number of significant respects. It cannot be supported by the UDCG without further amendments to the design.

If CN were of a view to approve the application, then the following are recommended to be considered as essential Conditions of Consent:

- Setback of the corners of *all the balconies* on the north-west corner to align with the column shown on the north facade, so that the western side of the balconies would then be 4.063m from the common boundary. This small modification would result in moderate reduction of overshadowing of, and view impacts on No.509.
- Removal of the large western balcony at level 12 - Unit 1203 which would be separated from

<p>the balconies of No. 509 by less than 14m, approximately 10m. less than the ADG recommendation for buildings of this scale, resulting in unacceptable privacy impacts. This and /or adjoining units need to be re-planned to resolve this issue.</p> <ul style="list-style-type: none"> <li>• The pathway adjacent to the western boundary and the northern block is narrow due to the inadequate side setback and is immediately adjacent to habitable rooms and balconies of H301 and H302 in particular. If this pathway is not widened by a provision of a greater wall setback, the pathway should be deleted, and this area landscaped and made accessible only for maintenance. For residents living in the King Street tower block, access to the northern open-air communal terrace could be provided via the common room.</li> <li>• Treatment of the visually exposed western podium wall above No.505 and the building to the west in King St needs to be detailed to provide a visually appropriate finish.</li> <li>• Provision of potential vehicle access through the proposed carpark to the isolated sites to the west.</li> </ul>	
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Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks for designing and assessing a residential apartment development. The following section contains an assessment of the development against key aspects of the ADG.

*2C Building Height*

The amended proposal now complies with the maximum height limit for the site of 45m. Refer to Clause 4.4 of the NLEP 2012 for further discussion on building height.

### *2D Floor Space Ratio*

The proposed development complies with the maximum floor space ratio for the site of 5:1. Refer to Clause 4.4 of the NLEP 2012 for further discussion on FSR.

### *2E Building Depth*

The proposed development seeks a variation to the depth of building requirement (maximum 18m length) and the proposal provides approximately 25 – 26m building length which contributes to the overall building form and scale of development. However, the overall building form and bulk and scale is acceptable in the context of the site and scale of surrounding development. Matters of solar access – light and ventilation within the development achieves compliance with the ADG and overshadowing has been demonstrated to not have an unreasonable negative impact on adjoining properties.

### *2F Building Separation*

As discussed in this report, the proposal seeks variations to the recommendations of the ADG building separation distances for all levels above podium level. Building separation and setbacks are considered critical issues to the acceptable development of this site, without significant adverse impacts on adjoining properties.

The development as amended, taking into account the design response to the main areas of UDCG comments to date and a balanced consideration of the site, its physical constraints and the constraints imposed by those adjoining properties is considered acceptable. The current proposal is considered appropriate within the context of the site and location within the city centre. A proposal that reaches the potential maximum height and floor space ratio limits is not always a reasonable expectation or reality, unless the design appropriately responds to its neighbours, and the current design appears to respond appropriately to ensure a reasonable level of amenity, expected in this city centre location is achieved.

The current proposal has responded by further increasing the separation / setbacks (particularly on the Hunter Street portion of this tower by 1.5m and this is discussed below). Further setbacks off the King Street tower (via Lauers Lane) by 500mm has also been proposed and is discussed below.

The changes have assisted in contributing to reduced massing / bulk and scale and improved amenity through greater separation between buildings.

However, in considering the recommendations of the ADG; the design and separation distances also provided on adjoining properties; the site challenges; the reasonable expectations of being able to develop one's property and public benefits of redevelopment the current amended proposal on balance is considered acceptable.

Previously CN assessment identified the below remaining outstanding issues that are now considered to have been resolved by the current amended plans and supporting information. Further detail in relation to these outstanding matters is provided below, relevant to the consideration of appropriate separation / setbacks.

Hunter Street (Block H) – increase setbacks along western side boundary (as it relates to No. 509 Hunter St – Sky residences)

*Primarily around the front portion of the Hunter Street (Block H) tower where setbacks within the site fall as low as 2m. This may assist with more appropriate spatial separation / massing of the development and reduce the current impacts on outlook and visual presence on adjoining land. Some benefits in terms of improved visual and acoustic privacy would also result from greater spatial separation.*

In considering the Apartment Design Guide (ADG) – one must consider the (broader) overall required separation distances across boundaries (building to building), and also the visual privacy separation distances to site boundary.

- i. Broader separation distances as it relates to spatial separation between buildings across boundaries, for habitable to habitable spaces should be a minimum of 12m (up to 4 levels), 18m (5 to 8 levels) and 24m (9+ levels). Non-habitable requires half the habitable setback distances (6m, 9m, 12m) respectively.
- ii. Visual privacy separation distances as it relates to setbacks to boundaries, for habitable rooms / balconies and gallery access circulation (treated as habitable) should be a minimum setback to boundary of 6m (up to 4 levels), 9m (5 to 8 levels) and 12m (9+ levels). Non-habitable requires half of the habitable setback to boundary distances (3m, 4.5m and 6m) respectively.

The Guide also suggests that whether there is a blank wall or not the setback requirement for the internal space (ie. Habitable or non-habitable) should still apply. This seems to relate to the required setback to property boundary but also to internal setbacks within a development site between buildings.

The current proposal has seen some change to the Hunter Street building outline with a reduction in overall width and increase in setbacks along the western side boundary. This change has reduced the 3-bedroom upper level apartments to 2-bedroom apartments along this boundary. This change also results in an increase in approximately 1.5m setback (by removing 1.5m from building mass – up to Level 14) from the western side of the Hunter Street building as outlined by the applicant. Further amendments in line with the UDCG advice of May 2020 have been undertaken in relation to setbacks and further design refinement to improve the relationship between properties and maintain amenity.

These amendments are considered a positive change by reducing the overall width of building and increase in setback along western side boundary in this location. This response provides a reduction in building mass and articulation bringing this section of building back in line consistent with setback of the main section of building in this location along the western boundary. As one continues south along the western boundary setbacks increase (as previously proposed), and this is acceptable, as the site also benefits from additional separation provided from Sky residences. Through design refinement it is considered that a reasonable level of amenity is maintained both within and external to the site achieving the provisions of the ADG. The previous amendment to overall building height of the Hunter Street building, now compliant with the 45m height limit has also been beneficial to the site and surrounding properties.

The development does remain below the suggested numerical separation / setbacks within the ADG, especially from Level 5 to 8 and Level 9+. However, on merit the current amendments do present valuable changes in terms of reducing the overall width of the Hunter Street building block, a reduction in the built form massing of the development and further increases to the setback along the western boundary as it relates to Sky residences.

This is also considered an improvement in overall amenity and provides some further relief and spatial separation for outlook, view sharing and solar access. In respect to views, a primary view being obtained through or across an adjoining property is not realistic nor reasonable to expect this will be retained into the future, especially in a city centre location. Sky residences also benefits from additional building height with consent granted for a 19-storey development under a previous height limit control. Additional solar access plans / documentation also suggests that a reasonable level of solar access will be maintained for adjoining properties.

The proposed western side setback to the boundary as mentioned above varies from 3.1 to 6.2m. This proposed setback with the minimum 7m setback provided by Sky Residences is considered to achieve an acceptable combined separation.

The proposed eastern side setback to the boundary to Worth Place Apartments also varies from 4.3 to 9.3m, which is considered acceptable and supported by UDCG.

This is a particularly difficult site located between existing developments and those under construction, that have also been approved at various times, under various controls and requirements and based on merit and locational context. A balanced approach to all these contributing factors needs to be considered with the overall assessment of this application.

King Street (Block K) – increased setbacks along Lauers Lane and boundary between site and Worth Place apartments (on north-eastern side)

*Increased spatial separation in both areas (above) will not only improve spatial massing and bulk and scale of this development, but how it relates to other adjoining and adjacent sites – current development and future redevelopment across Lauers Lane.*

*The importance from a design perspective providing a corner element on King St / Lauers Lane is acknowledged, however increased setbacks for the full length of Block K along Lauers Lane is required. Increased setbacks within identified areas above will relieve congestion, spatial massing and improve amenity for all properties and the public domain.*

Amendments have been made to the King Street building footprint increasing the separation along the eastern side of Lauers Lane. This will result in an additional 500mm being dedicated to Lauers Lane (dedication in total to 1.5m along Lauers Lane). This amendment results in a reduction of the eastern side 2-bedroom apartments located on Level 3 to 8 along the boundary to 1-bedroom apartments. Changes also achieve a reduction in spatial massing, increased sightlines from Worth Place apartments towards the south, improved spatial massing in this location between properties and improved amenity for Worth Place apartments.

Improved view from the public domain from King Street has also resulted from the changes as outlined by the applicant.

Amendments made over time and in addition these most recent amendments are considered positive and reduce the overall width of building, reduce the spatial massing and increase the setback response along this section of the eastern boundary in this location.

In regards to the separation / setback distances within the ADG, given some land dedication has occurred along the Laneway for benefit of the site and surrounding properties as part of this development, it is considered reasonable and appropriate to give due consideration to the overall setbacks provided to the future widened Lauers Lane centreline in balancing up the ADG guidelines and the merits of the proposal. Any future redevelopment of these properties across Lauers Lane could also take benefit from this, as shown in 3D modelling of how these properties could be reasonably developed into the future. There have been various amendments to setbacks and building design work along this eastern section fronting Lauers Lane. This benefits the site, the public domain, an upgrade of Lauers Lane for all that it services. A reduction in spatial massing and opening up the space and sightlines along Lauers Lane and outlook from the adjoining Worth place apartments has also benefit in maintaining a reasonable level of amenity for adjoining properties.

No further separation / setbacks have been proposed in this latest round of information between the common boundary between the southern elevation of Worth Place apartments and the northern elevation of King Street building. However, refinement in building design over time and also at podium level 3 – common and private open space and landscaping treatment has contributed to an improved relationship and amenity in this location between properties. Further, the latest amendments to building form and setbacks off Lauers Lane has contributed toward increased spatial separation, reduced building form, improved sightlines down Lauers Lane out onto King Street, in turn all valuable toward maintaining a reasonable level of amenity between properties within this area of common boundary.

The current amended plans have adequately addressed the above outstanding matters raised in March 2020 and UDCG advice of May 2020. The proposal is now considered acceptable and achieves the recommendations of the ADG for separation, notwithstanding the variations to numerical recommendations.

### *2G Street Setbacks*

Street wall heights and setbacks from street wall height are generally acceptable, and how the built form relates to adjoining developments has been resolved through various amendments as discussed within the report. The street wall heights and setbacks from the street are acceptable within the context of the site and existing development and will also be acceptable for any future site redevelopment within this city centre location.

### *2H Side and Rear Setbacks*

Side and rear setbacks are acceptable in the context of built form, residential amenity and visual dominance or presences of the development on adjoining properties.

*Part 3 Siting and Development*

*3B Orientation*

The building layout has been designed to face both Hunter and King Street with potential water views to the north. The site's orientation allows the buildings to achieve solar access within the site as demonstrated with the Solar Access assessments submitted with the application.

*3C Public Domain interface*

Ground level access to the commercial / retail tenancies is provided directly addressing the street and with appropriate lobby areas for the shop top housing above.

A Crime Risk Assessment has been submitted with the application assessing the development against the CPTED principles including natural surveillance. Living areas and balconies have been orientated towards the public domain to facilitate a safe and secure transition between the private and public spaces. The glass roofed entry structure allows visibility from apartments above the entry to the residential lobby contributing to passive surveillance.

*3D Communal and Public open space*

The proposal provides for 2 x communal open space areas (at Level 3 podium – Hunter Street tower) and additional rooftop (at Level 11 rooftop – King Street tower). Infrastructure such as seating, BBQ facilities and landscaping is incorporated into these outdoor communal open space areas. These areas are accessible via lift access from the common rooms for all residents. The existing 'Lift 4' has been provided with access to the lift overrun on Level 10, for maintenance. An additional lift, adjacent to 'Lift 4' has been provided from Level 9 for access to rooftop communal open space. The addition of the rooftop communal open space on King Street tower has been provided with an accessible toilet at the Level 10 lift foyer, reducing impact on usable open space for occupants.

*3E Deep Soil Zones*

The SEPP acknowledges that deep soil zones may not be possible on some sites, due to their CBD location, and the fact that there are non-residential uses at ground floor level. Both of these conditions are relevant to this site.

The applicant has responded with the following:

*The site being a high-density infill site does not have deep soil landscaping provided. However, there are deep soil landscaping zones with a width of approximately 1-2m at the podium level along the boundaries. These are designed to provide screening to the neighbours.*

Landscaping has been provided on the communal open space areas - podium level (Level 3) Hunter Street tower and to a lesser extent on the roof top (Level 11) King Street tower. However, CN's UDCG advice of May 2020 states:

*The following issues relating to the podium landscape design must be addressed:*

- (a) *The pathway adjacent to the western boundary and the northern block is quite narrow due to the inadequate side setback and is immediately adjacent to habitable rooms and balconies. This is not acceptable.*
- (b) *As depicted in the architectural documentation, the common space on the eastern side appears to be a potential access route to the northern podium outdoor communal area but is also unacceptably close to habitable rooms and balconies of Unit H303. The Landscape plan for this area is different to the architectural plan DA04, and partially addresses this issue. However, further consideration is needed of this area to include an attractive access path to the north, adequately distanced from the units, as well as substantial landscaping.*
- (c) *The light well / courtyard on the western boundary adjacent to the King Street units could be directly looked into and over from the adjoining pathway, raising visual privacy and noise issues for bedrooms opposite and below. The pathway must be redesigned to ensure adequate screening by way of planting or other devices.*
- (d) *At the western and eastern ends of the northern communal space, the balustrades are immediately on the common boundary, so that there would be no privacy separation from the adjoining site should it be developed. As noted in the panel's previous feedback, an appropriate setback including a more substantial landscape screening should be provided to all podium boundary perimeter walls.*

The revised architectural plan (June 2020) have included a security gate along the western boundary to restrict access past habitable rooms for maintenance purposes.

The revised architectural plans have also been made consistent with the landscaping plans (January 2020) which addresses the UDCG advice in May 2020.

The plans have been revised to provide a gate from the King Street lobby / entrance area into the courtyard on the western boundary adjacent to King Street, to ensure no access is provided into the courtyard from the public / common area.

### *3F Visual Privacy*

The proposed development seeks variations to the recommended separation and setback provisions of the ADG and requirements of the NDCP 2012 as discussed within this report. Refinement in design over time has responded to visual privacy concerns raised by the UDCG and public submissions. Privacy screen measures and window orientation has assisted where possible within the site and toward adjoining properties to manage visual privacy impacts.

As advised within the UDCG advice in November 2019, *the relocation of segments of both the Hunter Street and King Street towers toward the western side boundary would result in some improvement in acoustic and visual privacy in relation to existing and future buildings to the east, although these remain problematic in relation to the King Street tower.*

*With respect to the King Street tower the applicant identified modifications to apartment layouts as a means of addressing the lack of compliant setback to the building. These comprise changes in plan layout and screening of eastern side windows and south-eastern decks utilising sliding louvre screen and glass louvres. UDCG does not support the glass louvres unless of obscure glazing.*

*With respect to the Hunter Street tower, the changes would improve the amenity of east-facing apartments and these could now be accepted, and those along the western side would also be reasonable in relation to the subject development itself, but the reduced separation would unacceptably impact on views and outlook from the neighbouring property under construction at No.509 Hunter Street (Sky residences development).*

The proposed development is considered acceptable regarding visual privacy impacts given the amendments to separation, design measures and orientation of layouts, which have all considered visual privacy both within and external to the development. The 3D Elevational views, fly through and photomontages assist in demonstrating that the proposal is acceptable and will maintain a reasonable level of amenity and visual privacy for adjoining properties.

### *3G Pedestrian Access and Entries*

The applicant has stated that *building access areas, entries and pathways are clearly visible from the public domain. Ground level has been designed to minimise level changes along pathways, and entries and circulation are in accordance with the Access consultant's requirements.*

The proposal is considered acceptable in relation to pedestrian access and entry provisions for the development.

### *3H Vehicle Access*

A Traffic Impact Assessment has been submitted with the application.

Vehicular access is from Lauers Lane with car park entry allowing for vehicles to safely enter and exit from the site. A 1.5m wide dedication of land has been provided by the development to widen the existing width of Lauers Lane and provide for upgrade of pedestrian footpath area down Lauers Lane which will enhance the vehicular and pedestrian environment of Lauers Lane.

Traffic, access and parking is discussed further under Section 7.3 – Traffic, parking and access of the NDCP 2012.

The proposal is acceptable in relation to traffic and vehicular access provisions off Lauers Lane.

### *3J Bicycle and Car Parking*

Parking facilities have been provided over three levels to accommodate the number of apartments in the building, as well as the commercial / retail tenancies. There is no visual impact associated with ground / above ground parking as both Hunter Street and King Street frontages are sleeved with commercial / retail tenancies.

Bicycle and car parking provision is discussed further under Section 7.3 – Traffic, parking and access of the NDCP 2012.

The proposal is considered acceptable in relation to bicycle and car parking provision on site. A Green Travel Plan has also been submitted for the proposal.

#### *4A Solar and Daylight Access*

A Solar Access and Ventilation Two Expert Opinion was prepared by Steve King and submitted with the application. This opinion provides analysis and justification of the proposal and concludes that the proposed building complies with the ADG Design criteria for solar access.

The Expert opinion provides a detailed compliance table which sets out in detail the solar access and ventilation status of each apartment and also provides detailed 'views from the sun' on a half hourly basis. In summary 72% of apartments meet the solar access requirements of the ADG, which is acceptable.

The Expert opinion demonstrates that solar access within the site for future occupants of this development and the recommendations of the ADG are satisfied.

Further information by way of updated solar access plans (April 2020) were submitted which reflect the over shadowing impacts to the surrounding development. A schedule of results also accompanied these 3D shadow diagrams, specifically relating to the Sky residences development under construction, and identified the impacts on units with and without the development of the site.

The applicant in response stated:

*In examining the diagrams, it can be seen that the shadows from the Hunter Street building fall on the eastern and northern facades of the Sky residences and have generally cleared the tower by 12:45pm. The recessed lounge rooms in the 03 stack of units and the balcony dividing walls in the 04 stack of units appears to preclude the living rooms satisfying the ADG requirements to be classified as solar compliant. The north eastern corner units of the 02 stack receive compliant. The north eastern corner units of the 02 stack receive compliant afternoon sun. Therefore, it is the east facing units of the 03 stack above level 10 that could be affected.*

*The report reflects that the sun comes up as follows:*

- a) 9am to level 12*
- b) 10am to level 11*
- c) 11am to level 10*
- d) 12 noon to level 7*

*The affect upon the solar compliance of the Sky residences occur from level 10 to level 12.*

*As the shadows cast by the proposed building clear at 12:45pm but the sun continues on that face until 1:30pm, levels 10, 11 and 12 all receive more than 2 hours of sun and are therefore compliant with the ADG solar access provisions.*

With the latest amended architectural plans and supporting information, a further letter of opinion was provided in relation to the development satisfying the requirements of the ADG in relation to solar access – light and ventilation within the development. This also assists with responding to the UDCG May 2020 advice where they expressed concerns regarding solar access, in particular within the King Street building design, given reduced separation between towers and along Lauers Lane which required design solutions and re-orientation of units to address visual and acoustic privacy between the site and surrounding properties.

#### *4B Natural Ventilation*

Natural ventilation is maximised through a design that encourages recessed balconies and corner glazing units. Cross ventilation is achieved via apartments located with dual aspects.

#### *4C Ceiling Height*

Floor to ceiling heights for habitable rooms are 2.7m habitable rooms and 2.4m minimum for non-habitable rooms have been achieved while the floor plate depths allow for maximum penetration of natural light into the space.

#### *4D Apartment Size and Layout*

All apartment sizes are greater than the minimum required under SEPP 65, to provide a better level of amenity.

All habitable rooms have a window to an external wall with a total minimum glass area greater than 10% of the floor area of the room.

Based on ceiling heights of 2.7m, habitable room depths are required to be limited to 6.75m – 8.1m. The design proposes single aspect apartments that are 8.1m or less to the rear of the kitchen from the nearest external opening in open-plan arrangements.

#### *4E Private Open Space and Balconies*

All apartments appear to comply with the minimum numerical requirements, with a number of apartments exceeding the minimum areas for private open space and balconies.

Private open space is directly accessible from living areas of each apartment. Balconies are integrated into the overall design development and form part of the detail of the building. Balconies have sun-shading elements to protect from summer sun where needed.

#### *4F Common Circulation and Spaces*

The lobbies are naturally ventilated and lit and the maximum number of apartments off a circulation core on a single level does not exceed the maximum of eight apartments.

*4H Acoustic Privacy*

An Acoustic impact assessment was submitted with the application, which considered the acoustic amenity of the proposed development and impact on surrounding development. Particularly, with regards to apartments fronting Hunter Street and King Street, acoustic impacts from traffic noise have been addressed through balcony design and the provisions of window glazing treatments.

Balconies are separated by full height masonry walls. The proposal will comply with all relevant Australian standards relating to noise transmission and the recommendations of the Acoustic impact assessment submitted with the application.

CN's Environmental Protection Officer considered the report and provides the following comments:

*A theoretical acoustic assessment was carried out by Reverb Acoustics dated September 2017 to support the proposed development. The assessment has modelled the cumulative impacts from road traffic and rail noise against the requirements for internal noise levels. The acoustic assessment demonstrated that provided the recommendations in Section 7.1 (which set out the glazing and construction requirements) are applied, internal noise levels (of 35dB in sleeping areas and 40dB in living areas) will comply with AS/NZS2107-2000, the Office of Environment and Heritage (OEH), Department of Planning & Infrastructure (DoPI), and Newcastle City Council (NCC) guidelines. This will be addressed by an appropriate condition of consent.*

*Section 7.5 of the Acoustic Assessment addresses mechanical ventilation; however, the noise levels associated with plant are based on predictions as no plant has been selected yet. As such it is necessary to condition the development such that the acoustic consultant carries out an assessment once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This has been addressed within the recommended conditions of consent.*

Conditions are recommended in relation to acoustics.

Based on previous CN's UDCG advice, their concerns generally have been resolved through further design refinement, setback increases in some respects and landscaping.

*4J Noise and Pollution*

The proposal will comply with all relevant Australian Standards relating to noise transmission and the recommendations provided in the Acoustic impact assessment submitted with the application.

Amendments undertaken during the assessment process has resulted in relocation of air conditioning plant to a centralised position to reduce the potential for noise pollution and resultant amenity impacts.

Based on a number of amendments made during the development assessment process and resolution of suggested conditions to be addressed moving forward with any final design by the UDCG May 2020 advice, it is considered that the development has come a long way since originally proposed and presents a development that is now considered to meet UDCG recommendations and is a more reasonable and acceptable response to site context, the challenges presented by adjoining development and its city centre location.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development.

#### Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed Use zone under the provisions of NLEP 2012. The proposed development is a mixed-use development consisting of commercial / retail premises at ground and residential accommodation in the form of a residential apartment building above and is permissible within the B4 Mixed Use zone under NLEP 2012.

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as follows:

- i) To provide a mixture of compatible land uses.*

Comment: The proposed development consists of a mixed-use development comprising of ground level retail and commercial premises and 83 residential apartments above, configured in two separate towers with a mix of 1, 2- and 3-bedroom apartments. The development provides a mix of compatible land uses.

- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comment: The proposal provides for an appropriate mix of uses in order to maximise the use of public transport and provide the ability for walking and cycling in this city centre location.

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

Comment: The development is appropriate in this mixed-use zone and in the context of supporting the nearby central business district of Newcastle city centre.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site. Conditions are recommended to ensure demolition works and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.1 - Minimum subdivision lot size

No minimum subdivision lot size requirement applies to the site in this location and the proposal does not include subdivision.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height limit of 45 metres. The original proposal exceeded the maximum height limit of 45m (exceedance of 2.48m) and was supported by a Clause 4.6 variation request to this standard.

The development was amended, by removing one storey from the Hunter Street tower and now complies with the prescribed height limit. The Clause 4.6 variation request to this standard is no longer required.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has a maximum 5:1 FSR limit. The proposed development has an FSR of approximately 3.7:1 and complies with this requirement.

Clause 5.10 - Heritage Conservation

The site is located within the Newcastle City Centre Heritage Conservation Area. The site and existing buildings are not listed as a heritage item. The area has and is undergoing change and the development is not considered likely to have an adverse impact within the Heritage Conservation Area. No sites within the vicinity of the proposal are listed heritage items.

The submitted Statement of Environmental Effects (SEE) concludes, the archaeological potential of the site is low, and any construction works will be required to comply with the relevant legislative requirements if any heritage items or relics are unearthed during works.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

Part 7 Additional local provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage values of Newcastle. The proposal is consistent with the objectives of Part 7 of the NLEP 2012.

Clause 7.4 - Building Separation

This clause requires that a building must be erected so that the distance "to any other building is not less than 24 metres at 45 metres or higher above ground".

The current amended proposal with a reduction in maximum building height below 45m results in this clause no longer being relevant to this application.

Clause 7.5 - Design excellence

An Architectural Design Statement has been submitted with the application as part of the SEPP 65 requirement that addresses the design principles that have been used to formulate the proposal.

The proposal does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

The application was referred to CN's UDCG on a number of occasions during the assessment of the application. The proposal has been amended and developed in response to recommendations of the UDCG over time.

The last round of advice provided by UDCG in May 2020, related to the amended plans submitted in March 2020. Following this advice, further amendments were made to the proposal in response to both UDCG advice and re-notification. The current amended plans submitted in June 2020 have incorporated the recommendations of the UDCG into the current design.

The applicant has submitted that, the matters for consideration under this clause have been satisfied in summary by:

- i) *The proposal is contextually appropriate taking into account its zoning and compliance with the development standards of Newcastle LEP 2012.*
- ii) *The proposal has been architecturally designed to meet the objectives of Section 6.1 – Newcastle City Centre provisions of Newcastle DCP 2012.*
- iii) *The proposal does not impact identified view corridors as contained in Newcastle DCP 2012.*
- iv) *The proposed development has placed emphasis on the future desired character. No heritage matters or streetscape constraints exist for this site.*
- v) *The proposal provides a height transition between the adjoining developments (namely Worth place apartments) and the future Sky residences development.*
- vi) *The proposed height transition will act to improve the skyline compared to a steep drop in built form when viewed from the public domain (specifically looking south from Honeysuckle and Hunter Street).*
- vii) *The height transition presents an acceptable relationship between the site and two key adjoining properties. The bulk and massing of the proposal has taken into consideration adjoining development which is demonstrated by the mirroring of the building form of Worth place apartments. The proposal has utilised the overall design of Worth place apartments, more specifically the blank wall and balconies to the west which have been incorporated into the current design.*

*viii) Privacy measures in accordance with the planning principle 'protection of visual privacy' have been provided taking into consideration adjoining developments.*

Based on the amendments over time and more recently incorporated into the current design as recommended by the UDCG and subject to recommended conditions, the proposal is considered to have progressed positively significantly since originally proposed. The proposal presents a development that is now considered a more reasonable and acceptable response to site context, the challenges presented by adjoining development and its city centre location. On balance and having taken into account the criteria under this clause the proposal is now acceptable in relation to design excellence.

## **5.2 Any draft environmental planning instrument that is or has been placed on public exhibition**

There is no exhibited draft environmental planning instrument relevant to the application.

## **5.3 Any development control plan**

### **Newcastle Development Control Plan 2012 (NDCP 2012)**

The main planning requirements of relevance in the NDCP 2012 are discussed below.

#### Commercial Uses - Section 3.10

This section encourages commercial development that attracts pedestrian traffic and activates street frontages. The inclusion of retail / commercial uses on the ground level of the development will provide an active street frontage to both Hunter Street and King Street and will encourage and improve pedestrian movement along these street frontages within this B4 Mixed Use zone and Newcastle City Centre location.

The development is consistent with the aims and objectives of this section of the NDCP 2012. The subject site is in an ideal location for the proposed commercial / retail premises due to proximity to public transport, services, retail and recreational areas.

The proposal has been architecturally designed and will provide an active street frontage, with visual connection into commercial / retail uses at ground level. The amended proposal is now considered of an appropriate scale and form in the context of the site's city centre location and on balance responds appropriately to surrounding development.

#### Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has considered the proposal to be acceptable and provided the following comments:

*The site is affected by flooding at PMF Flash and Ocean flood event with Level of approx. 3.4m AHD. The site is not affected by the 1 % AEP event in both cases and is noted as a low risk site. The criteria to set the floor levels is generally comparable footpath levels and nuisance flows have been considered to allow for minimum floor level to be set for the development. It is noted that in the 2007 storm event a flood level of RL 2.6m AHD was recorded at the site along Hunter Street frontage, however, was bounded to Hunter St frontage and minor impacts on the site was noted. It is also noted that additional drainage provisions have been made through the Light Rail project, which will assist in local drainage.*

*The proposed retail along Hunter St has been set at 2.50m AHD which is approx. 100mm above the existing footpath level. For accessibility purposes, the proposed level of 2.5m AHD for Hunter St frontage is acceptable, similarly, the proposed driveway from Lauers Lane and the retail units along King St frontage have been set above the footpath levels as indicated in the revised Architectural drawings.*

*The development generally complies with CN Flood Management requirements.*

The proposal is acceptable in relation to flooding.

#### Mine Subsidence - Section 4.03

Separate approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act 2017*, due to the site being located within a proclaimed mine subsidence district. Conditional approval for the proposed development has been granted by Subsidence Advisory NSW and submitted with the development application.

#### Safety and Security - Section 4.04

This section applies to the proposal given the nature and scale of development, with components of common space (driveway, car parking, entry foyers, lift and stair wells and overall communal open space areas).

The development is acceptable in relation to aspects of safety and security providing for good natural surveillance from active frontages to balconies and maintains clear sightlines between private and public spaces. Lighting external spaces and limiting places to hide are provided within the design. Access to the building and car parks is controlled and safe for residents 24 hours per day. CCTV provides a level of additional security.

A Crime Risk Assessment is not considered necessary for this application. However, a Crime Prevention Through Environmental Design (CPTED) assessment has been submitted which did not identify any significant issues. Recommendations of the assessment have been considered and implemented within the overall development design.

Accordingly, the proposal is acceptable in relation to safety and security.

Social Impact - Section 4.05

Redevelopment of this degraded and under-utilised site within the Newcastle City Centre is a positive outcome socially. The proposal will have a positive impact within the community as it will provide additional varied housing stock and commercial / retail opportunities within the Newcastle City Centre. The upgrade of Lauers Lane (off King Street) associated with this development will also provide public domain benefits and direct benefits to the site and existing development which currently rely on vehicular access via Lauers Lane.

Soil Management - Section 5.01

Appropriate sediment control measures have been included in the proposal in accordance with this control. Whilst the proposal is of large scale the nature of the site with relatively flat topography does not include a basement and will require minimal cut or fill.

A Geotechnical investigation prepared for the site will ensure appropriate soil management measures are undertaken. Accordingly, the proposal is acceptable, and a condition is recommended in relation to soil management.

Land Contamination - Section 5.02

Land contamination has been considered in more detail under 5.1 of this report in accordance with SEPP 55 – Remediation of Land.

Vegetation Management – Section 5.03

The proposal does not involve the removal of any vegetation.

Aboriginal Heritage - Section 5.04 and Archaeological Management – Section 5.06

The Statement of Environmental Effects (SEE) submitted with the application stated the following:

*An Aboriginal Archaeology and European Heritage (AHIMS) search was undertaken and indicates that no items of Aboriginal heritage are located on the site or within 200m of the site. Additionally, a desktop search of the NSW State Heritage Inventory on 12 September 2017 and CN's Heritage Register also indicated that no items of significance are located within the subject site.*

*Further that the current buildings on the site are of very limited heritage significance and that there are no heritage considerations that would require the retention of all the current buildings on the site. There are no other heritage considerations that would preclude the development proposed in terms of aboriginal heritage.*

*The archaeological potential of the site is low, any items unearthed during construction would be managed under the National Parks and Wildlife Act and/or other relevant legislation at that time.*

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'.

Accordingly, the proposal is acceptable in relation to aboriginal and archaeological heritage.

#### Heritage Items - Section 5.05

The site does not contain any heritage items as discussed under Clause 5.10 Heritage Conservation under the provisions of the NLEP 2012.

#### Heritage Conservation Areas - Section 5.07

The site is located within the Newcastle City Centre Heritage Conservation Area and is discussed under Clause 5.10 Heritage Conservation under the provisions of the NLEP 2012.

#### Part 6.00 Locality Specific Provisions

##### Newcastle City Centre - Section 6.01

The following comments are made concerning the proposed development and the relevant provisions of Section 6.01:

##### *Character Areas (6.01.02)*

The subject site is within the 'Character Areas (6.01.02) 'Civic'. The proposal has been designed with regard to the NDCP 2012 principles for this area. In particular, the proposal would provide an inviting building entry and active frontages that allow visual permeability from the street to within the building.

##### *Street wall heights (6.01.03 A1)*

The proposed development has dual primary street frontages to Hunter Street and King Street and secondary frontage to Lauers Lane. The maximum street wall height for the city centre is 16 metres.

The proposal does not comply with this minimum street wall height requirement and the plans have been amended over time to address previous concerns raised during the assessment. Through amended plan and design refinement, the applicant has responded with the following:

##### *King Street building*

*Council have raised concern with the bulk, scale and massing of the street wall along Lauers Lane. Council have raised that the street wall along the Lauers Lane does not have an acceptable setback.*

*Amendments over time have seen the widening of Lauers Lane by 1.5 metre of land dedication for upgrade of Lauers Lane to take two-way traffic and provide adequate pedestrian access and public domain benefits. It is noted that the street wall is consistent with surrounding development which maintains minimal boundary setbacks to street walls. In this regard, it is considered that the street wall in this location is well considered and appropriate.*

#### *Hunter Street frontage*

The proposed development incorporates a street wall height of approximately 10 metres (3 storeys), seeking a variation to 16m street wall height under the NDCP 2012. The variation is considered acceptable in the context of street frontage and lessening impacts on existing adjoining properties, then would result with compliance with the 16m street wall height in this instance. Other treatments along the common eastern boundary with adjoining No. 498 Hunter Street (Worth Place Apartments) has improved the interface along this common boundary by lowering the podium height down to 1.6m (relative to the adjoining No.498 (apartment terrace height) and increased setback for landscaping treatments, whereby reducing building bulk, podium height and communal activity space along this eastern boundary to assist with potential amenity impacts.

CN's UDCG advice in May 2020 in relation to 'Built Form and Scale' expressed that both towers are now compliant with the height limit under the NLEP 2012 and acceptable within their high-rise context. The podium and both street facade heights are also compliant.

#### *King Street frontage*

The variation to 16m street wall height under the NDCP 2012 proposing a part 11 storey building which now incorporates some setback above 4 storeys, not dissimilar to the approved Sky residences development to the west is considered acceptable in the context of the site and surrounding development, namely the approved Sky residences development under construction.

Further design refinement to building form and setbacks to King Street and within the Lauers Lane frontage have resolved previous concerns regarding building bulk and scale, massing and inadequate separation and setbacks of both frontages. The current amended plans have increased the setbacks off Lauers Lane, the performance criteria require consideration to be made to the scale of adjacent development and any future development in the area.

UDCG advice has now accepted the street wall heights and setbacks off both King Street and Lauers Lane in the context of the site, existing and future envisaged streetscape and demonstration that land on the opposite side of Lauers Lane can achieve a reasonable level of development, if or when redeveloped into the future, notwithstanding the variations that remain to the ADG recommendations for separation distances and setbacks to boundaries and across boundaries. They have also acknowledged that the amendments over time have also improved the outlook and amenity of Worth Place Apartments relative to the site and sight lines down Lauers Lane.

The proposal is satisfactory in this regard.

*Building setbacks (6.01.03 A2) and Building separation (6.01.03 A3)*

The NDCP 2012 map does not identify any specific building setback on the primary road frontages.

The assessment acknowledges that the site is unlikely to achieve full compliance with setback requirements of the ADG or the NDCP 2012, due to the narrow site and location within the context of adjoining (existing and future) developments. This has been a considerable constraint to redevelopment of this existing site. A number of amendments have been made, further increasing setbacks off Lauers Lane, setbacks along the eastern boundary and to an extent increase in setbacks and building articulation down the western boundary to address potential amenity impacts between properties.

Further detail is provided under the SEPP 65 design principles and recommendations of the ADG relating to building separation and setbacks within this report.

On merit and when balanced with all the matters for consideration, the variations to the setbacks are supported.

*Building separation (6.01.03 A3)*

As discussed within this report, the proposal is considered acceptable in relation to building separation and consistent with the objectives of the ADG.

The applicant has responded with the following:

*In respect to setbacks and building separation, reference is made to the Land & Environment Court's Planning Principle: Protection of visual privacy, as contained in Meriton v Sydney City Council [2004] NSWLEC 313. This Planning Principle provides guidance on the assessment of setbacks and privacy which may not strictly meet the numerical requirements of the Apartment Design Guide (ADG) or another development control or standard having regard to the density of the area and appropriate design responses. In particular, at paragraph 46 of Meriton v Sydney City Council, the Court stated:*

*46. Generalised numerical guidelines such as [those in the then Residential Flat Design Guide] need to be applied with a great deal of judgment, taking into consideration **density, separation, use and design**. The following principles may assist:*

- a. The ease with which privacy can be protected is inversely proportional to the **density** of development.*
- b. Privacy can be achieved by **separation**. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level.*

- c. *The **use** of space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*
- d. *Apart from adequate separation, the most effective way to protect privacy is by skewed arrangement of windows and the use of devices such as fixed louvres, high and / or deep sills and planter boxes.*
- e. *In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

*In Meriton v Sydney City Council, the Court accepted that potential for overlooking to one site was significantly reduced by skewed windows and was acceptable. The Court considered it appropriate to impose a condition that another section of the development does not contain windows, noting that a further application may be able to demonstrate that above eye level windows would protect the privacy of the adjoining dwellings. A condition was also imposed requiring windows adjacent to a future development site to be no closer than 6 metres from the boundary up to a certain level. The appeal was up-held and development consent granted subject to conditions.*

#### *Hunter Street tower amended plans*

*Plans have been amended to increase the setback of the front portion of the Hunter Street Tower from the eastern boundary to 6.733 metres, which will increase the separation between the buildings and allow a greater sense of space. It is noted that careful consideration of this interface has been incorporated in the design with the adoption of the guidance provided through the Planning Principle with the internal location of bedrooms and bathrooms on this side of the building, the offsetting of levels, the location and orientation of windows and the use of louvres.*

*It is acknowledged that by pushing this elevation away from the Worth Place Apartments it moves the tower closer to the western boundary. In this respect attention is again drawn to the design response at this interface and its adoption of the guidance of the Planning Principle, namely the placement and orientation of windows along this elevation to minimise overlooking, the offset of levels, the internal location of bedrooms on this side of the building and the use of louvres and privacy screens. The separation between the rear portion of the proposed development and the Sky development remains the same as previously sought at 12.157 metres. Again, when viewing the plans at this location concerns around privacy have been considered and appropriately addressed. It is envisaged that the re-development of 505 and 507 Hunter Street will be potentially a maximum of three storeys (probably commercial) and thus be of a similar height to the podium level of the proposed development and as such the relationship between these buildings will be acceptable.*

*King Street tower amended plans*

*Plans have been amended to increase the setback of the rear portion of the King Street tower from the eastern boundary to approximately 3.20 metres (this creates an approximate 6.20 metre setback from the new centre line of Lauers Lane thus assisting with a potential 12 metre separation when shared with the sites opposite should they be developed). It also reduces the scale of the building when viewed in Lauers Lane and facilitates a greater sense of openness on those south facing units in the Worth Place Apartment building.*

*By pushing this elevation away from the eastern boundary, it moves it closer to the western boundary. In this respect attention is drawn to the design response at this interface and its adoption of the guidance provided in the Planning Principle, namely the considered placement of windows along this elevation to minimise overlooking, the offset of levels and the internal location of bedrooms on this side of the building.*

*Having regard to adjoining sites, it is noted that the setback of the Sky development at this point is approximately 21.50 metres and given the considered design of the proposed development the impacts are considered minimal. It is envisaged that the re-development of 368 - 376 King Street will likely be of three storeys and thus be of a similar height to the podium level of the proposed development and as such the relationship between these buildings is acceptable.*

As discussed within this report building separation is considered appropriate within the context of the site and surrounding development.

*Building depth and bulk (6.01.03 A4)*

For a residential tower the NDCP 2012 requires – above street wall height to have a maximum gross floor area (GFA) per floor of 900m<sup>2</sup> and maximum building depth of 18m.

The proposed development and residential tower has an area which achieves the 900m<sup>2</sup> or less per floor GFA, but seeks to vary building depth of 18m by proposing a building approximately 25 – 26m in length.

*The applicant has responded with the following:*

*In respect to the bulk of the proposed towers, it is noted that the proposed Hunter Street tower is approximately 12.15m in width which is considered slim when compared to surrounding development (proposed and existing) and has incorporated architectural elements which effectively provides balance to its scale.*

*There is also no justification for the suggestion that the proposed development will create an offensive wall of tall buildings, when such a visual setting exists throughout the city centre when viewed from specific angles and vantage points (ie. when looking from the ground level at Hunter Street north-east back towards the Honeysuckle precinct).*

As discussed within this report, the proposal on balance is considered to have achieved an appropriate bulk and scale of development and variation to depth requirement is considered acceptable.

*Building exteriors (6.01.03 A5)*

The exterior of the development has been discussed in section 5.1 of this report under 'State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development' and is considered satisfactory.

*Heritage buildings (6.01.03 A6)*

There are no heritage buildings located on site.

*Awnings (6.01.03 A7)*

The proposal provides for awnings along both street frontages and within Lauers Lane to allow pedestrian all-weather access into the development.

*Design of car parking structures (6.01.03 A8)*

The design of the proposed car parking areas sleeved behind street front premises is considered to comply with this control.

*Landscaping (6.01.03 A9)*

Landscaping is discussed within this report, in more detail under SEPP 65 and ADG section.

*The applicant has responded with the following:*

*Council has requested that soft landscaping should be achieved in line with ADG requirements (25% of the site area), with the view that the development should be amended to increase the landscaping on site.*

*As noted previously, the ADG is not intended to be, and should not be applied as, a set of strict development standards, reference is made to Planning Circular PS 17-001.*

*In relation to landscaping, the objective of Part 3D-1 'Communal and public open space' is "An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping".*

*Part 3D-1 also notes that, where communal open space cannot be provided at ground level, it should be provided on a podium or roof. Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should demonstrate how they meet the objectives.*

*It is noted that the development site is located in a CBD setting with an allowable FSR of 5:1. It is further noted that the development has provided a well landscaped podium and also a roof top garden located on the King Street building providing approximately 37% of the site area as communal open space.*

The proposal is considered acceptable in relation to landscaping provided at both podium level and rooftop area within this city centre location.

*Access network (6.01.03 B1)*

The NDCP 2012 map does not identify any existing or desired new connections through the site. Though, the proposal includes active uses at ground level, promoting access and public use of the public footpath fronting the site on both Hunter Street and King Street frontage and more formally upgrades and activates Lauers Lane.

*Views and vistas (6.01.03 B2)*

The amended proposal now complies with the 45m height limit. There is an identified view corridor in proximity to the site within the NDCP 2012, however the proposal does not significantly impede this identified view corridor contained within the map in NDCP 2012. Loss of outlook and views is discussed within the report.

The applicant's latest response is acknowledged and provided below.

*Concern was raised in regard to potential loss of sightlines for Sky Residences and residents residing in the southern side of Worth Place Apartments. Reference is made to the Land & Environment Court's Planning Principle: Views - general principles, as contained in Tenacity Consulting v Warringah [2004] NSWLEC 140. The principle of 'Tenacity' confirms that a landowner does not have a proprietary right to retain all or part of the views enjoyed (or capable of enjoyment) from their land. The Court specifically acknowledges that entire loss of a view in some cases (although a devastating impact) could be reasonable in the circumstances.*

*Of particular relevance to the subject development application, the planning principle in 'Tenacity' establishes that partial views are valued less highly than whole views, and views across side boundaries are more difficult to protect than those from front and rear boundaries. 'Tenacity' further confirms that the Court is more likely to accept that a view loss as acceptable where the development otherwise complies with the applicable planning controls.*

*The site is located within a CBD setting and is consistent with the local provisions and strategies. It is acknowledged that the proposal will impede current views as the site is currently, in the most part, undeveloped. The impact of a building designed to the local provisions will undoubtable result in some form of view loss compared to an undeveloped site.*

*It is considered that in the development of local provisions of Council, the impact on existing views was considered acceptable given the locational context of the site. The revised proposal has incorporated numerous mitigation measures to reduce the potential impact of loss of views including the use of two towers on the site and the use of a stepped building form. It is also noted that design changes undertaken in April 2020 included a revision which resulted in the reduction of the eastern side 2-bedroom apartments located on levels 3 to 8 along the boundary to become 1-bedroom apartments. The revision also acts to increase the sightlines from Worth Place Apartments towards the south, as a result acting to improve spatial massing in this location and improve the overall amenity for Worth Place Apartments and when viewed from King Street.*

*Submissions also noted that the proposal will be similar to looking at a 14-storey brick wall. Reference is given to the submitted 3D fly through model and the photomontages which clearly indicate that the proposal is a well-designed development which is contextually appropriate and has been well considered in its architectural form.*

On balance the proposal is considered acceptable in the context of the site and surrounding development and with combined separation / setbacks across boundaries, a reasonable level of outlook and views will be maintained consistent with this city centre urban environment.

*Active Street Frontages (6.01.03 B3)*

The NDCP 2012 maps do not identify the site as requiring an active frontage to the streets, nor is it within an identified 'activity node'. However, it is considered that the proposed development includes an active street frontage.

*Addressing the street (6.01.03 B4)*

The proposal contributes to the safety, amenity and quality of the public domain through the provision of ground level commercial space. Separate pedestrian accesses are proposed to the commercial / retail tenancies from the street, as well as to the residential lobby.

*Public artwork (6.01.03 B5)*

The proposal is below 45 metres. Therefore, public art is not applicable to the proposal.

*Sun access to public spaces (6.01.03 B6)*

The proposal will not create significant overshadowing impacts on public spaces when considered in the context of this city centre environment.

*Infrastructure (6.01.03 B7)*

The proposed stormwater system has been designed to comply with Section 7.06 of the NDCP 2012. The proposal will otherwise connect to the existing water and sewer network servicing the site.

*Site Amalgamation (6.01.03 B8)*

The site is not located on former rail corridor land.

Section 7.02 - Landscape Open Space and Visual Amenity

*General controls (7.02.02)*

As outlined within CN's UDCG advice of November 2019, the overall landscape area quoted is 37% of the site area, however this percentage includes substantial areas of hard paving which is excluded from the ADG landscape consideration.

The proposal provides for a total of 11% of actual landscape area which takes into account both communal and private open space areas and is inconsistent with NDCP 2012.

This is further discussed within Section 6.01 – Newcastle City Centre provisions of the NDCP 2012.

Section 7.03 - Traffic, Parking and Access

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*Vehicular Access, Driveway Design and Crossing Location*

*The proposal is to access the three levels of car parking at ground level from Lauers Lane. It is agreed that this is the best vehicular access point for the development as it is within a low traffic volume laneway and thus not directly off the busier King and Hunter Streets. The provision of a combined entry exit driveway being approx. 7.8 metres wide would comply with AS2890.1-2002 and is considered satisfactory. Due to the low speeds within Lauers Lane sight distances from the access are also considered satisfactory. No objection to the proposed access to the on-site car park is raised.*

*The issue with the access is that the development is likely to increase traffic volumes in Lauers Lane to in excess of 30 vtpd during peak periods and as such two-way flow within the laneway needs to be considered. Currently Lauers Lane is approximately 4.3 metres wide which is not considered suitable for two-way traffic flow with Australian Standard.*

*The development is proposing to widen Lauers Lane carriageway to approx. 5.5m (that is, between kerb to kerb will be 5.5m). A 1.5m wide footpath access is proposed along the development frontage, which will provide a safe and accessible footpath along the Lane.*

*The entry to Lauers Lane will be designed as a Footpath Continuation with pedestrian right of access at the raised footpath. The proposal has been reviewed by Newcastle City Traffic Committee (NCTC) and has been supported (NCTC meeting dated 18 March 2019 Item 33).*

*The existing vehicle crossing from Hunter St will need to be removed and footpath area rectified.*

*Lauers Lane Widening and Footpath Continuation*

*Discussions with the applicants have been had regarding widening of Lauers Lane to ensure that the laneway width is wide to accommodate two-way traffic. The revised proposal has allowed for approx. 1.5m of roadway widening which will allow for at least 5.5m wide carriageway and a 1.5m wide footpath along Lauers Lane.*

*The proposed redesign of Lauers Lane has been prepared in concept as noted on Dwg No. DA01:*

*Proposed design of Lauers Lane as follows:*

- a) Lauers Lane will be widened to 5.5m minimum. This will allow for two-way traffic movement*
- b) The footpath redesigned to be located along the proposed development frontage*
- c) Lauers Lane from King St to be designed as a footpath continuation to facilitate for pedestrian right of way over the footpath*
- d) Additional widening of Lauers Lane will be dedicated as road reserve*

*Traffic Section and NCTC Consultation*

*The modifications to Lauers Lane and footpath continuation have been consulted with CN's Traffic and Transport Section. The proposed concept has been also presented to the NCTC on 18 March 2019 Item No. 33 and has been supported by the NCTC.*

*Conclusion*

*The proposed changes to Lauers Lane will allow for two-way traffic movement on the laneway. The Footpath Continuation over the entry of Lauers Lane will provide a good pedestrian movement platform.*

*It is noted that some of the submissions raised concerns about the width and vehicle flow along Lauers Lane. The proposed widening of the lane will result in a more efficient two-way traffic flow in the lane, provide a safe pedestrian access along the Lane and the footpath continuation will increase safety of pedestrians at the intersection with King St.*

*A future turning area could be provided on at the end of Lauers Lane subject to future development of the properties on the east of the lane.*

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### Parking Demand

#### Off-Street Car Parking Demand

The proposed development comprises of 16 x 1-bedroom units, 56 x 2-bedroom units, 11 x 3-bedroom and 276m<sup>2</sup> of commercial / retail floor area. Based on the revised submitted architectural plans, a total of 99 off-street car parking spaces are provided.

Applying the Newcastle CBD parking rates, the total car parking requirement for the proposed development is 51 car parking spaces (40 for residential, 8 for visitors and 3 for commercial), 41 bicycle spaces and 3 motorcycle spaces.

Description	No of Units	CN CBD DCP Parking Rates		Proposed Parking Provision by Applicants	CN Comments and Recommendations
		Rate	Spaces		
1 Bedroom	16	0.6	9.6		
2 Bedroom	56	0.9	50.4		
3 Bedroom	11	1.4	15.4		
Total Units	83		75.4	82 (Error noted on the Email dated 29 May 20 by 1 space)	Acceptable as per Email confirmation on 29 June 20
Visitor		1 space for first 3 dwellings plus 1 space for every 5 thereafter	17	12	Acceptable
Retail commercial /	276m <sup>2</sup>	1 space per 60m <sup>2</sup> GFA	4.6	5	Acceptable
Total (All figures were rounded up)			97	99	Acceptable

The proposal under Council's DCP is required to provide a total of 97 on-site car parks made up of 75 resident parks, 17 visitor car parks and 5 commercial spaces (Total of 97 parking spaces). The development provides a total of 99 spaces which is two spaces more than the DCP requirement.

It is proposed to provide 12 visitor car parking spaces, 5 retail spaces and 82 spaces allocated to the Residential Units. Council has consistently given visitor car parking concessions for major residential developments in the area of up to 50 % therefore a car parking supply of 12 visitor spaces would be consistent with previous approvals in the area.

*As has been accepted in other developments during peak visitor parking periods, outside normal business hours, the retail parking could be utilized by visitor parking meaning that during peak periods for visitor parking, up to 17 visitor car spaces could be available. This is considered as an optimum way to utilize the car parking spaces. One accessible space has been provided which seems to comply with BCA requirements.*

#### Motorbike and Bicycle Parking

*A total of 5 motorbike parking has been indicated on the plans, which complies with CN DCP.*

*A total of 90 bicycle parking will need to be provided. 83 spaces will be for residential units (Class 2), 4 visitor spaces (Class 3 within site) and at least 3 spaces for retail (Class 2). The revised plans have indicated storage spaces, which should be adequate to cater for the development.*

*Additional bicycle spaces can be provided within the footpath area.*

#### Alternative Transport Modes

*The development is well positioned to encourage alternative transport trip making by residents, staff and visitors. Excellent access to public transport is available and pedestrian and cycle infrastructure in the area is adequate. To encourage alternate trip making modes and as required in the DCP for residential developments in excess of 50 units a Green Travel Plan has been submitted.*

#### Conclusion

*Adequate off-street parking has been provided for the development and car parking provisions generally comply with CN DCP requirements. Conditions are recommended.*

#### Traffic Generation

*The traffic report prepared by Seca Solution has determined a peak traffic generation from the site of up to 56 vtpm in the AM peak, 37 vtpm in the PM peak and 454 vehicle trips per day.*

*Furthermore, cumulative impacts from the adjoining development has been considered. CN concur with this Traffic Consultant assessment and the conclusion of the report in that once this traffic generation is distributed throughout the network there is no adverse impact on the mid-block and intersection capacity of the local and state road network.*

#### Servicing

*Waste collection is to be managed via kerbside collection off King Street by private contractor with the building maintenance staff moving the bins for collection up to three times a week. This is considered satisfactory provided servicing occurs outside peak traffic periods i.e. prior to 7 am or after 7 pm.*

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*The WMP has stated that the Building management will need to ensure that the bins are transported to and from King St. The bins will need to be removed from the road / footpath area as soon as it is cleared.*

*A condition is recommended for developments within the CBD to ensure bins are not left on the street.*

### Public Domain

*Having regards to the above engineering aspects the following public domain works are considered to be required in connection with the development, and will be subject to separate approval under Section 138 of Roads Act:*

<b>Works</b>	<b>Reason</b>
<i>Reconstruct Lauers Lane including proposed widening and land dedication as road reserve</i>	<i>To improve traffic movement and two-way car movement through Lauers Ln.</i>
<i>Install Footpath Continuation at intersection of Lauers Lane and King St including road and footpath works and drainage</i>	<i>To improve street drainage, streetscape and facilitate compliant footway grades. To enhance pedestrian amenity and safety due to increased pedestrian demand from development.</i>
<i>Installation of street lighting and surveillance cameras on Lauers Lane</i>	<i>For safety and surveillance</i>
<i>Install new street trees and street furniture including bicycle racks</i>	<i>Improve streetscape</i>
<i>Remove redundant driveway</i>	<i>Redundant driveway to be removed and footpath reinstated</i>

### Awning Proposal

*The proposed awnings will need to be designed to City of Newcastle's requirements and to consider street tree planting. Under awning lighting will need to be provided. Conditions are recommended in this regard.*

Based on the above, the proposal is acceptable in regard to the requirements of this section of the NDCP 2012.

### Section 7.05 - Energy efficiency

#### *Business development (7.05.01)*

The proposed commercial / retail premises incorporate measures to maximise natural / passive climate control, including glazed frontages to allow for sunlight penetration. The proposal is considered to meet this control.

Section 7.06 Stormwater and Section 7.07 - Water Efficiency

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*Northrop Consulting Engineers have prepared the concept stormwater management plans.*

*The subject site has an area of 1,827m<sup>2</sup>. A 29KL underground stormwater reuse tank is proposed. The tank will collect rainwater from the roofed areas for reuse within toilets, landscaping and any washing. A sand filter tank system is proposed, which will provide for stormwater treatment.*

*Majority of the car parking on the north is generally sub-basement style parking. A 3m<sup>3</sup> underground stormwater storage area with pump-out system has been provided for the basement, which will capture any runoff within the basement car park and any potential seepage.*

*The stormwater plan submitted by Northrop Engineers has been reviewed and complies with the NDCP 2012 requirements. Water Sensitive Design has been done and stormwater reuse and treatment have been provided. It is considered that the proposal is generally sustainable. A maintenance program will need to be developed to ensure that regular maintenance is done.*

Drainage Connection

*The pump-out system is proposed to discharge to Hunter St frontage. It is noted that a separate approval from TfNSW and State Rail maybe required for any road opening.*

*The discharge from the proposed underground rainwater tank and sand filter system is proposed to be connected to the kerb inlet pit on King St. Furthermore, new drainage system will need to be installed on Lauers Lane as part of the road works.*

*The proposed stormwater discharge connections are generally acceptable.*

Groundwater Management and Ground Anchors

*The development is proposed with a sub-basement style parking on the north and will highly likely affect the groundwater table. A separate approval maybe required to be attained from MPI (Groundwater Licence) prior to any extraction of groundwater.*

*The discharge of the groundwater may highly likely be done to CN drainage system. If this is the case, then the applicants will need to attain a separate approval from CN for the proposed discharge of any groundwater. An Environmental Engineer or consultant will need to determine the method to treat the groundwater prior to discharge to CN drainage system. In this regard, the applicants will need to provide CN evidence that MPI have approved the groundwater licence.*

*Similarly, ground anchors maybe required to ensure that adjoining properties including the road reserve and Light Rail is protected.*

*Conditions are recommended to ensure that the process for groundwater discharge and approval from MPI is attained and separate approval for ground anchors by relevant road authority is obtained.*

Accordingly, the proposal is acceptable in relation to water management.

#### Section 7.08 - Waste Management

A Waste Management Plan has been provided with the application. Waste collection is proposed via kerbside collection off King Street by private contractor with the building maintenance staff moving the bins for collection up to three times per week. Commercial / retail components of the proposal have not identified tenants therefore servicing requirement are unknown at this stage. The proposal has identified that servicing of SRV vehicles is most likely (outside waste collection) and these vehicles can utilise the proposed commercial / retail car spaces.

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*Waste collection is to be managed via kerbside collection off King Street by private contractor with the building maintenance staff moving the bins for collection up to three times a week. This is considered satisfactory provided servicing occurs outside peak traffic periods ie. prior to 7 am or after 7 pm.*

*The WMP has stated that the Building management will need to ensure that the bins are transported to and from King St. The bins will need to be removed from the road / footpath area as soon as it is cleared.*

*A condition is recommended for developments within the CBD to ensure bins are not left on the street.*

Based on the submitted information and the amended plans, the proposal is considered to be acceptable.

#### Street Awnings and Balconies - Section 7.10

As outlined under the Public Domain above, the proposed street awnings and balconies will need to be designed to CN requirements. Consideration will be needed in relation to street tree planting. Under awning lighting will also need to be provided along frontages. Relevant conditions are recommended.

Development Adjoining Laneways – Section 7.11

The proposal incorporates dedication of 1.5m of land toward the upgrade of Lauers Lane. Amendments to the King Street building design over time has resulted in an improved outcome in relation to building form and articulation (inclusive of appropriate corner element to the building design relative to the King Street and Lauers Lane streetscapes. The development provides for awnings to both the King Street and Lauers Lane frontages and amendments to building form and design have resulted in an improved relationship generally to Worth Place Apartments and Lauers Lane.

Upgrade works to Lauers Lane will provide benefit to both this development and other developments that currently rely on this lane for vehicular access. Land dedication and upgrade works will be undertaken at no cost to the CN. More detailed discussion regarding Lauers Lane is provided in Section 7.03 Traffic, Parking and Access under the NDCP 2012. Conditions are recommended relevant to these works in accordance with CN requirements.

Section 8.0 - Public Participation

The original application was publicly notified in accordance with CN's Public Participation Policy. A total of 23 submissions were received in response (inclusive of 8 late submissions).

The proposal was amended and re-notified on a number of occasions. The second round of re-notification seen a total of 15 submissions received in response (inclusive of 4 late submissions). The third round of re-notification seen a total of 8 submissions received in response.

Further amendments were made in March 2020 and the application was re-notified, closing on 7 May 2020. A total of 37 submissions were received in response (inclusive of 8 late submissions) expressing continued concerns regarding the proposal.

The current amended plans lodged in June 2020 were not re-notified. The plans were amended in response to the submissions received in the last round of re-notification and the UDCG advice in May 2020.

Comments provided to the concerns raised by the objectors received during all public exhibition processes are provided in part 5.8 of this report. Note: The proposal now complies with the 45m height limit for the site under the development standards contained within the NLEP 2012.

Development Contributions

Sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition is recommended requiring this contribution be paid as detailed in CN's Development Contributions Plans.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. Conditions are recommended in relation to the requirement to comply with AS2601 – Demolition of Structures for proposed demolition works.

#### **5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant.

Key aspects of potential impact have related to bulk and scale, built form massing and associated separation distances, visual and acoustic privacy, solar access and view loss to adjoining properties.

The amendments to the proposal over time to reduce the bulk and scale, reduction in density, reduction in building height and various design solutions have had a positive impact on the development and its compatibility in bulk, scale and massing of development within the immediate area. The development is considered acceptable within the context of the site and this city centre location.

It is acknowledged that the development does seek variations to the recommended separation / setback distances as contained within the Apartment Design Guide and to a lesser extent within the NDCP 2012. However, when balanced with the merits of the application the development is now considered to have addressed to an appropriate level separation from boundaries and collectively across boundaries to adjoining developments. The proposal has resolved visual and acoustic privacy impacts through various design refinement and also supported by an acoustic assessment. The proposal has demonstrated through information submitted that the proposal internally satisfies solar access provisions and demonstrates through shadow diagrams and analysis, in particular as it relates to adjoining property to the west (Sky Residences) that overshadowing will occur in this city centre location, but not to an unreasonable level. Visual representations of the proposal included 3D elevational views, a fly through and photomontages which have assisted in demonstrating the development on balance sits well within the existing context and future streetscape, and overall building form and density in this location.

It is considered that the proposal will not have any significant negative social or economic impacts. The proposed development will have a positive social and economic impact as it relates to the redevelopment of an underutilised and aged site. In addition the proposal will have positive social and economic impact on the locality in that it will provide additional retail / commercial opportunities and housing options in the locality, which is close to educational facilities, employment opportunities, public transport, local business centres and the Newcastle CBD.

### **5.7 The suitability of the site for the development**

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard to the City Centre location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

### **5.8 Any submissions made in accordance with this Act or the regulations**

A total of 83 submissions (inclusive of 20 after closing of exhibition periods) have been received in response to the four rounds of public notification undertaken for this development.

The key concerns raised by objector have consistently included:

- i) Building form and scale
- ii) Building height
- iii) Building setbacks and separation distances
- iv) Traffic, parking and access
- v) Visual and acoustic amenity
- vi) Anti-social behaviour
- vii) Consistent street wall heights
- viii) Solar access and residential amenity
- ix) View loss
- x) Overdevelopment of the site
- xi) Precedent

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The key issues raised within the submissions have been discussed previously in this report. The following provides a summary of the issues raised and a response to those issues.

<b>Issue</b>	<b>Comment</b>
<b>Building form and scale</b>	<p>The proposal complies with development standards of height and FSR for the site under the NLEP 2012.</p> <p>As discussed within this report the overall built form and scale of development in the context of site and adjoining properties is acceptable.</p> <p>The proposal is considered to meet the design principles of SEPP 65 and Apartment Design Guidelines and is consistent with the requirements of NLEP 2012.</p>
<b>Building Height</b> concern originally regarding non-compliance and height in relation to bulk and scale.	<p>The original proposal exceeded the 45m height limit by one storey (2.48m exceedance).</p> <p>Amendments seen a reduction in height by one storey and the proposal now complies with the 45m height limit.</p> <p>It is acknowledged as expressed by the applicant that the height of building design is considered an appropriate transition between No. 489 Hunter Street (Worth Place Apartments – 9 storeys) and No. 509 Hunter Street development (Sky residences – 19 storeys) to the west.</p> <p>The overall built form and scale impacts have been reduced through both height reduction and other amendments relative to scale, built form massing and building articulation to provide some additional separation / setbacks from boundaries and as the development relates to adjoining properties.</p>
<b>Building setbacks</b> separation and setbacks are below the ADG requirements	<p>The proposal seeks variations to separation and setback recommendations of the ADG.</p> <p>These concerns are discussed in Section 5.1 of this report under the provisions of SEPP 65 – Design Quality of Residential Apartments assessment.</p>

	<p>The current amended proposal is considered on balance to be an acceptable response to redevelopment of this site. Setbacks provided both to site boundaries and across boundaries (as per ADG recommendations) are acceptable and facilitate redevelopment of this constrained site, without unreasonable impacts on adjoining properties in this city centre location.</p> <p>Whilst CN's UDCG suggestion for a greater setback along a section of the Hunter St building, equal to that of the setback provided within the Sky Residences development (also below the ADG recommendations) remains outstanding, the other design refinements recommended by the UDCG in order to support the proposal have been resolved. The proposed setback of the Hunter Street building is however considered acceptable on balance due to location of windows, separation to blank walls, proposed room usage and privacy screening.</p>
<p><b>Traffic, parking and access</b> increase in traffic congestion, access conflict between developments, in adequate width of Lauers Lane, insufficient parking provision.</p>	<p>In response this concern is discussed in section 5.3 of this report under 'Traffic, Parking and Access – Section 7.03' of the NDCP 2012 assessment.</p> <p>A Traffic Assessment was submitted with the application. It is considered that the additional traffic flows associated with the development will have minimal impact upon traffic safety.</p> <p>The proposal includes the widening of Lauers Lane to be 5.5m between kerb edges for the length of the laneway. This results in an upgrade of the laneway and land dedication in this location of 1.5m. The dedication and increase in width will act to support the additional traffic and provide better access for future residences and other properties who gain access, in particular Worth Place Apartments and currently to a lesser extent those properties on the other side of the lane.</p> <p>CN's engineers have assessed the submitted proposal and do not raise</p>

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	<p>concerns in terms of its traffic impacts, accepting that suitable road capacity exists within the nearby streets and suitable upgrades will occur within Lauers Lane to the benefit of all properties gaining access off Lauers Lane.</p> <p>The proposal provides sufficient on-site carparking to cater for the development consistent with NDCP 2012 requirements.</p>
<p><b>Amenity</b> acoustic, building setbacks, privacy, solar access and views</p>	<p>These concerns are discussed in Section 5.1 of this report under the provisions of SEPP 65 – Design Quality of Residential Apartments assessment.</p> <p>The amendments made during the assessment process has incorporated a number of measures to ensure privacy and amenity for residents of the proposal and adjoining development is maintained. Design responses have included well-considered positioning of bedrooms, living areas and balconies to avoid overlooking. The use of skewed and high-level ribbon windows in conjunction with privacy screens and louvers have also been utilised in the design.</p> <p>It is acknowledged that separation and setbacks provided are below the recommendations of the ADG. However, amendments to setbacks and revised building articulation to both increase setbacks and as a design solution to reduce the building form mass all contribute toward reasonable levels of amenity for surrounding development, consistent within this city centre location.</p> <p>The development is considered acceptable in the context of maintaining a reasonable level of amenity both within and surrounding the site.</p>
<p><b>Anti-social behaviour</b> communal areas at podium level will cause amenity impacts and potential anti-social behaviour for surrounding developments given lack of location</p>	<p>The applicant has expressed that communal areas are provided to enhance the amenity of residents and are also designed to maximize safety. Communal areas are incorporated into developments to achieve good amenity and to promote safety and</p>

<p>and inadequate separation distances and setbacks.</p>	<p>social interaction between residents, as identified in the ADG and NDCP 2012.</p> <p>The applicant has stated that security / safety concerns raised relative to the eastern side of Worth Place Apartments and the podium level of the proposal due to the proximity of the balconies. Security and privacy measures have been incorporated through planter boxes, landscaping, skylights shafts (Hunter St building) and screen panel fencing. These measures are indicated on Architectural Plans DA04, DA13 and SK05.</p> <p>The proposal has good natural surveillance from active street frontages and balconies with clear sightlines between private and public spaces maintained. Lighting to external spaces will also be provided. Access to the buildings and car park area is controlled and safe for residents 24 hours a day. CCTV will provide another level of additional security. Given measures as outlined and the height of the two adjoining buildings, it is considered that all reasonable steps have been taken to address security concerns.</p> <p>As with all residential apartment buildings, both residents and the body corporate will also assist in management of on-going occupation and appropriate behaviour within the development.</p> <p>A CPTED assessment has been conducted which identified minimal issues and the recommendations from the assessment will be implemented within the development design.</p> <p>The proposal has been supported by a CPTED assessment and is considered acceptable in terms of safer by design key principles.</p> <p>The proposal is considered to be appropriate in relation to safety and security and the management and monitoring of anti-social behaviour.</p>
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<p><b>Consistent Street Walls</b> existing street wall height of two storeys, building extends out to boundary and is three storeys in height</p>	<p>As discussed in this report, amendments have been made to reduce the impacts on the Hunter Street podium as it relates to the adjoining property to the east (Worth place apartments). As per CN's UDCG advice further design development of the Hunter Street frontage was undertaken to address the disparity of the podium height relative to adjacent building frontages.</p> <p>The NDCP 2012 requires a street wall height of 16m, the proposal seeks a variation to this street wall height (at approximately 10m). This is acceptable and has been proposed at three storeys to assist in maintaining a reasonable street wall height consistent with both existing adjoining properties and the future envisaged street walls heights encouraged under the NDCP 2012.</p>
<p><b>Sunlight</b> overall bulk and scale and built form with inadequate separation and setbacks from adjoining properties will result in unacceptable light and ventilation for these adjoining developments</p>	<p>A Solar Access Expert Opinion has been submitted with the application. Further advice was provided of a recent opinion that the proposal is considered to achieve good light and ventilation consistent with the ADG.</p> <p>This information establishes that acceptable levels of light and ventilation are achieved for the proposed development.</p> <p>Shadow diagrams were also provided with analysis specific to the western adjoining property – Sky Residences which demonstrates that whilst overshadowing will occur a reasonable level of solar access will be maintained with site redevelopment.</p> <p>This concern is discussed in section 5.1 of this report under 'Provisions of any Environmental Planning Instrument – SEPP 65 - Design Quality of Residential Apartments assessment.</p>
<p><b>Visual and acoustic privacy</b></p>	<p>The proposal is considered acceptable in relation to visual and acoustic privacy both for future residents of the site and for adjoining properties.</p> <p>Visual and acoustic privacy concerns are discussed in more detail in section 5.3 of this report under 'ADG or Newcastle City Centre</p>

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	<p>– Section 6.01’ of the NDCP 2012 assessment and section 5.6 of this report under ‘<i>Environmental Impacts.</i>’</p>
<p><b>Wind</b></p>	<p>Whilst the development does seek variations to the separation / setback recommendations within the ADG, the overall spatial context and built form is acceptable. It could be equally said that the clustering of buildings can also reduce this potential.</p> <p>This is a potential problem with any development with a CBD city centre environment. Building design elements and screening of balconies and sheltered landscaped communal areas assists in reducing wind tunnelling impacts. Other surrounding development are also designed to deal with such issues in an urban city centre environment.</p>
<p><b>Economic / property values</b></p>	<p>This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979.</i></p>
<p><b>Construction</b> traffic management during demolition and construction</p>	<p>Some concerns were raised about construction impacts during construction.</p> <p>Appropriate conditions are recommended which will require a Construction management plan be implemented to address noise, dust and other matters such as waste and traffic management. Relevant guidelines and Australian Standards also exist to ensure appropriate construction management is undertaken with any development site.</p> <p>Construction and traffic management will be required to ensure works are carried out in accordance with appropriate legislative and CN requirements.</p>
<p><b>Overdevelopment</b> of the site.</p>	<p>The proposal is permissible within the zone and is considered an appropriate form of development, consistent with the character and context of the site and surrounding development.</p>

	<p>The proposal is consistent with key development standards contained within NLEP 2012, specifically height limit and floor space ratio limit.</p> <p>Amendments and design refinement over time in response to the assessment, have reasonably addressed issues of bulk and scale and built form massing across the site. Given the physical characteristics of the site being narrow and irregular in shape, with dual street frontages and constraints also imposed by surrounding developments, the design on balance is considered a reasonable response. The proposal has been supported by 3D elevational views, fly through and photomontages that assist in demonstrating that the proposal will sit comfortably within the context of the site and surrounding developments in this city centre location.</p>
<p><b>Precedent</b></p>	<p>Concerns have been raised that given the lack of separation and setbacks from boundaries and adjoining properties, will result in an unfavourable precedent set for other developments.</p> <p>It is not considered that an undesirable precedent will be set as every application is required to be considered both against the legislative requirements and on its own merits.</p> <p>The proposal does seek to vary the separation and setbacks recommendations of the ADG and NDCP 2012. However, as discussed within this report, the proposal is a reasonable design response to the site, its context and surrounding existing and future development.</p>

## 5.9 The public interest

As discussed within the report, it is considered that the issues and concerns raised in submissions have been adequately resolved by submission of amended plans and do not require any further amendments. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

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

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

The proposed development is considered to be satisfactory having regard to the provision of additional housing, retail and commercial uses within the Newcastle City Centre area. The overall size, bulk and scale of the proposed development as amended and spatial massing with both development on the eastern side and the development currently under construction on the western side as well as their collective visual prominence is considered acceptable and within the public interest in this city centre location.

## 6.0 CONCLUSION

The proposal is found to be an acceptable response to the redevelopment of site and is satisfactory having regard to the relevant planning policies including SEPP 65, NLEP 2012 and NDCP 2012.

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis of the amended plans and supporting information and recommended conditions in **Attachment B** are included in any consent issued.

## ATTACHMENTS

**Item 23 Attachment A:** Submitted Plans – 495-501 Hunter Street and 364 King Street, Newcastle

**Item 23 Attachment B:** Draft Schedule of Conditions – 495-501 Hunter Street and 364 King Street, Newcastle

**Item 23 Attachment C:** Processing Chronology – 495-501 Hunter Street and 364 King Street, Newcastle

**Item 23 Attachments A to C distributed under separate cover**