



City of  
Newcastle



## CITY OF NEWCASTLE

# Development Applications Committee

Councillors,

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

**DATE:** Tuesday 1 December 2020

**TIME:** Following the Briefing Committee Meeting

**VENUE:** Council Chambers  
Level 1, 12 Stewart Avenue  
City Administration Centre  
Newcastle NSW 2302

J Bath  
Chief Executive Officer

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

24 November 2020

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**DEVELOPMENT APPLICATIONS COMMITTEE**  
**01 December 2020**

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**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 NOVEMBER 2020**

**RECOMMENDATION**

The draft minutes as circulated be taken as read and confirmed.

**ATTACHMENTS**

**Attachment A:** 201117 Development Applications Committee Minutes

*Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)*

## CITY OF NEWCASTLE

Development Applications Committee Meeting 01 December 2020

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### Attachment A

## CITY OF NEWCASTLE

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West and on video conferencing platform Zoom on Tuesday 17 November 2020 at 7.06pm.**

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### PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, E White and P Winney-Baartz.

### IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), M Murray (Executive Officer), A Knowles (Council Services/Minutes), E Horder (Council Services/Meeting Support), K Sullivan (Council Services/Meeting Support) and G Axelsson (Information Technology Support).

### APOLOGIES

#### MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

The apologies submitted on behalf of Councillors Church, Dunn and Rufo be received and leave of absence granted.

**Carried**

### DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

#### Councillor Clausen

Councillor Clausen declared a less than significant non-pecuniary interest in Item 40, DA2019/01334 – 5 Erina Place, North Lambton – Dual Occupancy – Two x Three-Bedroom Detached Dwellings, Two x Swimming Pools and Two Lot Strata Subdivision, as a petition tabled as part of one of the submissions included a signature from the State Member for Wallsend and the declaration was made on the basis of shared political affiliation.

#### Lord Mayor, Cr Nelmes

The Lord Mayor declared a pecuniary interest in Item 40, DA2019/01334 – 5 Erina Place, North Lambton – Dual Occupancy – Two x Three-Bedroom Detached Dwellings, Two x Swimming Pools and Two Lot Strata Subdivision stating she had a pecuniary interest with one of the proponents and managed the conflict by removing herself from the Chamber for discussion of the item.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 OCTOBER 2020**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

The draft minutes as circulated be taken as read and confirmed.

**Carried  
unanimously**

**DEVELOPMENT APPLICATIONS**

**ITEM-40 DAC 17/11/20 - DA2019/01334 - 5 ERINA PLACE, NORTH LAMBTON - DUAL OCCUPANCY - TWO X THREE BEDROOM DETACHED DWELLINGS, TWO X SWIMMING POOLS AND TWO LOT STRATA SUBDIVISION**

The Lord Mayor left the meeting for discussion on the item.

The Deputy Lord Mayor, Councillor Clausen, took the Chair.

**MOTION**

Moved by Cr Duncan, seconded by Cr Mackenzie

- A. That DA2019/01334 for dual occupancy (detached) with swimming pools and two lot strata subdivision at 5 Erina Place, North Lambton 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 Council's determination.

**Carried  
unanimously**

The Lord Mayor, Councillor Nelmes, did not return to the meeting prior to close of the meeting.

**The meeting concluded at 7.12pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-41                    DAC 01/12/20 - DA2020/00717- 5 HILLVIEW CRESCENT  
THE HILL - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS**

**APPLICANT:                J DIXON  
OWNER:                    B R STEEL & C K BIERL  
NOTE BY:                 GOVERNANCE  
CONTACT:                 DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

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**PART I**

**PURPOSE**

An application (DA2020/00717) has been received seeking consent for alterations and additions to an existing dwelling house at 5 Hillview Crescent, The Hill.

The submitted application was assigned to Development Officers Michael Peisley and Ethan Whiteman for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (17% variation).

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and one submission was received in response.

The objector’s concerns include:

- i) Privacy impacts



**Subject Land:** 5 Hillview Crescent, The Hill

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.

### Issues

- 1) The proposed variation to the Height of Buildings development standard, under the NLEP 2012.

### 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

#### *Vote by division*

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00123 for dwelling house – alterations and additions at 5 Hillview Crescent, The Hill be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. 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 site comprises Lot 22 DP 32721. The lot is irregular in shape, located on a bend in Hillview Crescent that creates a road frontage of approximately 58 metres, a maximum depth of 33 metres and a total area of 757m<sup>2</sup>. There is approximately seven metres of fall across the site from the eastern to the western corner.

The site is currently occupied by a detached two storey dwelling, a large hardstand area and retaining walls that create a terraced landscaped area. The general form of development in the immediate area consists of a mixture of original and renovated dwellings, modern architectural designed dwellings and multi-storey residential flat buildings. They range in architectural style, reflecting the ongoing development since the establishment of The Hill as a suburb.

### **2.0 THE PROPOSAL**

The applicant seeks consent for the following works:

- i) Residential addition incorporating three stories including garage, recreation room, kitchen, dining, deck and bedroom
- ii) Alterations to the existing dwelling including new stairways, living room
- iii) Bathrooms and ensuite
- iv) Swimming pool and associated child resistant barrier
- v) New driveway and paving
- vi) Stepped pathway and screening to dwelling entry

In response to the concerns of the objectors and at the request of CN officers, the applicant submitted revised plans for the proposal. The revised plans include the installation of privacy screening to the full extent of the north-western side of the proposed deck, along with clarification on the extent of the proposed building height departure.

The revised plans were not notified but have been placed on CN's Development Application Tracker on CN's webpage. The revised plans address the concerns of the neighbour and privacy impacts have been minimised with the additional screening along the deck.

A copy of the submitted plans is at **Attachment A**.

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

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's CPP. One submission was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

#### **a) Amenity Issues**

- i) Privacy – concern for overlooking from proposed north-western facing deck to the living rooms and private open space of units located at 3 Hillview Crescent.

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 EP&A Act.

### **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 EP&A Act, as detailed hereunder.

#### **5.1 Provisions of any environmental planning instrument**

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

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

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

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) (the SEPP) is one of a suite of Land Management and Biodiversity Conservation reforms that commenced in New South Wales on

25 August 2017. The SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the SEPP contains provisions similar to those contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the NDCP 2012 can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

The proposed development proposes the removal of two trees that, in accordance with the SEPP that assessment has been completed against the provisions of the NDCP 2012.

### **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 the ISEPP. Ausgrid's referral response of 21 October 2020 confirmed that the development raised no concerns with respect to ISEPP.

### **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.

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

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

#### Clause 2.1 - Land Use Zones

The subject property is zoned R2 Low Density Residential under the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, which are:

- i) To provide for the housing needs of the community within a low-density residential environment.
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of sections of the existing dwelling. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 9.945 metres, exceeding the prescribed maximum building height by 1.445 metres or 17%.

The applicant has submitted a request for a variation to this development standard, as required by clause 4.6 of the NLEP 2012. Refer to the discussion under clause 4.6 - Exceptions to Development Standards below.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the subject site has a maximum floor space ratio (FSR) of 0.60.

The submitted FSR is 0.34 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

The application involves a proposed building that exceeds the maximum building height under clause 4.3 of the NLEP 2012.

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 9.945 metres, exceeding the prescribed maximum building height by 1.445 metres or 17%.

The area of roof that exceeds the maximum 8.5 metres height limit by 1.445 metres is located at the top portion of the roof pitch and extends in along the roof ridge for the length of the proposed addition (approximately 7.277 metres in length).

The objectives of clause 4.3 of the NLEP 2012 are:

- a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.
- b) To allow reasonable daylight access to all developments and the public domain.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

- i) Clause 4.3 is not expressly excluded from the operation of this clause; and
- ii) The applicant has prepared a written request requesting CN vary the development standard and demonstrating that:
  - a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - b) there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the development standard is summarised as follows:

***How is strict compliance with the development standard unreasonable or unnecessary in this particular case. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?***

*This clause 4.6 submission has been made by the applicant on behalf of the building owners to demonstrate that roofline compliance with the NLEP 2012 Building height control is unnecessary and unreasonable on this site in this circumstance.*

*In this case the 8.5 metres maximum height control stipulated by the NLEP 2012 clause 4.3 and the NLEP 2012 Building Height Map has been encroached by 17%. The proposed small ridgeline extension adopts a sympathetic roofline without environmental detriment to neighbours or the public interest. The existing excavated driveway and extreme fall across the site exacerbates this measured overall building height and the encroachment incurs zero environmental impact or planning concern.*

- i) This dwelling is surrounded by taller residential flat buildings and two to three storey single dwellings positioned above and around it, along Hillview Crescent. These dwarf this home in terms of building height and street context and will be unaffected by the existing ridgeline height retained and extended as part of this proposal. There have been no neighbour objections received in regard to this proposed roof ridge height or extension.
- ii) This is a challenging site that slopes 2.3 metres across the existing footprint of the retained house and an extreme 6.5 metres natural contour fall across an unusually shaped valley-like lot. The simple extension of this roof will best use the lower portion of the site over the driveway to logically extend all three building levels.
- iii) The max height of this proposed roof ridge extension is exacerbated by the existing driveway level (RL 8.00) being cut 1 metre below the original natural ground contours at the centre of the site (RL 9.00).

- iv) A new max height of 9.945 metres is measured from the existing driveway cut to the end of the extended ridgeline. The encroachment of 1.445 metres above the 8.5 metres height limit stipulated for the site under the NLEP 2012 clause 4.3 and the NLEP 2012 Zone Maps represent a 17% increase. This would measure 1 metre less (5% increase) if natural ground contours over the driveway had been retained.
- v) The proposed roof extends the existing shape but replaces the hip and vertical gable wall profile facing the street entrance. There will be no ridge height change.
- vi) Retaining the single dwelling home and roof shape is compatible with the character of surrounding single dwellings in this R2 zoned established suburb.
- vii) A lower pitch of flat skillion roof might assist in complying with the 8.5 metre height limit, but it would result in a disjointed, less homogenous roof addition over a quarter of the buildings length. Such a competing roof style would be a visually poor outcome for neighbours about the site.
- viii) The proposed pitch roof extension is the simplest, most practical way to add to this building and improve the street presence of this home.
- ix) The highest ridge point is measure well within the centre of the site but is disguise by the lower 2 storey kitchen / verandah slicing across the front of the house. The new street view will pose less vertical impact than the existing three storey red brick frontage does now.

***Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.***

- i) The 17% height non-compliance concerns a ridgeline only located at the south end, centrally within the site.*
- ii) No neighbours are positioned east or south so there is zero impact on public or environmental amenity.*
- iii) The best use of the pre-existing topography, existing build footprint, roof style, and large street setback dictate this response as the most favourable solution to minimise impact.*
- iv) The height retains a single dwelling built form, compatible with typical single residences in the immediate area.*
- v) The privacy of neighbours will not be affected by the 17% increase due to the central ridgelines encroachment only.*
- vi) There are no overshadowing impacts in any direction.*

***Other relevant information to be considered in varying the development standard***

- i) There is public benefit in retaining this single dwelling in this locality and demonstrating how to maximise full property potential on a difficult site. There were no neighbour concerns submitted in regard to building height during the notification period, this indicates that the extended ridge height and proposed design in unopposed, and the retention of the single dwelling is supported.*
- ii) The height encroachment is the consequence of unique site conditions. The encroaching roof ridge, positioned deep within the site, demonstrates no impact on neighbourhood amenity and poses no risk to wider environmental state or regional planning objectives.*
- iii) The roofline addition will not contravene state or regional planning objectives, instead, it supports the intention of the EP&A Act to allow for complex site conditions to be weighed against the strict application of the building height guideline.*

**Conclusion**

The proposal does not comply with the height of building standard prescribed by clause 4.3 of the NLEP 2012. Having evaluated the likely affects arising from this non-compliance, it is considered that the objectives of clause 4.6 of the NLEP 2012 are satisfied as the breach to the maximum building height does not create any adverse environmental planning impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and use of clause 4.6 of the NLEP 2012 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the height of buildings standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3).
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the building height development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 20-0002 of 5 May 2020.

- d) The proposed building height exceedance of 1.445 metres is considered to be a reasonable variation and it will have minimal impact on neighbouring properties in terms of bulk, scale, privacy, overshadowing and view loss. The proposed exceedance of the maximum building height does not add unnecessary bulk and scale to the development. The proposed scale of the development is not out of character with existing dwellings within Hillview Crescent and the wider surrounding area.

It is considered that the applicant has demonstrated that the application of the standard is both unreasonable and unnecessary in this instance and that the proposed height and scale of development is in character with the host building and surrounding locality. The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a low density residential environment whilst suitably respecting the amenity and character of surrounding development and the quality of the environment, in accordance with the relevant R2 zone objectives. Further, it is considered the clause 4.6 variation request is well founded. The request for the maximum building height to exceed 8.5m is supported.

#### Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulfate 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.

### **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 subject application.

### **5.3 Any development control plan**

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

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of section 3.02.

***Street frontage appearance (3.02.03)***

The proposed development meets the acceptable solutions of section 3.02.03.

***Side / rear setbacks (building envelope) (3.02.04)***

The proposed development meets the acceptable solutions of section 3.02.04, except in relation to the exceedance of the maximum height that is specified in the NLEP 2012.

A performance based assessment of the proposal has been completed and the proposed development achieves the relevant performance criteria within section 3.02.04 of the NDCP 2012. The bulk and scale of the proposed development:

- a) *Is consistent with that of the existing built form prevailing in the street and locality.*
  - i. The proposal is not inconsistent with the existing built form in the locality.
- b) *Does not create overbearing development for adjoining dwelling houses and their private open space.*
  - i. The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to not create unreasonable impacts.
- c) *Does not impact on the amenity and privacy of residents in adjoining dwelling houses.*
  - i. The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.
- d) *Does not result in the loss of significant views or outlook of adjoining residents.*
  - i. The proposed development meets the acceptable solutions of section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

e) *Provides for natural light, sunlight and breezes.*

- i. Solar access to the adjoining neighbours will not be reduced by the proposed development. Breeze paths will still be provided for with the proposal.

***Landscaping (3.02.05)***

The site area is 757m<sup>2</sup>, generating a requirement for 30% (i.e. 227m<sup>2</sup>) of the site to be provided with landscaping. The total area of proposed landscaping is approximately 400m<sup>2</sup> and meets the NDCP 2012 requirements.

***Private open space (3.02.06)***

The proposed private open space area is satisfactory and meets the NDCP 2012 requirements.

***Privacy (3.02.07)***

The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is sufficient to create a reasonable level of privacy between those premises.

In response to concerns relating to potential privacy impacts from the use of the proposed deck area, revised plans have been submitted depicting a combination of solid cladding and screens with 25% perforations up to a height of 1.7 metres above finished floor level of the north west elevation of the proposed mid-level deck addition. The plans were not renotified as the revised plans sufficiently addressed the privacy impacts and minimise any overlooking onto the adjacent property.

A suitable condition is also proposed in the draft schedule of conditions to address any potential privacy impacts arising from the use of the mid-level deck area on nearby properties.

The privacy of the proposed development and the adjoining neighbours is satisfactory and meets the NDCP 2012 requirements.

***Solar access 3.02.08)***

The proposed development complies with the NDCP 2012 requirements as it does not significantly overshadow north facing living area windows and the principal area of private open space of adjacent dwellings.

***View sharing (3.02.09)***

The proposed development meets the acceptable solutions of section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

***Car parking and vehicular access (3.02.10)***

The proposed development is considered to be satisfactory and to meet the NDCP 2012 requirements as vehicles can enter and exit the site in a safe manner.

***Ancillary development (3.02.12)***

The proposed swimming pool is not considered to be visually intrusive on the streetscape and meets the relevant performance criteria of section 3.02.12.

As suitable condition is also proposed in the draft schedule of recommended conditions to address any potential noise attenuation impacts arising from pool plant and equipment on nearby properties.

Refer also to section 5.8 of this report for further discussion on privacy issues raised during the notification process.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development section of the NDCP 2012, the proposed development is considered acceptable in relation to the abovementioned NDCP 2012 sections and achieves compliance with relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides an appealing presentation to the street with appropriate residential amenity, while maintaining privacy for adjoining neighbours.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

The proposed development is satisfactory with respect section 5.01 of the NDCP 2012.

Vegetation Management - Section 5.03

The proposed development proposes the removal of two trees. The proposed tree removal is acceptable, with respect to the provisions of the NDCP 2012.

Traffic, Parking and Access - Section 7.03

The proposed development is required to provide on-site car parking in accordance with the rates set out in Table 1 of section 7.03.02 of the NDCP 2012. As a dwelling house with gross floor area greater than 125m<sup>2</sup>, the proposed development is

required to have a minimum of two car parking spaces. The proposal is satisfactory in this regard.

Stormwater- Section 7.06

The proposed stormwater drainage system includes a rainwater tank for water re-use within the dwelling, with the rainwater tank overflow connected to the street kerb and gutter. The proposed stormwater management plan is satisfactory and in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued. Based on the submitted information, the proposal is acceptable.

Public Participation – Community Participation Plan

The proposed development was publicly notified in accordance with CN's CPP and one submission was received in response.

Comments are provided in section 5.8 below.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, 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 Regulation 2000 (Regulations).

As consent is being sought for the demolition of sections of the existing dwelling, clause 92 of the Regulations requires CN to take into consideration the provisions of AS2601 - Demolition of Structures. The proposed demolition is satisfactory and compliance with AS2601 will be included in the conditions of consent for any demolition works.

Clause 94 of the Regulations is considered to apply, pursuant to the provisions of clause 94(1)(a). It is not considered appropriate to require the existing building to be brought into total compliance with the Building Code of Australia. However, it is considered appropriate to require hardwired smoke alarms to be installed. It is noted

that a prescribed condition of the consent will require the new work to comply with the Building Code of Australia.

**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.

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

It is considered that the proposal will not have any negative social or economic impacts.

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

The constraints of the site have been considered in the proposed development, which includes mines subsidence and acid sulfate soils. 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 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**

The application was notified in accordance with CN’s CPP, and one submission was received.

The key issues raised within the submissions have been discussed previously in this report under the relevant policy section where applicable. For the purposes of clarity, the following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Privacy impacts arising from proposed verandah and pool areas on neighbouring courtyard area and request for screening and higher pool fencing between properties	As discussed within section 5.3 of this report, the proposed development is considered acceptable having regard to the acceptable solutions and performance criteria of section 3.02.07 of the NDCP 2012.  Revised plans have been submitted

	<p>depicting privacy screening to the north western elevation of the second storey deck.</p> <p>No additional screening is considered necessary between the proposed pool area and the adjoining properties given the primary areas of private open space and main living areas are located elsewhere on the site.</p> <p>In addition, a condition is proposed to be placed on the consent requiring privacy screening to be included on the north western side of the second storey deck.</p>
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**5.9 The public interest**

The proposed development is satisfactory having regard to the principles of ecologically sustainable development.

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 development is in the public interest as it achieves the objectives of the R2 Low Density Residential land use zone and applicable principal development standards and will allow for the orderly and economic development of the site.

**6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Item 41 Attachment A: Submitted Plans - 5 Hillview Crescent, The Hill**

**Item 41 Attachment B: Draft Schedule of Conditions - 5 Hillview Crescent, The Hill**

**Item 41 Attachment C: Processing Chronology - 5 Hillview Crescent, The Hill**

**Item 41 Attachments A-C distributed under separate cover**

## CITY OF NEWCASTLE

Development Applications Committee Meeting 01 December 2020

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**ITEM-42**                    **DAC 01/12/20 - DA2020/00758 - 59 SCENIC DRIVE  
MEREWETHER - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS**

**APPLICANT:**            **J L WASIK**  
**OWNER:**                **J L WASIK & L WASIK**  
**NOTE BY:**              **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

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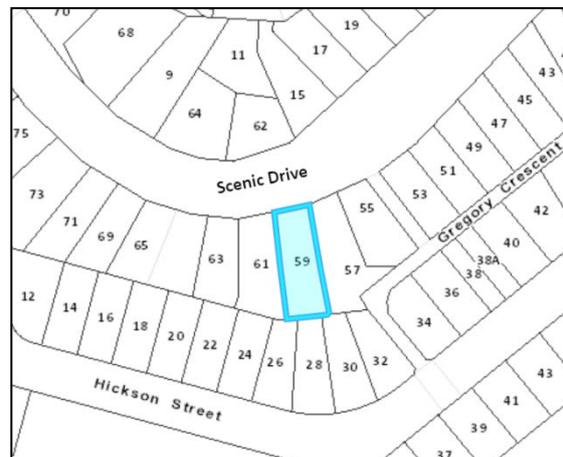
### PART I

#### PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling house at 59 Scenic Drive, Merewether.

The submitted application was assigned to Development Officer, Mark McMellon, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the building height development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (14.3% variation).



**Subject Land:** 59 Scenic Drive Merewether

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 14 submissions have been received in response. In addition, three late submissions were also lodged after the formal notification period had closed.

The objector's concerns included:

- i) Development exceeds building height limits and approval would create undesirable precedence in the area.
- ii) View loss.
- iii) Privacy and amenity impacts.

- iv) Overshadowing.
- v) Roof glare.

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.

### Issues

- 1) The proposed variation to the Height of Buildings development standard, under the NLEP 2012.

### 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 the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00758 for alterations and additions to a dwelling at 59 Scenic Drive Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- C. 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 Lot 11 Sec 15 DP 38649 and is a rectangular allotment located on the southern side of Scenic Drive, Merewether. The site has a frontage of 15.25m to Scenic Drive, an average depth of 51.4m and a total area of 783.9m<sup>2</sup>.

Access to the site is via a shared 'Right of Carriageway' from Gregory Crescent (via Hickson Street) at its southern boundary. The site slopes quite steeply toward Scenic Drive from the Gregory Crescent boundary with over 15m of fall over the site.

The subject property is currently occupied by a three-storey dwelling with metal roof, lightweight wall cladding and attached double garage. Existing development on adjoining sites comprises of two and three-storey dwellings, consistent with the general form of development in the area. Dwellings in the area are predominantly of a contemporary architectural style.

### **2.0 THE PROPOSAL**

The applicant seeks consent for the following works:

- i) A proposed lift which will service all floor levels of the dwelling.
- ii) A new ensuite and home gym addition connecting the existing master bedroom on the upper floor.
- iii) New entry foyer, porch and entry ramp to the ground floor.
- iv) Extension of the existing decks fronting Scenic Drive off the lower floor and ground floor.
- v) Provision of new privacy screening to the western side of the deck addition.
- vi) Proposed hallway addition and stairs to lower floor of the dwelling.

The original proposal also included a new roof over the existing ground floor deck fronting Scenic Drive. Amended plans have since been submitted deleting the roof over this area as requested by the owner.

A copy of the current amended plans is at **Attachment A**.

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

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's CPP. Fourteen submissions were received in response. The concerns raised by the objector's in respect of the proposed development are summarised as follows:

#### **a) Statutory and Policy Issues**

- i) Building height - exceedance over maximum building height prescribed to the site will create an undesirable precedence in the area.

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

- i) Privacy impacts from south facing windows.
- ii) View loss.
- iii) Additional overshadowing.
- iv) Roof glare.

After the notification period, amended plans have since been submitted deleting the proposed roof over the existing deck of the ground floor at the request of the owners.

Due to the proposal being reduced in scale, the amended plans were not renotified.

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

### **4.0 INTEGRATED DEVELOPMENT**

The application does not require integrated approvals from another public authority as part of the development, noting that plans endorsed by Subsidence Advisory NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017* were lodged with the development application.

### **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 EP&A Act, as detailed hereunder.

#### **5.1 Provisions of any environmental planning instrument**

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

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

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

The subject site is located within the coastal use area. The proposed development is not likely to result in an adverse impact upon any of the matters to be considered under clause 14 of the SEPP.

The proposed development will not increase the risk of coastal hazards and the site is not subject to a coastal management program and is therefore considered to meet the provisions of clause 15 of the SEPP.

The proposed development is considered acceptable having regard to the applicable provisions of this SEPP.

**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.

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

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, which are:

- a. To provide for the housing needs of the community within a low-density residential environment.

- b. To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- c. To accommodate a diversity of housing forms that respect the amenity, heritage and character of surrounding development and the quality of the environment.

Clause 2.7 - Demolition Requires Development Consent

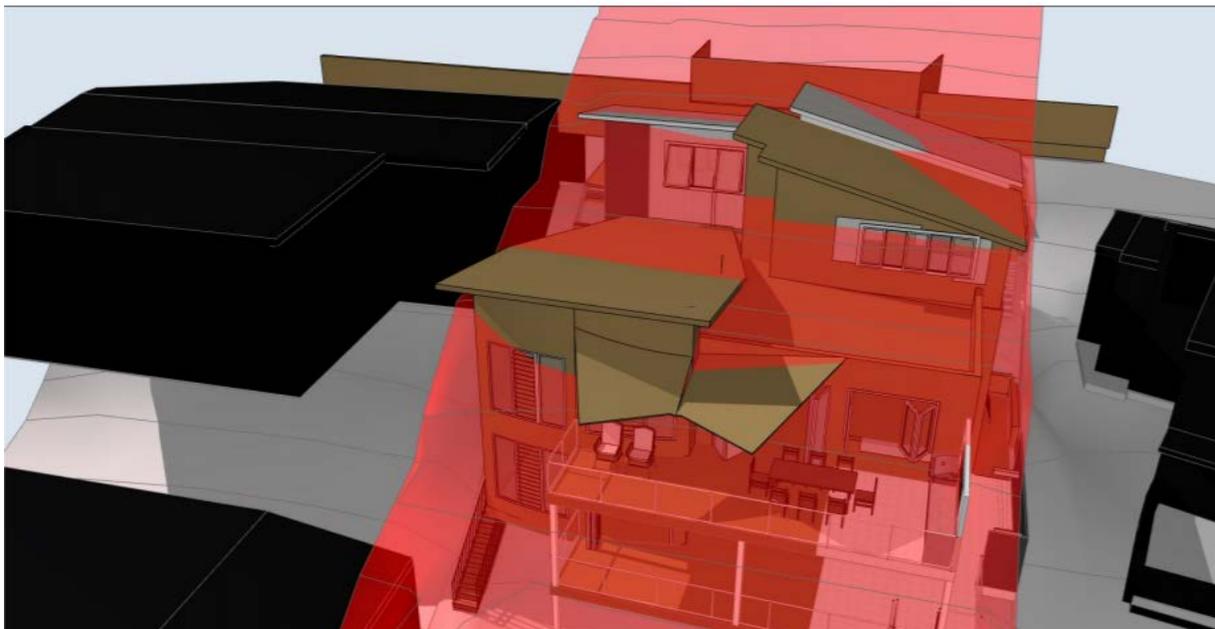
The proposal includes part demolition of some existing walls and roof structures to the ground and upper floors to facilitate the proposed alterations and additions. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

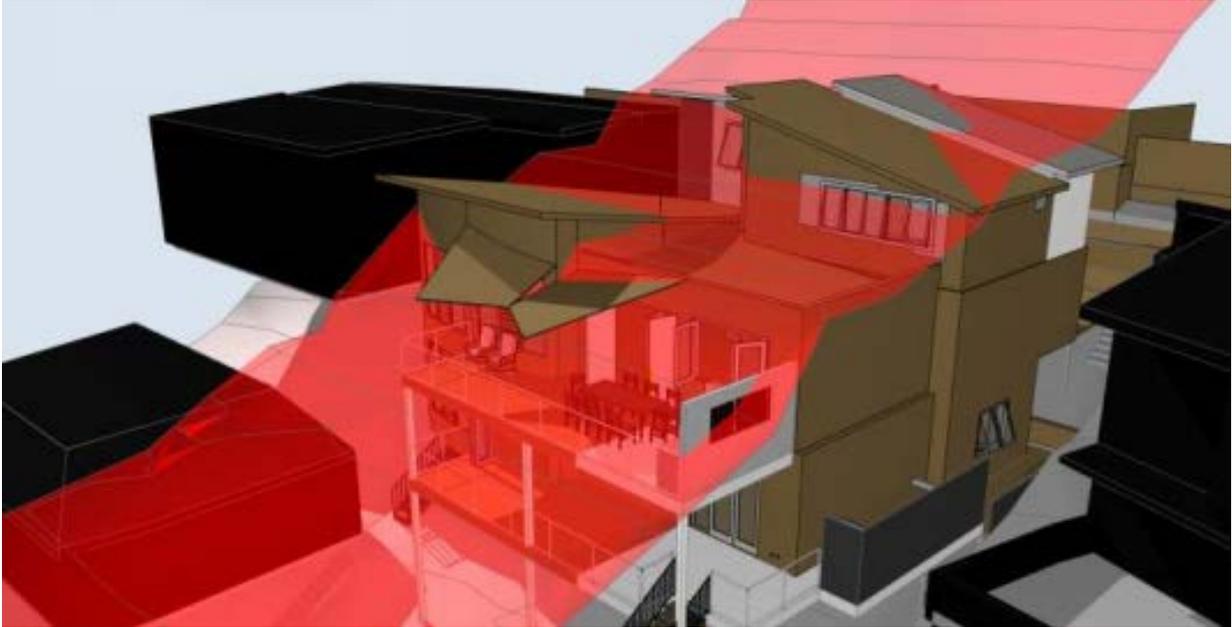
Under the NLEP 2012 the site has a height of buildings development standard of 8.5m.

The proposed development will result in a maximum height of 9.717m, equating to an exceedance of 1.217m or 14.3% above the height of buildings development standard for the subject land. Existing and proposed building height exceedances are depicted below.

The three-dimensional views of the subject proposal are shown below, with the existing elements in dark beige, proposed elements in grey and the adjacent dwellings shown in black. The height of buildings envelope is modelled in red.



**Figure 1** - View looking south from Scenic Drive frontage over site



**Figure 2** - View looking south east over site



**Figure 3** - View looking west over site

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 0.6:1. The submitted FSR is approximately 0.36:1 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

The proposal includes additions to a dwelling that exceeds the maximum height of buildings under clause 4.3 of the NLEP 2012.

Under the NLEP 2012 the site has a maximum building height of 8.5m. The submitted height is approximately 9.717m, equating to an exceedance of 1.217m or 14.3% above the height of buildings development standard for the subject land.

The objectives of clause 4.3 of the NLEP 2012 are:

- a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
- b) To allow reasonable daylight access to all developments and the public domain.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request that CN vary the development standard and demonstrating that:
  - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the height of building Development Standard is included beneath.

**1.1 What is the name of the environmental planning instrument that applies to the land?**

*Newcastle Local Environmental Plan 2012.*

**1.2 What is the zoning of the land?**

*R2 Low Density Residential*

**1.3 What are the objectives of the zone?**

- i) *To provide for the housing needs of the community within a low density residential environment;*
- ii) *To enable for other land uses that provide facilities or services to meet the day to day needs of residents;*

- iii) *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

**1.4 Why is the development standard being varied? eg. FSR, height, lot size**

*Height.*

**1.5 Under what clause is the development standard listed in the environmental planning instrument?**

*Clause 4.3 Height of Buildings (HoB).*

**1.6 What are the objectives of the development standard?**

*i) The objectives of this clause are as follows —*

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
  - b) *to allow reasonable daylight access to all developments and the public domain.*
- 2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

*The proposed development meets the objectives of the HOB development standard, as the scale of development makes a positive contribution to the desired built form within Merewether and the scale of the development allows for reasonable solar access to the proposed and adjoining developments in accordance with CN's controls.*

**1.7 What is the numeric value of the development standard in the environmental planning instrument?**

*8.5 metres.*

**1.8 What is proposed numeric value of the development standard in your development application?**

*The proposed numeric value of the Development Standard in the Local Environmental Plan is 9.717m for the highest point of the roof over the new ensuite / hallway / lift. An exceedance of 1.217m.*

**1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation between the numeric value of the Development Standard and the proposed numeric value of the Development Standard is 14.3% for the roof over the ensuite / hallway / lift.

**1.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

*Strict compliance with the Development Standard is unnecessary or unreasonable in this case for the following reasons.*

- i) The height of the development meets the objectives of the Development Standards in that it the height will be consistent with the built form of the context and will allow reasonable daylight access to all developments and the public domain.*
- ii) The proposed height of the addition enables the efficient and effective use of the site and provides a high level of amenity which meets the needs of the owners.*
- iii) The proposal will result in no real impact to neighbours in terms of privacy and, overshadowing and would result in only a minor reduction in existing views from two properties located behind / above the subject site. The objective of view sharing in relation to the Development Control Plan has been achieved.*
- iv) The additional height is considered minimal in comparison to the exceedance of the height limit already approved at the site by CN in 2003.*
- v) The existing approved building already contravenes the current building height limit by an even greater percentage.*
- vi) The addition will not be any taller than the current highest point of the roof of the house.*
- vii) The proposed addition would maintain privacy to adjoining development using opaque window glazing to all new southern windows.*
- viii) The proposed addition will not be visible from the public domain of Scenic Drive and would only be visible from the private driveway off Gregory Crescent.*
- ix) The proposed additions will not cause non-compliant overshadowing of adjacent properties; and will be articulated with various materials to break up any visual bulk of the additions.*
- x) As the bulk, form, setbacks and height of the proposed rear additions are consistent with the existing house, we feel that the proposal meets the objectives of the Newcastle Development Control Plan 2012 (NDCP 2012).*

- x) Strict compliance with the standard would prevent the use of the dwelling house to suit the owner’s needs.*
- xii) The proposal has demonstrated that a development of high quality and amenity can be achieved under the current design, including compliance with setbacks, building separation distances, solar access, and natural ventilation.*
- xiii) The precedence is set in Merewether that allows for height variations with 25 applications made for height variations since 2012 which is summarised in the table below. The table demonstrates six developments that have requested and gained approval for clause 4.6 Variations to Height of Buildings in Merewether. Two of the precedents are close to the subject site.*

Address	Justification of Variation	Extent of Variation
3 Scenic Drive Merewether	Achieves underlying objectives of height control	38.8%
55 Woodward Street, Merewether	Not have unreasonable impact on amenity of the area	14.1%
39 Scenic Drive, Merewether	Achieves underlying objectives of height control	14.3%
24 Ocean Street, Merewether	Compatible with Streetscape (bulk, scale and mass)	14%
31 Lloyd Street, Merewether	Compatible with Streetscape (bulk, scale and mass)	14%
113 Frederick Street, Merewether	Not have unreasonable impact on amenity of the area	5.4%

- xiv) Strict compliance with the standard is unreasonable and unnecessary as it would not result in a better-quality development, or a development with less impact on adjoining housing than is currently proposed.*
- xv) The outcomes will not adversely impact on the characteristics of the site or surrounding area to an extent that would warrant such a limitation when having regard to the existing and proposed built form, visual impacts, views to and from the site and positive social impacts. Therefore, the standard is unreasonable and unnecessary.*

**1.11 How would strict compliance hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.**

*Objects of Act*

*The objects of this Act are as follows —*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*

- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

*Strict compliance with the Development Standard would hinder the attainment of objects b); g); h) in that the application seeks to provide a lift to serve the three storeys of the house, and the provision of the lift is the product of good design and will allow the house to be accessible to a greater range of community members, particularly the elderly, disabled and less mobile community members; and the lift will be socially responsible as it will allow the owners to age in place within their current house. The lift would improve the amenity of the house for the owners and ensure their health as they age.*

*Strict compliance with the standard would limit the ability of the site to provide a quality and high amenity residential development for the owners.*

*The proposed development is considered to be ecologically sustainable development as it seeks retention of an existing dwelling house with suitable additions to make the dwelling suitable for the residents' needs rather than demolition of the existing dwelling house and a completely new build.*

*The proposed development is a permissible use in the zone and complies with the relevant development standards and controls (except for height). In this regard, the proposal represents the sustainable use of development of land.*

**1.12 Is the development standard a performance-based control?**

*No. The specific Development Standard is not a performance-based control.*

**1.13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?**

*The reason that strict compliance with the Building Height Standard would be unreasonable or unnecessary is that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*Further, the reason that strict compliance with the Building Height Standard would be unreasonable or unnecessary is that the underlying objective or purpose would be defeated or thwarted if compliance were required.*

*The specific part of the development which will contravene the Building Height Development Standard is the height of the roof over the new ensuite and hallway / lift when measured along the centre of the site and the west elevation from the natural ground line.*

*The reason that contravention of the Development Standard would be reasonable in this case is because the impact of the height of the addition would not be any taller than the tallest part of the existing house. Thus, the addition would be consistent with the existing house and that of the neighbouring context.*

**1.14 Are there Sufficient environmental planning grounds to justify contravening the development standard? Give details**

*The environmental planning grounds to justify the contravention of the development standard are that the following objects of the Act would be met by allowing the variation of the development standard in this case.*

*Object b) - to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.*

*This object would be met by the development providing a social benefit to the occupants of the house to allow them to “age in place” through the presence of the lift giving improved physical access to all three storeys of the house. This will allow the occupants to live in their home for longer before needing to move into any type of residential aged care which would need to be provided by the government at great expense.*

*Object g) - to promote good design and amenity of the built environment.*

*This object would be met by the development providing an improved amenity through improved access for a wider section of the community which provides a good example of responsible design.*

*Object h) - to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

*This object would be met by the development promoting the health and safety of the occupants by providing improved safety of movement throughout the three storeys of the house.*

**1.15 Is the varying of the Development Standard in the Public Interest?**

*The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the relevant zone.*

*The above reasoning demonstrates that the proposal variation to the height limit would be reasonable in this case and would be considered worthy of CN support.*

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**Conclusion**

The proposal does not comply with the height of building standard prescribed by clause 4.3 of the NLEP 2012. Having evaluated the likely affects arising from this non-compliance, it is considered that the objectives of clause 4.6 of the NLEP 2012 are satisfied as the breach to the maximum building height does not create any adverse environmental planning impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and use of clause 4.6 of the NLEP 2012 to vary this development control is appropriate in this instance.

Based on the above, it is reasonable to conclude that strict compliance with the height of buildings standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning circular PS 20-002 of 05 May 2020.

- d) The proposed development exceeds the maximum building height by 1.217m. The proposed building height exceedance is considered to be a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is in character with the surrounding locality. The proposed exception to the height of buildings development standard of the NLEP 2012 is considered to be a minor variation and strict compliance would be unreasonable and unnecessary.

It is considered that the applicant has demonstrated that the application of the standard is both unreasonable and unnecessary in this instance and that the proposed height and scale of development is in character with the host building and surrounding locality.

The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a low density residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R2 zone objectives. Further, it is considered the clause 4.6 variation request is well founded. The request for the maximum building height to exceed 8.5m is supported.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulfate 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.

### **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 subject application.

### **5.3 Any development control plan**

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

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

#### Single Dwellings and Ancillary Development - Section 3.02

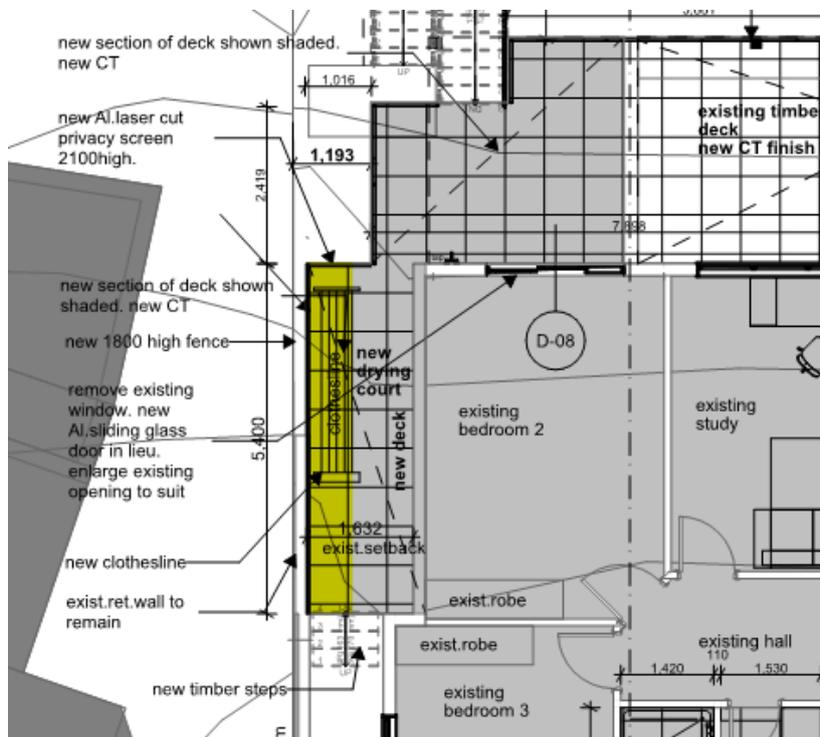
The following comments are made concerning the proposed development and the relevant provisions of section 3.02.

**Street frontage appearance (3.02.03)**

The setbacks of the existing dwelling fronting Scenic Drive will remain unchanged. The proposal includes a new external stair which gains access to the yard area from the lower level deck. As the proposed new external stair is setback approximately 17m from the Scenic Drive frontage and behind the building line of neighbouring dwellings, the proposed new external stair is considered satisfactory.

**Side / rear setbacks (building envelope) (3.02.04)**

The majority of the proposed development is within the building envelope when measured from side and rear boundaries with the exception of part of the 'new drying court deck' which encroaches within the 900mm side setback as depicted below:



**Figure 4 - Side setback departure towards western common boundary with area of departure highlighted in yellow.**

A small section of the eaves of the western side of the proposed addition over the existing garage also slightly projects outside the nominated building envelope controls.

It is considered the proposal will not adversely impact the streetscape or amenity of the area and that the proposed bulk and scale of the dwelling is similar to other dwellings in the vicinity. The proposal also does not result in the loss of significant views or outlooks of adjoining residents, as well as providing for adequate light and breeze paths.

The variations are considered to be minor and satisfactory in accordance with the relevant performance criteria of section 3.02.04 of the NDCP 2012.

***Landscaping (3.02.05)***

Adequate landscaping areas and potential areas are available on the site and it is considered that they are satisfactory with the acceptable solution criteria of this section.

***Private open space (3.02.06)***

The proposal seeks to retain and extend the existing lower and ground floor decks which are suitable to act as private open space. The proposed development is considered satisfactory in this regard.

***Privacy (3.02.07)***

The proposed new windows facing south are associated with a bathroom, toilet and the home gym located on the upper floor. These five windows are awning type windows which open out from the bottom section only and are all fitted with opaque glass. Given the limited use of such rooms, this is not expected to have a significant impact on privacy on the higher southern properties in Hickson Street. All of the southern properties are located outside the 12m privacy sensitive zone as defined in this section of the NDCP 2012.

Privacy screening has also been included to the western side of the proposed deck extensions fronting Scenic Drive.

The proposal ensures the dwelling house does not unreasonably overlook living rooms or principal area of private open space of neighbouring dwellings and complies with CN's policy in terms of maintaining a reasonable standard of visual privacy.

***Solar access (3.02.08)***

Given the north south orientation of the subject site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory with regard to this section of the NDCP 2012.

***View sharing (3.02.09)***

With regard to the planning principle for view sharing (Tenacity Consulting v Warringah [2004] (NSWLEC 140)), it has been assessed that the applicant has proposed a design which demonstrates relative compliance with CN's planning controls.



**Figure 5** - Panoramic view from southern property at 28 Hickson Street Merewether - Upper level deck (from a standing position) taken by CN's Assessing Officer on 15 October 2020.



**Figure 6** – Northern view towards subject property from southern property at 28 Hickson Street Merewether and expansive distant city views - Upper level deck (from a standing position) taken by CN's Assessing Officer on 15 October 2020.



**Figure 7** – Northern view towards subject property from southern property at 28 Hickson Street Merewether and expansive distant city views - Kitchen window (from a standing position) taken by CN's Assessing Officer on 15 October 2020.



**Figure 8** – Northern view towards subject property from southern property at 28 Hickson Street Merewether - Upper level deck (from a standing position) taken by

CN's Assessing Officer on 15 October 2020. Architect has superimposed an image with the approximate height and location of the proposed additions at 59 Scenic Drive Merewether. Note that the majority of the existing cityscape views will still be retained.

Firstly, the proposal meets the performance criteria by allowing for view sharing with neighbouring properties where reasonable and by presenting a design consistent to that of existing development in the locality.

Secondly, consideration is given to the applicable planning principle which established a four-step process for considering the impact of a development on views:

- i) An assessment of the value of views to be affected by reference to their nature extent and completeness.
- ii) A consideration of how views are obtained and what part of the property the views are obtained from.
- iii) A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.
- iv) An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The existing view corridor and the amount of existing views that will be retained, as a result of the proposed development to the most affected southern properties (26 & 28 Hickson Street Merewether, and to a lesser extent 24 Hickson Street Merewether) has been considered.

It is acknowledged that there will be some impact on the properties to the south as a result of the proposal, primarily from their lower level / external garden and recreation areas.

Notwithstanding, these properties are also afforded with substantial views from other main parts of their buildings that are situated at a much higher level than the subject property which will still be retained.

Overall, it has been assessed that the applicant has suitably demonstrated that the proposed development will have a minor impact on existing views and has demonstrated that the proposal is reasonable having regard to the established principals for assessing view sharing.

The assessing officers site photographs and the applicants view analysis confirm that the view impacts are considered to be satisfactory in accordance with this section of the NDCP 2012 and the relevant planning principle.

A copy of the detailed view analysis report is at **Attachment B**.

***Car parking and vehicular access (3.02.10)***

Vehicular access and on-site carparking will not be affected by the proposal. The existing car parking and vehicular access arrangements will remain and are considered satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development section of the NDCP 2012, the proposed development is considered acceptable in relation to the abovementioned NDCP 2012 sections and achieves compliance with relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

Bush Fire Protection - Section 4.02

The proposed site is classified as bush fire prone land. A bushfire assessment report has been submitted by the applicant which addresses Planning for Bushfire Protection.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

The earthworks proposed as part of this application are minimal and are consistent with the requirements of the NDCP 2012.

The proposed development is satisfactory with respect to the relevant soil management objectives.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Traffic, Parking and Access - Section 7.03

The proposal is acceptable having regard to this section as there are no changes to the current parking and access arrangements.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Public Participation – Community Participation Plan (CPP)

The proposed development was publicly notified in accordance with CN's CPP and 14 submissions have been received in response.

The key issues raised within the submissions have been discussed previously in this report under the relevant policy section where applicable. Refer also to Part 5.8 of this report for more detailed discussion on remaining issues.

**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 EP&A Act and the Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

**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.

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

It is considered that the proposal will not have any negative social or economic impacts.

**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 northern part of the lot is identified as a current landslide risk under the Newcastle Coastal Zone Management Plan. The proposed development is located to the south of the mapped landslip area. All new works will also be required to comply with the Building Code of Australia.

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**

The application was notified in accordance with CN's CPP. 14 submissions were received during the notification period and an additional three submissions were received after the closing date.

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

Issue	Comment
Non-compliance with the NLEP 2012 Building height limit	<p>The majority of dwellings within this part of Scenic Drive exceed the maximum building height as a result of protruding floor levels on steep sites.</p> <p>The applicant is entitled to justify the departure by way of a clause 4.6 Application to vary a Development Standard.</p> <p>Refer to previous discussion within Part 5.1 of this report.</p>
Height exceedance if approved will create a precedence within the area	<p>There are a large number of dwellings within the area of Scenic Drive, Hickson Street and Lloyd Street in Merewether that exceed the NLEP 2012 maximum building height of 8.5m.</p> <p>Notwithstanding, every application is assessed on its merits and assessed against the NLEP 2012 and the NDCP 2012.</p> <p>Refer to previous discussion within Part 5.1 of this report.</p>
Loss of views	View impacts are acceptable having regard to the

	<p>performance criteria of section 3.02.09 of the NDCP 2012.</p> <p>Refer to previous discussion within section 5.3 of this report and via the applicants view analysis report.</p>
<p>Privacy impacts from new south facing windows</p>	<p>Privacy impacts are acceptable having regard to the acceptable solutions and performance criteria of section 3.02.07 of the NDCP 2012.</p> <p>Refer to previous discussion within section 5.3 of this report.</p>
<p>Additional overshadowing due to proposed second storey extension</p>	<p>Given the orientation of the site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory and in accordance with the acceptable solution criteria of the NDCP 2012.</p> <p>Refer to previous discussion within section 5.3 of this report.</p>
<p>Additional glare from new colorbond roof</p>	<p>In regard to the colour of the proposed metal roofing, it is noted that the BASIX Certificate requires a maximum solar absorptance of medium (0.475 - 0.7).</p> <p>The selected Colorbond metal roofing will be a colour classified as medium.</p> <p>The existing Colorbond roofing appears to be the colour “Windspray” which is a medium grey colour. Windspray is a colour which is still available, and the owners would like to match this colour for the new area of roofing. Windspray, as a medium colour should have a lesser reflectivity when compared with colours such as Surfemist or galvanised metal roof sheeting.</p> <p>A lesser reflectivity will assist with addressing any glare problems for adjacent property owners above or behind the site in Hickson Street.</p> <p>The manufacturer of Colorbond metal sheeting, Bluescope Steel, provides information on their website in relation to glare from metal roofing. This information advises that reflectivity from Colorbond roofing will reduce over time and will reduce significantly within the first twelve months of installation.</p> <p>A medium colour of Colorbond, as required by the BASIX</p>

	Certificate for energy efficiency will not pose an adverse glare issue for adjacent property occupants.
lack of a Section 4.6 application to vary the development standard in relation to the maximum building height	A clause 4.6 application was submitted and was uploaded to the CN application tracker.  Refer to previous discussion within Part 5.1 of this report.
Inaccurate and misleading Statement of Environmental Effects	The architect advised that in relation to the Statement of Environmental Effects document, Issue B which was an earlier incomplete draft of the Statement of Environmental Effects was inadvertently uploaded with the application documents at the time of submission.  The error was corrected prior to the completion of the notification period, with the correct document, Issue D provided to CN.  Issue D includes correct dimensions in relation to the building height and additional detail in relation to view sharing.
Impacts on property values	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.

**5.9 The public interest**

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The development is in the public interest as it achieves the objectives of the R2 Low Density Residential land use zone and applicable principal development standards and will allow for the orderly and economic development of the site.

**6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment C** are included in any consent issued.

**ATTACHMENTS**

**Item 42 Attachment A:** Submitted Plans - 59 Scenic Drive, Merewether

**Item 42 Attachment B:** View Analysis Report – 59 Scenic Drive, Merewether

**Item 42 Attachment C:** Draft Schedule of Conditions - 59 Scenic Drive,  
Merewether

**Item 42 Attachment D:** Processing Chronology – 59 Scenic Drive, Merewether

**Item 42 Attachments A-D distributed under separate cover**

**ITEM-43                    DAC 01/12/20 - DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT**

**APPLICANT:**            **PETER BLAKE**  
**OWNER:**                **WICKHAM LANDS PTY LTD**  
**REPORT BY:**           **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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**PART I**

**PURPOSE**

An application (DA2018/00773) has been received seeking consent for alterations and additions to the mixed-use development approved under DA2016/00384, which was approved by the Joint Regional Planning Panel (JRPP) on 20 October 2019. The subject site is 73-79 Railway Lane, Wickham.

The proposed development amends the existing approval to facilitate an additional four storeys including 40 residential apartments. The total number of residential apartments resulting in the development increases from 150 to 190.

The proposed development also amends the previous basement parking design, the design of the commercial tenancies and the design of open space and landscaping. The application interlinks with the previous approval (levels three to seven – DA2016/00384), while proposing a new design for the basement to level two, and levels seven to thirteen.

The submitted application was assigned to Senior Development Officer, Damian Jaeger, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination as the construction value of the proposed development (\$27.53m) exceeds the staff delegation limit of \$10M. The application also involves a proposed variation to the height development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

It is advised that the proposal is the subject of a deemed refusal appeal lodged with the Land and Environment Court. Currently a hearing is set down for 14 -



**Subject Land: 73-79 Railway Lane, Wickham**

15 January 2020. Should the development application (DA) be approved by the DAC, the deemed refusal appeal can be withdrawn by the applicants.

Further, a draft voluntary planning agreement associated with this proposal has been separately assessed and reported to Council by City of Newcastle's (CN) Urban Planning Section at **Attachment A**. At the Ordinary Council meeting held on 22 September 2020, Council resolved to place the voluntary planning agreement on public exhibition. The exhibition has now been completed and the draft voluntary planning agreement, associated with this proposal, is being reported to Council for endorsement on 24 November 2020. However, it is noted that under the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the submitted DA and voluntary planning agreement require separate assessment processes and pathways.

The current development has been recommended for approval on a deferred commencement basis and the finalisation of the voluntary planning agreement forms one of the deferred commencement conditions.

A copy of the amended plans for the proposed development are at **Attachment B**.

The DA was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012) – section 8.0 (now repealed) and one submission has been received in response.

The objector's concerns included:

- i) Questions regarding CN as being the appropriate consent authority;
- ii) Objection to how the additions and alterations have been submitted under the subject application;
- iii) Questioning the proposed construction costs of the development;
- iv) Concerns regarding the public benefit of the height exceedance;
- v) Concerns regarding urban design elements of the proposal;
- vi) Concerns regarding solar access, natural ventilation and amenity aspects for the proposed dwellings; and
- vii) Questioning the public art aspects as the proposal is over 46.5m in height.

Details of the submission received is 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.

**Issues**

- 1) Height of Buildings – the proposed development has a building height of 44.99m and does not comply with the maximum building height of 24m prescribed under clause 4.3 of the NLEP 2012. This results in a variation of 87.46%. The applicant has submitted a clause 4.6 variation request.
- 2) Matters raised in the submission including height, urban design, amenity and visual impacts.

**Conclusion**

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

**RECOMMENDATION**

***Vote by division***

- A. That the Development Applications Committee, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out;
- B. That DA2018/00773 for proposed alterations and additions to the approved mixed-use development (DA2016/00384) involving four additional storeys, an additional 40 apartments, alterations to basement car parking and design of commercial tenancies at 73-79 Railway Lane, Wickham be approved and consent granted on a deferred commencement basis, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- C. That those persons who made submissions be advised of CN's determination.

**Political Donation / Gift Declaration**

Section 10.4 of the EP&A Act 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?*

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## PART II

### 1.0 BACKGROUND AND THE SUBJECT SITE

#### Background

The JRPP approved DA2016/00384 on 20 October 2019, for “demolition of existing buildings and erection of 10 storey mixed development including 150 residential units, two commercial units, two basement levels for parking and associated site works” on this site. As part of this approval the 10<sup>th</sup> storey consisted of rooftop terraces and communal open space.

No works under this consent have commenced on site as yet and the approval has not lapsed.

#### Land and Environment Court Appeal

On 29 April 2020, the applicants lodged a deemed refusal appeal against the application with the Land and Environment Court. Currently a hearing is set down for 14-15 January 2020.

Should the DA be approved by the DAC, the deemed refusal appeal can be withdrawn by the applicants.

#### Subject Site

The subject property comprises Lot 11 DP 1106378 and Lot 110 DP 1018454, and is known as 73-79 Railway Lane, Wickham. The site is irregular in shape and has an area of 4,556m<sup>2</sup>. The site adjoins Railway Lane to the south, with the railway corridor located on the southern side of Railway Lane. The consolidated site has a frontage of approximately 109m to Railway Lane, a western boundary of 41.135m, a northern boundary of approximately 83.635m and an eastern boundary of approximately 69.76m.

The site is currently occupied by a large industrial building and associated yard, which has been used for storing and servicing of vehicles. The site is surrounded to the north and west by industrial properties. To the east (between the site, Croft Street and Railway Street) is a small cluster of single and two storey residential properties and the Lass O'Gowrie Hotel (Local Heritage Item I691 under the NLEP 2012). Further east, the suburb of Wickham is a varied mix of older industrial /

commercial uses, single dwellings, lower scale multi-unit housing and newer larger scale mixed-use apartment buildings.

The subject site and surrounding area are relatively flat in level with a slight fall towards the north east. The subject site does not contain any trees or shrubs.

## **2.0 THE PROPOSAL**

The applicant seeks consent for alterations and additions to the approved mixed-use development (DA2016/00384). The application is lodged on the basis that it interlinks with the previous approval (levels three to seven – DA2016/00384), while proposing a new design for the basement to level two, and levels seven to thirteen, as follows:

- i) Increase of four additional storeys (ie. levels 10-13) and an additional 40 residential apartments within the overall reconfigured design;
- ii) Amendment to basement parking design, including removal of basement level two and relocation of parking from the previous basement level two, the ground floor and level one;
- iii) Amendment to the design of the commercial tenancies; and
- iv) Alterations to the design of open space and landscaping for the site, including relocation of the ground floor communal open space courtyard to level two, and incorporation of private courtyards for 11 apartments on level two.

The overall development (ie. combination of the approved DA2016/00384 and the works proposed under DA2018/00773) involves:

- i) Demolition of the existing buildings.
- ii) Construction of a 14-storey mixed-use development (height of 44.99m) comprising a total of 190 residential apartments with the following configurations:
  - a) 12 x studio units
  - b) 43 x one-bedroom units
  - c) 131 x two-bedroom units
  - d) 4 x three-bedroom units
- iii) Basement and ground level parking comprising 228 parking spaces.
- iv) Two commercial units (301m<sup>2</sup> and 105m<sup>2</sup> respectively).
- v) A courtyard garden element on the podium at level two.

- vi) Associated site works.

Refer to **Attachment B** for a copy of the amended floor plans and elevations of the proposal.

The various steps in the processing of the application to date are outlined in the Processing Chronology at **Attachment D**.

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). One submission was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

- i) Concern that the JRPP should be the consent authority, not CN.
- ii) It has been raised that the scope of the current application should be the entire proposal (ie. not DA2016/00384 with the addition of the proposed changes under this DA2018/00773).
- iii) The cost estimate for the proposal is questioned.
- iv) The public benefit resulting from the 45m high proposal is questioned.
- v) Issues raised regarding the urban form of the proposal, it's height and compliance with the requirements and intent of the Apartment Design Guideline (ADG).
- vi) Concern regarding the effective solar access, natural ventilation and amenity achieved by the proposed dwellings within the development and that it does not comply with the provisions of the ADG in these respects.
- vii) The proposed building, being over 46.5m in height, should be required to provide Public Art (ie. 1% of the total capital cost).

### 4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to section 4.46 of the EP&A Act, as approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act 2017*. Subsidence Advisory NSW granted their General Terms of Approval on 1 July 2019, at **Attachment E**.

It is also advised that the proposal was originally referred to Water NSW as integrated development due to the provisions of the *Water Management Act 2000*. Water NSW subsequently have confirmed that the current proposal no longer

constitutes integrated development as no ground water removal would likely be necessary and, as such, no licences / approvals are required.

## 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 EP&A Act, as detailed hereunder.

### 5.1 Provisions of any environmental planning instrument

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

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The previously approved development (DA2016/00384) included an assessment of the existing site suitability in respect to contamination (consisting of asbestos, construction / demolition wastes, lead, zinc, arsenic and hydrocarbons). A Remedial Action Plan (RAP) was prepared to address the contamination and ensure that the land could be made suitable for the proposed development. The implementation of that RAP was included as a condition of the approval for DA2016/00384.

A new RAP has been prepared and submitted to support the current DA. The changes between the submitted RAP and the one prepared for the earlier DA are minor. It is noted that the reduction of underground parking compared with the earlier proposal results in the required excavation for the development being reduced. This results in a reduction of the potential for groundwater ingress to the excavation, and a smaller total volume of material needing to be removed from the site. All the identified fill material will still be removed from site for appropriate disposal, with the reduction in volume of excavation applying to the underlying natural alluvial material only.

The recommended consent conditions regarding contamination are similar to those applied to the previously approved development, consisting of adoption of the RAP, the preparation of a validation report and the removal and disposal of all material which does not achieve the set remediation criteria. The application has been assessed against SEPP 55 and is considered acceptable subject to conditions of consent, as recommended at **Attachment C**.

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

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the JRPP to be the determining authority for development where it is included in schedule 7.

The capital investment value of the currently proposed application is approximately \$27.53m including GST and falls below the \$30m threshold for consideration by the JRPP. It is further advised that the proposal does not fall into any of the other categories of development which would trigger schedule 7 of the SEPP and, as such, CN is the consent authority for the proposal.

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

The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP provides that the NDCCP 2012 can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

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

The Coastal Management 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 'coastal zone' is defined in the *Coastal Management Act 2016* as comprising four coastal management areas: coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle Local Government Area (LGA) has no areas identified in the coastal vulnerability map.

The subject site is partially affected by the coastal environment area towards the north eastern corner. The proposed development is not inconsistent with the Coastal Management 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.

Ausgrid

The previous proposal was referred to Ausgrid under the provisions of clause 45 of the ISEPP to seek their comments regarding the proposal in context of the electricity transmission and distribution network. Ausgrid raised no objections to the design of the proposal subject to standard criteria regarding electricity supply and construction safety requirements. The current proposal was not referred to Ausgrid as the proposal retains the same footprint at the south eastern corner as the approved

design (area of potential effect) and, as such, no new issues arise. Conditions are recommended at **Attachment C** to ensure Ausgrid's requirements are met.

### Sydney Trains and Acoustic Impacts

Clause 86 of the ISEPP requires concurrence from Sydney Trains (under Transport for NSW) for development that involves the penetration of ground to a depth of at least 2m below ground level within 25m of a rail corridor. Sydney Trains has issued their concurrence and provided conditions for the development on a deferred commencement consent basis.

Sydney Trains conditions have been included within the recommended condition at **Attachment C**. A copy of Sydney Trains advice is at **Attachment F**.

In addition, the potential for acoustic impacts from the nearby railway line has been assessed by CN staff in accordance with clause 87 of the ISEPP as well as acoustic impacts from nearby Lass O'Gowrie Hotel. A Noise Assessment Report prepared by RCA Australia has been submitted to support the proposed development. The assessment report provides a description of the acoustic issues associated with the proposed development, a determination of noise levels and appropriate project criteria, an assessment of the impact of rail traffic noise and noise from the adjacent Lass O'Gowrie Hotel, and recommendations for any noise management measures that will be necessary.

It is identified that the required acoustic levels can be achieved for all proposed units with the incorporation of building treatments for walls, windows and doors. The glazing specifications will vary between units depending upon proximity and exposure to rail, hotel and traffic noise. A condition has been recommended within the draft conditions of consent which requires that acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by RCA Acoustics, and further that certification be provided prior to issue of Occupation Certificate.

The assessment considers the different orientations and varying distances from the noise sources to the proposed residential units and determines that internal noise level goals can be achieved in all units of the development, with the incorporation of building treatments for walls, windows and doors. The required glazing specifications vary between units depending on the exposure to rail traffic and the hotel. A consent condition requiring the adoption of the recommendations contained in the Noise Assessment has been included within the recommended conditions contained at **Attachment C**.

### **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 No 65 – Design Quality of Residential Apartment Development (SEPP 65)**

SEPP 65 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 ADG. An assessment of the development under the design principles is provided below.

CN’s Urban Design Consultative Group (UDCG) reviewed the application on 19 July 2019. A summary of the UDCG’s advice in relation to the design principles is provided in the table below.

Design Quality Principles	Assessment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDCG comments:</u></p> <p>Industrial buildings and an industrial storage yard occupy the site. Railway Lane to the south is currently a narrow carriageway. A similar industrial site to the immediate north is proposed for development after site remediation.</p> <p>A heritage listed site – the Lass O’Gowrie Hotel and a two-storey duplex are situated to the immediate east of the site.</p>	<p><u>Applicant’s response:</u></p> <p>No issues raised by the UDCG in relation to context and neighbourhood character.</p> <p><u>Assessments Officer’s comment:</u></p> <p>The proposal is acceptable having regard to the strategic planning outcomes intended for the Wickham area.</p>
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDCG comments:</u></p> <p>The additions to the approved development extend the outer ‘tower’ sections of the approved development by an additional five storeys. Additions are proposed as seamless extrusions, continuing the form and finishes of the approved development.</p> <p>Alterations to the existing approval involve the removal of one full level of basement parking (basement 2), the introduction of a second driveway</p>	<p><u>Applicant’s response:</u></p> <p>The minutes at the bottom of page 2 advise that the Wickham Masterplan (WMP) is not likely to be adopted in the early future. The WMP has been adopted and the NDCP 2012 has also been updated to reference the WMP.</p> <p>The UDCG minutes raise concern over the setbacks of the proposed and approved residential wings on the north frontage, stating that they do not satisfy ADG recommendations and would leave inadequate separation from future development on the large site immediately</p>

street access in lieu of deep soil landscaping, and a substantial reduction in the proposed area of commercial space proposed (958m<sup>2</sup> as approved with 406m<sup>2</sup> now proposed). No car parking was previously proposed at ground level or at level one in the approved development, but the revised proposal includes extensive car parking at ground level with a thin sleeve of commercial space on the southern extremity. Above, at level one, car parking under the proposal occupies much of the footprint extending to the northern, eastern and western boundaries. This level was previously primarily commercial, with four residences at the northern side, and with a large central courtyard, a smaller eastern landscaped courtyard, and deep soil planting to the west. The approved development was set back from the boundaries at both ground level and level one, but the revised proposal pushes the car parking structure to three of the four site boundaries.

The proposed development extends an approved U-shaped plan form rising stories plus rooftop common areas to 14.5 levels (by virtue of a partially above ground basement). The approved lower four levels are partially expressed as a brick faced podium extending east over a vehicle entry. A central landscaped courtyard is now proposed at level two to the inner area of the U-shaped plan. This central court is set above three levels of carparking with a smaller landscaped common area at level nine bridging the street front elevation between the outer residential levels, which are proposed to continue to level 13.

The development is proposed at the

to the north.

The setbacks at the lower levels, other than the new carpark, generally reflect those approved by the JRPP.

The proposed alterations will introduce a boundary wall to the north for the ground level and the first floor. From there the development steps back consistent with that approved by the JRPP and then for the proposed new levels consistent with the ADG.

To summarise the setbacks to the north boundary are:

- i) Close to the boundary for approximately 8m high;
- ii) Stepping back to 3m and 6m as per the existing approval setbacks up to level eight; and
- iii) Stepping back to 12m as per the ADG requirements for levels nine and above (other than a very small fire stair intrusion).

Currently the adjoining site to the north is occupied by an industrial building located on the northern boundary (minimal setback) with a similar height as that of the proposed development, see photo below.



It is considered good design and of improved amenity to match up to this existing built form.

western edge of an area of evolving residential apartment buildings in close proximity to the rail interchange. The development rising to 46.2m at the top roof level is in excess of the allowable 24m height limit. The approved development rises to a roof level of 30.3m with an overall height of plant and wall blades of 33.8m.

The proposed height of the additions is based upon recommendations in the WMP, which CN planners advised was not likely to be adopted in the early future.

Setbacks of the proposed and approved residential wings on the north frontage do not satisfy ADG recommendations and would leave inadequate separation from future development on the large site immediately to the north.

In addition we have given consideration to the likely future development of the adjoining property to the north, see sketch plan prepared by EJE below (see **Figure 1** – applicant's future development sketch). The most obvious design outcome for the adjoining site will be to place its car park onto the south boundary adjoining the proposed car park.

Accordingly, the proposal development responds to both the current constraints of the existing adjoining building to the north as well as the most obvious future design outcome for the adjoining site.

Assessments Officer's comment:

It is considered that the applicant has adequately addressed the issues raised by the UDCG. It is noted that ADG allows that "no building separation is necessary where building types incorporate blank part walls."

It is further advised that several recent proposals (ie. being a combination of recent approvals to completed developments) within the southern portion of Wickham (ie. rail edge precinct), reflect a similar design approach with zero setbacks to front, side and / or rear boundaries including 43 Station Street, 1 Union Street, 7 Union Street, 11 Charles Street, 12 Bishopsgate Street, 38 Hannell Street and 10 Dangar Street Wickham. All of these sites, including the subject site, are within the 'rail edge' precinct under the section 6.03 – Wickham of the NDCP 2012.

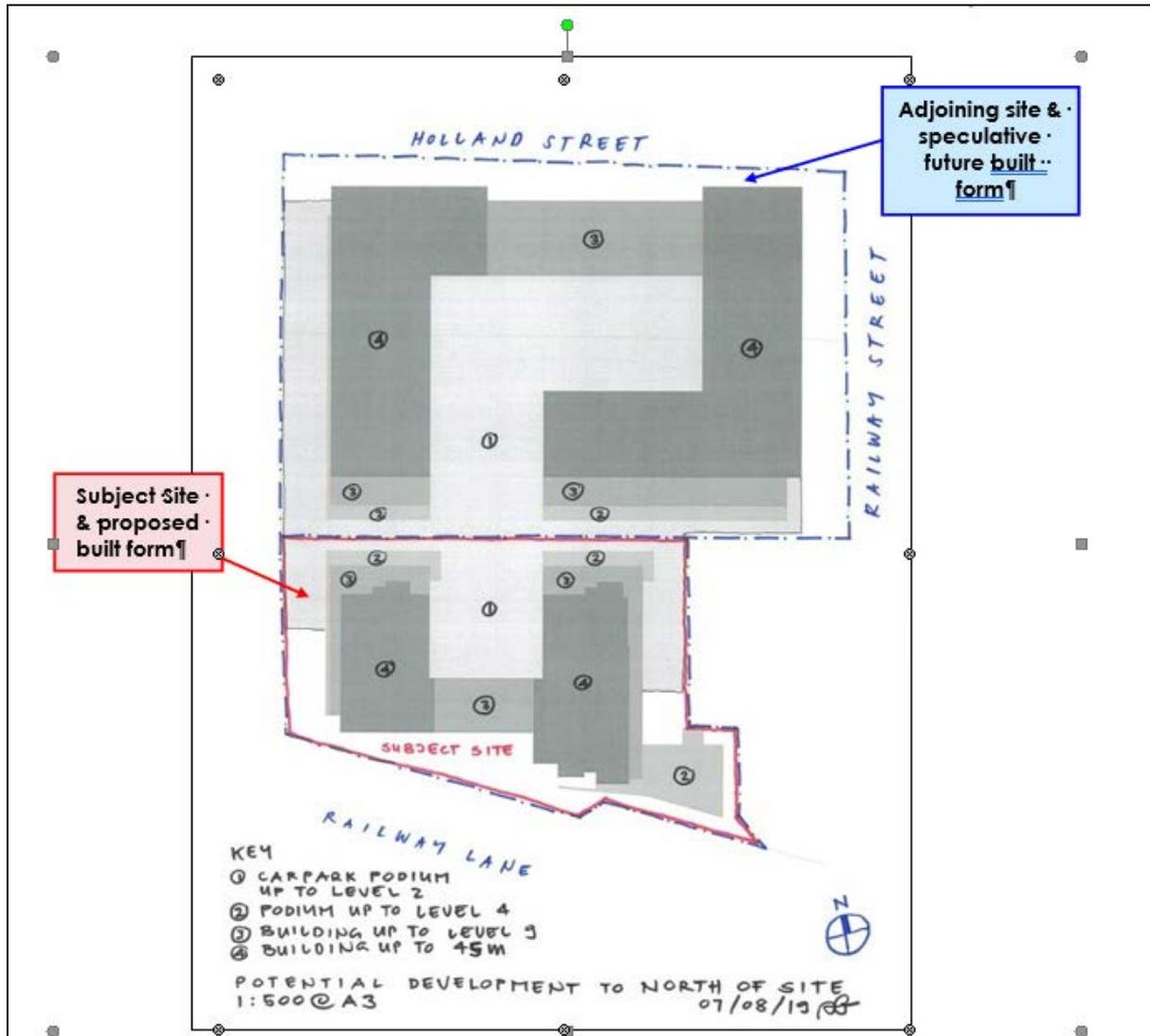


Figure 1 – Applicant’s future development sketch

**Principle 3: Density**

UDCG comments:

The new works combined with the existing approval have a floor space ratio (FSR) of 3.88:1 this being compliant with the maximum FSR of 4.0:1 allowable.

The proposed height of 45m does not comply with the current height limit of 24m.

Applicant’s response:

It is somewhat disappointing that the minutes of the UDCG do not make comment of the strategic location of the site and the good planning outcomes that are achieved by achieving density in this key location with exceptional access to public transport, shops and services and recreation.

The NLEP 2012 prescribes an FSR of up to 4:1 for the subject site.

The approved development achieves an FSR of 3.21:1.

	<p>The proposed development with the additional height will result in an FSR of 3.88:1. This still remains less than the NLEP 2012 density standard.</p> <p><u>Assessments Officer's comment:</u></p> <p>The proposal complies with the allowable FSR. The height exceedance is assessed under clause 4.3 and 4.6 of the report below.</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDCG comments:</u></p> <p>Proposed inclusions in the development providing sustainability are identified by the applicant as compliant with BASIX and exceeding minimum standards for natural ventilation and solar access.</p> <p>Whilst cross ventilation complies, UDCG previously identified the opportunity for improved solar access and cross ventilation to the residential apartments by deletion of the cross-over corridor on the southern central section of the floor plan. It is noted that this was not implemented in the approved development.</p>	<p><u>Applicant's response:</u></p> <p>The UDCG did not raise any concerns in relation to the proposed alterations and additions the subject of DA2018/00773.</p> <p>The UDCG comments in relation to improved solar access and cross ventilation by deletion of the cross over corridor on the southern central section of the floor plan, is part of the approved development under DA2016/384.</p> <p><u>Assessments Officer's comment:</u></p> <p>It is considered that the applicant has adequately addressed the issues raised by the UDCG as per the current application.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDCG comments:</u></p> <p>The following comments from the UDCG's 17 May 2017 review of the earlier development are considered applicable to the current application:</p> <p>i) At podium level it is recommended that planting areas to private courts should be increased in preference to the proposed extent of hard paving and extended into the adjacent common area. Private</p>	<p><u>Applicant's response:</u></p> <p>Landscaping on the podium has been increased as requested please refer to the attached drawings.</p> <p><u>Assessments Officer's comment:</u></p> <p>It is considered that the applicant has adequately addressed the issues raised by the UDCG. The current proposal, while reducing / amending some of the positive landscape elements of the previous design, is still acceptable and would not warrant refusal or redesign on</p>

<p>courts should all have planting separation in addition to privacy screens.</p> <p>ii) Planter edges should not rise vertically more than (say) 500mm in one increment.</p> <p>iii) Sand pits and other children’s’ play features should be incorporated into the central common area.</p> <p>It is noted that the current proposal has fully dispensed with the approved proposal’s area of deep soil planting on the development’s western side, which had provided a useful opportunity for introducing some appropriately scaled trees. It appears that no deep soil planting is now proposed, which is considered to be a retrograde step.</p> <p>The approved roof terrace communal area on the tenth floor (level nine), which is partially landscaped, and which included attractive covered barbeque areas and seating, has been substantially reduced in area. The proposed smaller communal area in this location, is likely to introduce noise conflicts with the immediately adjacent proposed residential units on this level.</p> <p>Similarly, at level one, the landscaped terrace on the eastern side of the approved commercial area has been deleted in favour of an enclosed car parking structure which extends virtually to the eastern boundary. The corresponding area at level one above, is proposed to become extensive hard-paved “private garden” spaces for Units 2.15, 2.16 and 2.17. These areas are proposed to include narrow planter beds that would only be capable of supporting low growing shrubs, which do not appear to have</p>	<p>this basis.</p>
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<p>any provision for (body corporate) maintenance access. The approved large central courtyard has been moderately reduced in area and relocated to the level above.</p> <p>This proposed revision represents a reduction of soft landscaping area, and a reduction of communally and publicly accessible landscaped open space, while at the same time introducing a substantial number of additional residences.</p>	
<p><b>Principle 6: Amenity</b></p> <p><u>UDCG comments:</u></p> <p>In addition to the northern setback, east and west side setbacks remain non-compliant.</p> <p>The proposed deletion of the car parking at basement level two, and introduction of additional parking to support the proposed additional units has involved, as described under Built Form and Scale, the dedication of a substantial proportion of both ground level and level one as car parking, and the creation of a podium form that extends to eastern, northern and western boundaries. The impact of this proposed change arising from the form, and related overlooking upon the neighbouring low-scale residences to the east has not been adequately addressed. One unit, no. 1.07 is somewhat isolated from its neighbours, and is overshadowed by the car park structure proposed adjacent to its north. Its only aspect is to the open driveway below.</p> <p>The UDCG does not support the extent and form of glazed balustrades, and recommends partially or fully obscure balustrades for privacy, screening of balcony furniture, thus</p>	<p><u>Applicant's response:</u></p> <p>Additional landscaping as shown on the attached drawings combined with the proposed setback of private courtyards to the east on level two will ensure adequate privacy is maintained.</p> <p>The clear balustrades are part of the approved development for the lower levels and the upper levels do not require obscure glass given the view angles from these levels.</p> <p><u>Assessments Officer's comment:</u></p> <p>It is considered that the applicant has adequately addressed the issues raised by the UDCG. The applicant has amended the extent of glazed balustrades to address the concerns of the UDCG.</p> <p>The setback aspects have been discussed above under Principle 2. The altered ground floor and first floor setbacks do not result in any privacy / overlooking impacts on neighbouring sites as the associated elevations are blank walls.</p> <p>It is agreed that Unit 1.07 has a lesser amenity due to its position in terms of outlook and solar access. The overall development still meets the solar access requirements under the ADG. It is typical</p>

<p>providing less exposed, more useable private open areas.</p>	<p>of large multi-storey apartment developments that a small proportion of proposed dwellings will have a slightly lesser aspect / amenity compared to the overall development.</p>
<p><b>Principle 7: Safety</b></p> <p><u>UDCG comments:</u></p> <p>Egress from the western fire stairs is directly into the main vehicle driveway and this needs to be amended.</p>	<p><u>Applicant's response:</u></p> <p>The Fire Stair 6 from basement to ground level has been adjusted so as to not have the exit directly into the vehicle driveway, please refer to the attached drawings.</p> <p><u>Assessments Officer's comment:</u></p> <p>It is considered that the applicant has adequately addressed the issues raised by the UDCG.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDCG comments:</u></p> <p>The number of apartments and the variety, including studios, would cater for the identified market in this evolving location. The predominance of two-bedroom apartments over studios or single bed apartments provides flexibility for most occupants.</p> <p>The large numbers of apartments with common circulation on levels two to eight is well in excess of ADG recommendations and is not supported.</p> <p>The level nine communal area previously provided good social amenity under the approved scheme, but has been reduced in area, in spite of the significant increase in the number of residences proposed. The communal spaces should include several enclosed area(s) with simple facilities, - kitchenette, toilet etc. Also, a toddler's play space with sandpit etc. (as included in the approved scheme</p>	<p><u>Applicant's response:</u></p> <p>We note that the UDCG have supported the mix of units.</p> <p>In relation to comments concerning circulation we note that levels two to eight are as approved under DA2016/384.</p> <p>It is considered that the number of apartments from level two to eight is not excessive, because of its U-shaped arrangement and layout. Each wing and each corridor are facing a different direction and could have its own identity.</p> <p>The location of elevators / lift lobbies allows all Residents to access their Unit without using two different corridors.</p> <p>It is considered that the proposal offers a sufficient amount of communal spaces with a very diverse range of community areas including a 326m<sup>2</sup> courtyard on level two, a 159m<sup>2</sup> community garden on level four (including kitchenette and toilet), several corridor lounge areas (level four to eight) and a 426m<sup>2</sup> roof terrace on level nine.</p>

<p>but is not now proposed) remains a very desirable amenity for future young families.</p> <p>The UDCG recommends provision of a car wash area opening onto external landscaping.</p>	<p><u>Assessments Officer's comment:</u></p> <p>It is considered that the applicant has adequately addressed the issues raised by the UDCG.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDCG comments:</u></p> <p>The UDCG considers the increased bulk and scale of the overall development requires further design development. This should address the relationship of the brick faced podium and additional upper floors, and the impacts of the proposed above - ground car park. Further consideration is required of the central elevation linking the outer towers as viewed from the street elevation. Use of increased recess and colour / tonal variation is recommended.</p>	<p><u>Applicant's response:</u></p> <p>The relationship of the brick faced podium and the additional upper floors has been designed as a reference to the scale and materialisation of the existing warehouse buildings in the Wickham precinct.</p> <p>It is proposed to extend the vertical wall blades in the lower levels to achieve a more dynamic rhythm and to underline the intention of a more filigree façade structure. Please refer to the attached drawings.</p> <p>The UDCG minutes do not articulate in detail the aesthetic concerns relating to the raised car park. The car park is sleeved behind a commercial tenancy and is otherwise not particularly visible from public spaces. The car park responds to both the existing surrounding and likely future surrounding built form.</p> <p>EJE advise that the Central Elevation (Street Elevation) linking the two towers has been created with a very well-structured and delicate composition. The design works with subtle balcony or Loggia recesses, with vertical tower-like blade elements, with different materialised wall blade arrangements and with the use of different coloured formations; all to emphasize the vertical façade elements and visually to breakdown the scale of the development.</p> <p>Additional drawings (A1012.1-A1014 and A1016 directly address the aesthetics of the car park elevation.</p>

	<p>The design intent of the precast concrete panels with its diamond pattern is to break down the scale of the geometric nature of the podium – the diamond pattern is a reference to the paving brick used in Newcastle and in particularly the Wickham area.</p> <p>Further the proposed precast concrete panels are rebated facade elements to allow a playful appearance between sunlight and shade on the surface of the material.</p> <p><u>Assessments Officer's comment:</u></p> <p>It is considered that the applicant has adequately addressed the issues raised by the UDCG by the final amended design. The elevations of the podium level incorporate a decorative pattern to offer further relief and interest.</p>
<p><b>Amendments Required to Achieve Design Quality</b></p> <p><u>UDCG comments:</u></p> <p>Clarification of the legal basis of this application needs to be resolved by CN.</p> <p>The above detailed matters discussed above and in particular those related to aesthetics, landscaping, social issues and amenity, need to be resolved to achieve design quality.</p>	<p><u>Applicant's response:</u></p> <p>This information responds to CN's additional information request dated 12 June 2019 and the UDCG minutes from the meeting of 19 July 2019.</p> <p><u>Assessments Officer's comment:</u></p> <p>It is advised that the application is the subject of a deemed refusal appeal before the Land and Environment Court. The adoption of the WMP, the applicant's submission of revised clause 4.6 request for the height variation and the formal offer of a Voluntary Planning Agreement address the legal aspects of the application.</p> <p>It is considered that the proposal is adequate in terms of the issues raised by the UDCG. It is noted that several of the issues raised by the UDCG are related to non-compliances already previously supported as part DA2016/00384 (with which this DA is interlinked) or are</p>

	<p>indicating that the previous development was a preferred design outcome compared to the current proposal. While it is agreed that aspects of the previous design resulted in a better outcome (eg. ground floor combination of open space, public domain and commercial units), the current proposal is still acceptable and would not warrant refusal or redesign on this basis.</p>
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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.

<b>Apartment Design Guide (ADG)</b>		
<b>3D Communal and public open space</b>		
<b>Objective 3D-1</b>		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.		
<b>Design Criteria</b>	<b>Comment</b>	<b>Compliance</b>
1. Communal open space has a minimum area equal to 25% of the site.	<p>The proposal provides four areas of communal open space / public open space;</p> <ul style="list-style-type: none"> <li>i) Ground floor public open space – 160m<sup>2</sup></li> <li>ii) Level two – 1,063m<sup>2</sup></li> <li>iii) Level four - 216m<sup>2</sup></li> <li>iv) Level nine - 198m<sup>2</sup></li> </ul> <p>The total communal open space provided is 1638m<sup>2</sup>, or 36% of the total site area.</p>	Complies
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9am and 3pm on 21 June (mid winter).	At least 50% of the communal open space achieves direct sunlight for a minimum of 2hrs between 9am and 3pm in mid-winter.	Complies

<b>3E Deep soil zones</b>			
<b>Objective 3E-1</b>			
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.			
<b>Design Criteria</b>			<b>Comment</b>
1. Deep soil zones are to meet the following minimum requirements:			The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where: <ul style="list-style-type: none"> <li>i) The location and building typology have limited or no space for deep soil at ground level (eg. central business districts, constrained sites, high density areas, or in centres); and / or</li> <li>ii) There is 100% site coverage or non-residential uses at ground floor level.</li> </ul> Due to the subject site's location, and extensive site coverage with non-residential development at ground (commercial units and parking), the development with the design guidance for this objective by integrating acceptable alternative forms of planting such as deep planting boxes on upper levels. This is considered acceptable.
<b>Site area</b>	<b>Minimum dimensions</b>	<b>Deep soil zone (% of site area)</b>	
greater than 1,500 m <sup>2</sup>	6m	7%	
			<b>Compliance</b>
			Merit based assessment
<b>3F Visual privacy</b>			
<b>Objective 3F-1</b>			
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.			
<b>Design Criteria</b>			<b>Comment</b>
1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required			<b>Separation distances</b>  <u>Up to 12m (Ground level and level one to three)</u> Blank walls with a zero setback are
			<b>Compliance</b>
			Complies and merit based assessment

<p>separation distances from buildings to the side and rear boundaries are as follows:</p>			<p>proposed to the north boundary, eastern boundary and part of the western boundary at ground level and level one. The street front boundary is a variable staggered setback. No minimum separation distance is required for blank walls, as such a zero setback complies with the required separation distances.</p> <p>Level two and three are 3.0m from the northern boundary and approximately 8.7m from the western and 9.6m from the eastern boundary. The street front boundary is a variable staggered setback at these levels. The eastern and western setbacks are considered to be acceptable. The northern windows are provided with sun and privacy louvres and are considered to meet the requirements of the ADG. It is noted that level two and three are consistent with the northern setbacks already approved under DA2016/00364.</p>	
<b>Building height</b>	<b>Habitable rooms and balconies</b>	<b>Non-habitable rooms</b>		
up to 12m (4 storeys)	6m	3m (zero allowable for blank walls)		
up to 25m (5-8 storeys)	9m	4.5m		
over 25m (9+ storeys)	12m	6m		
<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see Figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>			<p><u>Up to 25m (level four to seven)</u> Levels three to seven were approved under DA2016/00384 and the subject application does not make any changes to these levels. The currently proposed DA interlinks with this earlier approval. Levels four to seven have a western and eastern setback of approximately 9.0m and a northern setback of 6.0m.</p>	Complies and Merit based assessment
			<p><u>Over 25m (level eight to level 13)</u> Level eight has a western setback of 10.0m, an eastern setback of approximately 9.0m and a northern setback of 6.0m. The northern windows are provided with sun and privacy louvres and are considered to meet the requirements of the</p>	Merit based assessment

	<p>ADG.</p> <p>Levels 9-13 have western, north and eastern setbacks of approximately 12.0m and comply with the ADG.</p>	
	<p><b>Separation distances between the proposed towers</b></p> <p><u>Up to 25m (level three to seven)</u> Levels three to seven were approved under DA2016/00384 and the subject application does not make any changes to these levels. The currently proposed DA interlinks with this earlier approval.</p> <p>The proposal has a separation distance of 23.3m and complies.</p> <p><u>Over 25m (level eight to level 13)</u> At level eight to 13, a minimum 23.3m separation distance is provided between the eastern and western towers. A minimum separation distance of 24m is required between buildings on the same site and it is considered that the 23.3m proposed is acceptable in this instance.</p>	<p>Complies</p> <p>Merit based assessment</p>

**A4 Solar and daylight access**

**Objective 4A-1**

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

<b>Design Criteria</b>	<b>Comment</b>	<b>Compliance</b>
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of two hours direct sunlight between 9am and 3pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local</p>	<p>144 out of the 190 proposed apartments, or 76%, will achieve a minimum 2hrs sunlight during mid-winter.</p>	<p>Complies</p>

government areas.		
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of three hours direct sunlight between 9am and 3pm at mid winter.	N/A	N/A
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter.	46 out of the 190 proposed apartments, or 24%, receive no direct sunlight between 9am and 3pm at mid-winter.	Complies

**4B Natural ventilation**

**Objective 4B-3**

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.

<b>Design Criteria</b>	<b>Comment</b>	<b>Compliance</b>
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	The development provides for a least 60% of the proposed dwellings to achieve cross ventilation although the quality of ventilation for the studio apartments and the apartments facing the courtyard on level two is somewhat reduced.	Merit based assessment
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	The proposal complies with the maximum single depth to openings being approximately 14.0m.	Complies

**4C Ceiling heights**

**Objective 4C-1**

Ceiling height achieves sufficient natural ventilation and daylight access.

Design Criteria	Comment	Compliance								
<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="209 443 632 887"> <thead> <tr> <th colspan="2" data-bbox="209 443 632 555"><b>Minimum ceiling height for apartment and mixed-use buildings</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="209 555 379 624">Habitable rooms</td> <td data-bbox="379 555 632 624">2.7m</td> </tr> <tr> <td data-bbox="209 624 379 701">Non-habitable</td> <td data-bbox="379 624 632 701">2.4m</td> </tr> <tr> <td data-bbox="209 701 379 887">If located in mixed-used areas</td> <td data-bbox="379 701 632 887">3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table> <p>These minimums do not preclude higher ceilings if desired.</p>	<b>Minimum ceiling height for apartment and mixed-use buildings</b>		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed-used areas	3.3m for ground and first floor to promote future flexibility of use	<p><u>Mixed-use</u> The ground floor has a floor-to-floor height of 3.4m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 3.3m can be achieved for the Ground Floor retail premises.</p> <p><u>Apartments</u> All storeys containing apartments (level one to level 13) have a floor-to-floor height of 3.0m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</p>	<p>Complies</p>
<b>Minimum ceiling height for apartment and mixed-use buildings</b>										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed-used areas	3.3m for ground and first floor to promote future flexibility of use									

**4D Apartment size and layout**

**Objective 4D-1**

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Design Criteria	Comment	Compliance										
<p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="209 1442 632 1704"> <thead> <tr> <th data-bbox="209 1442 419 1554"><b>Apartment type</b></th> <th data-bbox="419 1442 632 1554"><b>Minimum internal area</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="209 1554 419 1592">Studios</td> <td data-bbox="419 1554 632 1592">35m<sup>2</sup></td> </tr> <tr> <td data-bbox="209 1592 419 1630">1 bedroom</td> <td data-bbox="419 1592 632 1630">50m<sup>2</sup></td> </tr> <tr> <td data-bbox="209 1630 419 1668">2 bedroom</td> <td data-bbox="419 1630 632 1668">70m<sup>2</sup></td> </tr> <tr> <td data-bbox="209 1668 419 1704">3 bedroom</td> <td data-bbox="419 1668 632 1704">90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and</p>	<b>Apartment type</b>	<b>Minimum internal area</b>	Studios	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>The proposal complies with the ADG.</p>	<p>Complies</p>
<b>Apartment type</b>	<b>Minimum internal area</b>											
Studios	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											

<p>further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>		
<p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>The proposed apartment design provides every habitable room with a window in an external wall.</p>	<p>Complies</p>
<p><b>Objective 4D-2</b> Environmental performance of the apartment is maximised.</p>		
<p><b>Design</b></p>	<p><b>Comment</b></p>	<p><b>Compliance</b></p>
<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>For a ceiling height of 2.7m, the maximum depth for habitable rooms other than combined living / dining / kitchen rooms is 6.75m.</p> <p>Other than combined living / dining and kitchen rooms, all habitable room depths have been limited to a less than 4m.</p>	<p>Complies</p>
<p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>The majority of the 190 proposed apartments have a maximum habitable room depth of 7m from a window for open plan living, dining and kitchen area.</p>	<p>Merit based Assessment</p>
<p><b>Objective 4D-3</b> Apartment layouts are designed to accommodate a variety of household activities and needs.</p>		
<p><b>Design Criteria</b></p>	<p><b>Comment</b></p>	<p><b>Compliance</b></p>
<p>1. Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</p>	<p>All master bedrooms have a minimum area of 10m<sup>2</sup>, and all other bedrooms have a minimum area of 9m<sup>2</sup> (excluding wardrobe space)</p>	<p>Complies</p>
<p>2. Bedrooms have a minimum dimension of 3m</p>	<p>All bedrooms have a minimum dimension of 3m (excluding</p>	<p>Complies</p>

(excluding wardrobe space).	wardrobe space).	
3. Living rooms or combined living / dining rooms have a minimum width of: i) 3.6m for studio and 1-bedroom apartments. ii) 4m for 2-bedroom and 3-bedroom apartments.	All of the 190 proposed apartments have living rooms or combined living / dining rooms which achieve the minimum dimension required for the number of bedrooms provided.	Complies

**4E Private open space and balconies**

**Objective 4E-1**

Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Design Criteria	Comment	Compliance															
<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Min. area</th> <th>Min. depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	All of the 190 proposed apartments have primary balconies that achieve the minimum area and depths required.	Complies
Dwelling type	Min. area	Min. depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	All the proposed apartments which form part of the podium level (level two) are provided private open space with a minimum area of 15m <sup>2</sup> and minimum depth of 3m. The design is such that this provision only applies to the apartments towards the north portion of the site.	<b>Compliance</b> Complies															

**4F Common circulation and spaces**

**Objective 4F-1**

Common circulation spaces achieve good amenity and properly service the number of apartments.

Design Criteria	Comment	Compliance
1. The maximum number of apartments off a circulation core on a single level is eight.	The maximum number of apartments off the circulation core on a single level is seven apartments.	Complies
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The east and western towers each are serviced by two lifts (ie. four in total). The design of the proposal is such that from ground level to level nine allows access to all lifts via a central common corridor. The proposal does not meet the lift ratio of one per 40 apartments and provides approximately one lift per 47.5 apartments. It is considered that the design outcome in this instance is acceptable.	Merit based assessment

**4G Storage**

**Objective 4G-1**

Adequate, well designed storage is provided in each apartment.

Design Criteria	Comment	Compliance								
<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3+ bedroom</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	Each apartment is provided an extent of storage volume located and access from within the individual apartments, in addition to storage volume access from a common area (a secure storage cage within the car parking areas). It is not considered that 50% of the storage is within the apartment but the proposal is otherwise considered to be acceptable.	Merit based assessment
Dwelling type	Storage size volume									
1 bedroom	6m <sup>3</sup>									
2 bedroom	8m <sup>3</sup>									
3+ bedroom	10m <sup>3</sup>									

The proposal is acceptable having regard to privacy, visual appearance, character, urban design and SEPP 65, taking into consideration the comments received from the UDCG and the design criteria in the ADG.

**State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64)**

The application does not include approval of signage. A separate DA is to be submitted for any future signage which does not comply with exempt or complying development requirements.

**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 the NLEP 2012, within which zone the proposed development is permissible with CN's consent as a combination of retail premises and residential flat buildings (ie. apartments).

The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

- i) To provide a mixture 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.
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The development meets the objectives of the zone as it will encourage a mixture of employment opportunities and accommodation in an accessible location, will maximise public transport patronage and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter region. The subject site is located within walking distance of the Newcastle Interchange (ie. currently incorporating trains and light rail with future bus terminal).

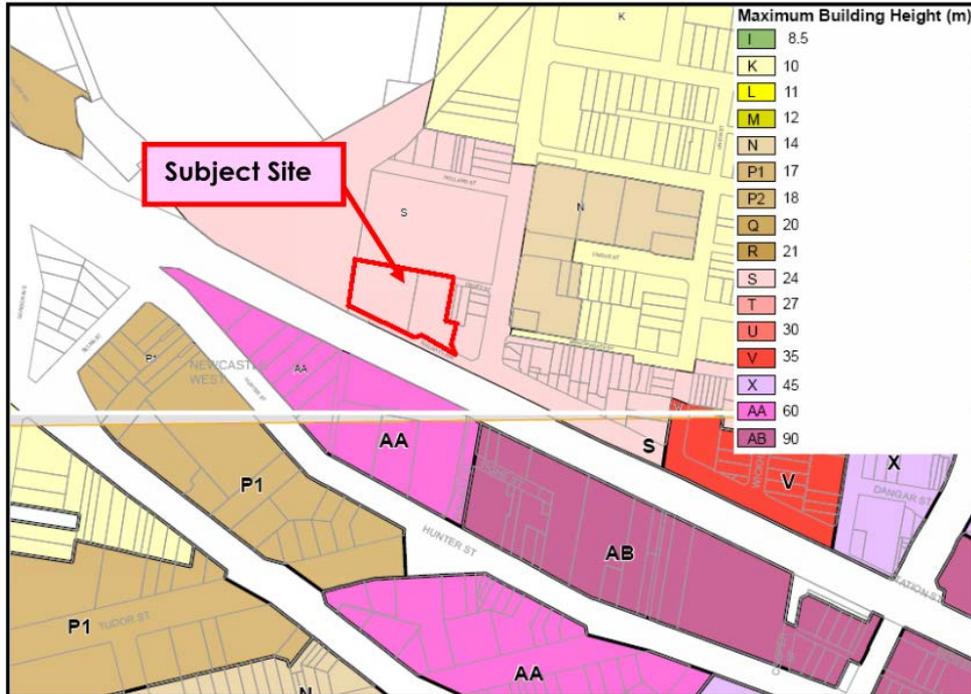
Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height development standard of 24m (see Figure 2). The submitted proposal has a maximum height of 44.99m which exceeds this requirement. This represents an 87.46% variation to the height standard (20.99m exceedance).

Figure 2 – Current allowable height standard (NLEP 2012)



(Source: Applicant's clause 4.6 request, page 9, version E)

The current proposal is interlinked with the previous DA 2016-00384 by retaining the approval of levels three to seven plus partly based on the previous design / layout. It is noted that this previous DA was approved with the following height breakdown and relied on a height variation under clause 4.6 as follows:

- i) The top of the ninth storey is 27.4m.
- ii) The top of the roof terrace and plant areas is 29.9m (clause 4.6 height).
- iii) The top of the architectural fin walls is 31.1m (clause 5.6).

The fin walls within the previous design met the provisions of clause 5.6 'Architectural Roof Features' under the NLEP 2012 and, as such, did not fall within the clause 4.6 variation. The previous fin wall design element is no longer part of the design in the current proposal.

Notwithstanding that the previous development was approved with a variation to 29.9m, the consideration of the current clause 4.6 variation request must be still based on the variation now being proposed (ie. 44.99m) relative to the existing 24m height standard. The assessment of the current clause 4.6 will still have regard to the circumstances of case in this instance which includes the existing environmental planning instruments, planning policies, surrounding approvals / developments and the previous approval on the site.

The applicant has submitted the required clause 4.6 variation request to this height standard. Refer to discussion under clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio (FSR) and Clause 7.10 – Floor Space Ratio (FSR) for Certain Development in Area A

Under the NLEP 2012, the site has an FSR development standard of 4.0:1. The submitted FSR is 3.88:1 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

The subject site has a height development standard 24m. The proposal has a height of 44.99m, being 20.99m over the height standard (87.46% variation).

The applicants have a clause 4.6 request to address the variation to the height development standard as assessed below.

The provisions of clause 4.6 are extracted below:

**“4.6 Exceptions to development standards**

- (1) The objectives of this clause are as follows —
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating —
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless —
  - (a) the consent authority is satisfied that —

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Planning Secretary has been obtained."

The Court of Appeal, in *Legal and General Life v North Sydney Municipal Council (1990) 69 LGRA 201 (Legal and General)*, considered whether there was any limit (numerical maximum) to the extent to which a consent authority could vary a development standard (ie. via the provisions of then SEPP 1 which is now comparable to clause 4.6). The Court ruled that there were no numerical limits in this respect to this discretion where a variation was properly made in the opinion of the consent authority (ie. meets the legal criteria / legal tests) and that the consent authority's discretion in respect to considering the quantum of a variation was "...unconfined".

The context of the Legal and General appeal was against the Council's approval of a large mixed-use residential apartment where the increase over the development standards was 329% for FSR (15:1) and 240% for height (17 storeys). It was found as part of the appeal that the SEPP 1 objection had been properly made and that the Council had properly assessed the SEPP 1 objection to the development standards in accordance with its powers under the provisions.

This appeal was lodged as a third-party challenge (by Legal and General Life) under the previous provisions section 123 of the EP&A Act (ie. now largely similar to the current section 9.46 of the EP&A Act regarding a breach of the provisions of the EP&A Act and seeking the Court to remedy said breach). This judgement shows that a variation can still be allowed under clause 4.6, notwithstanding that it may be numerically large, if the provisions of clause 4.6 are properly met.

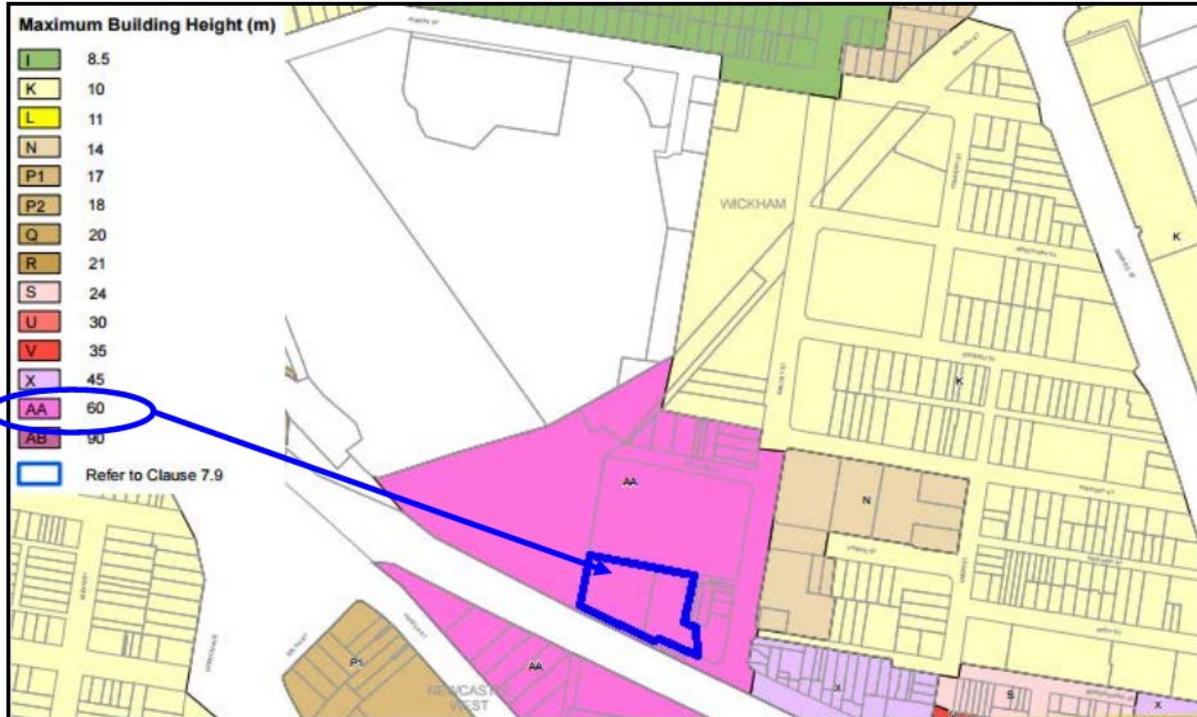
**Height vs FSR 'disconnect' – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case clause 4.6(3)(a)**

The applicant includes within their clause 4.6 request, the historic development standards (see Figure 3 and 4 below) that applied to the subject site as follows:

"The subject site originally had a maximum building height of 60m and an FSR of 6:1 when the NLEP 2012 was gazetted on 15 June 2012 (refer Figures 4 and 5 below - now included as Figures 3 and 4). However these standards were amended (to the current standards with height control of 24m and FSR control of 4:1) as part of the Newcastle Urban Renewal Strategy (NURS) and

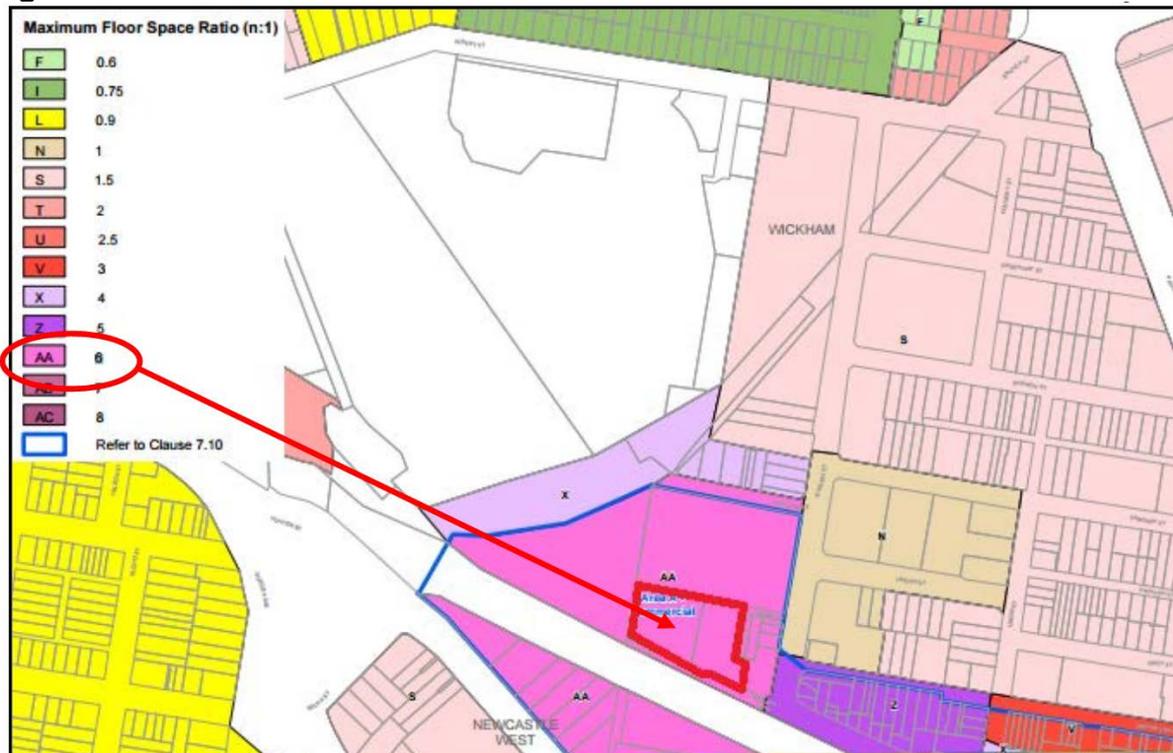
subsequent amendments to zoning, FSR and height controls throughout the city centre that were gazetted on 29 July 2014" (page 11, version E).

Figure 3 – Previous Height Standard NLEP 2012



(Source: Applicant's clause 4.6 request, page 11, version E)

Figure 4 – Previous FSR Standard NLEP 2012



(Source: Applicant's clause 4.6 request, page 12, version E)

At the same time that the height development standards within the NLEP 2012 were amended for the subject site, the heights were also altered in Wickham generally, along Hunter Street and notably within the area around the intersection of Hunter Street and Stewart Avenue where the allowable height increased to 90m.

While the subject site had a greater height development standard under a recent previous version of the NLEP (ie. July 2014), this was later amended by the Department of Planning directly (via the operation of SEPP (Urban Renewal) and this earlier height standard is not considered to be determinative in the consideration of the current clause 4.6 variation request.

Within the applicant's clause 4.6 variation request they make the following submissions, extracted below, regarding the interaction of FSR and height development standards and the resultant outcomes and impacts on the design of the proposed development:

"FSR is the primary "bulk and scale" control used in the NLEP 2012. In this case, there is a disconnect between the current height and FSR controls. The approved development for the site was not able to achieve close to the allowable FSR because of height restriction. The proposed height of 44.99m promotes a better density outcome, closer to the allowable and desired FSR.

The additional floor space achieved will make an important contribution to housing and be consistent with the Ecologically Sustainable Development (ESD) principles. It is sound planning practice to maximise density within the FSR control in this location and this is consistent with CN's Strategic Planning for the city (page 12, version E).

The ADG provides consistent planning and design standards for apartments across the State. It provides design criteria and general guidance about how development proposals can achieve the nine design quality principles identified in SEPP 65 (State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development).

The desired FSR can be achieved by either providing a building that is lower in height but that is filling all of the available height envelope within the height standard (so a more squat building form); or by providing a building form that is taller than the maximum permitted height but that does not use all of the available envelope, and so producing a more slender building form (or tower).

The slender built form is considered to be a superior design outcome, being a more aesthetically pleasing design to achieve a larger floor space. Best practice urban design principles support the slender built form approach. This is set out in the ADG as follows:

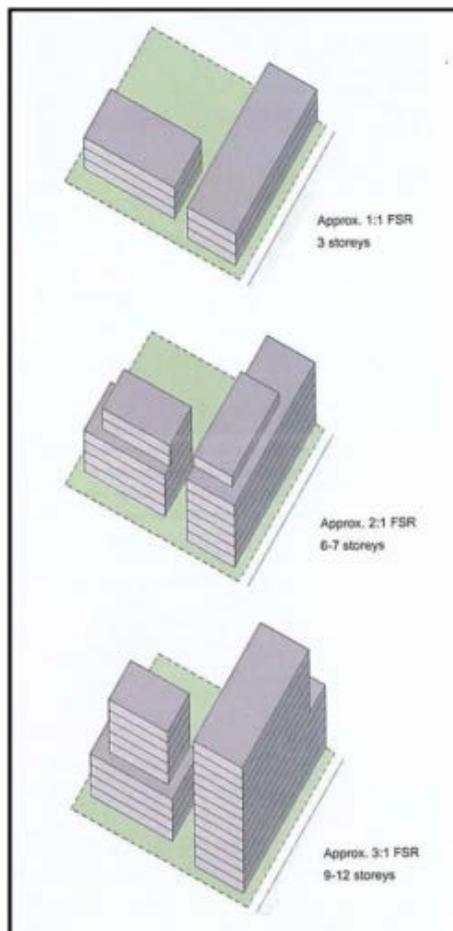
- i) Page 19 “Towers are suited to central business districts, major centres and urban renewal areas. This building type can be freestanding or combined with block developments (podiums).”

Consistent with this design principle, the proposed development is for two towers on a podium;

- ii) Page 21 “Strategic centres are characterised by an established commercial core with a full range of services, taller buildings and a network of retail and commercial streets with active street frontages.”

Taller building forms are consistent with strategic centres such as the inner city of Newcastle; and

- iii) Page 32 in particular identifies relationships between height and FSR and provides relevant diagrams for residential flat buildings, see below (page 15-16, version E).



**Figure 8: Sketches from Apartment Design Guide page 32.**

It can be seen that an FSR of 3:1 results in a suggested 9 – 12 storeys or say 25m to 32m in height conservatively. The FSR of 4:1 adopted by CN for this site should therefore adopt a height of around 14 – 17 storeys or 38m to 46m in

height conservatively. The proposed alterations and additions result in a responsive maximum height of 44.99m and an FSR of 3.88:1.

The ADG supports the slender tower form. With appropriately sized buildings, building floor plates and building depths, they can provide superior amenity to residents in terms of solar access, cross ventilation and views from buildings” (page 16, version E).

The inability of a proposal to achieve a certain allowable FSR for the site (ie. 4.0:1), due to the interaction with the height development standard, is not of itself accepted as direct argument as to why the standard is unreasonable or unnecessary in terms of the assessment of the current clause 4.6 variation request.

Notwithstanding circumstances where it may appear there is a disconnect between the allowable height and FSR within any environmental planning instrument (EPI), as may be the case in this instance, this is not a basis on which it would be accepted that it has been justified that the height standard is unreasonable or unnecessary.

Furthermore, the claimed ‘disconnect’ between the height and FSR standards within the NLEP 2012 may be the intended planning outcome allowing an alternative form of shorter, broader development on the site (eg. a commercial office building). More so, any applicant, before proceeding with a development, is fully aware of the applicable combination of FSR / height standards and ultimately the impacts on any possible design.

It is the applicant’s choice to pursue a mixed-use development (retail premises / residential apartments) with the resultant limitations on the design due to the combinations of FSR, height and interaction with SEPP 65 and ADG. Arguably, the requirements under the ADG are actually the largest limitation on achieving the FSR in this instance and not the interaction between height and FSR within the NLEP 2012. It is considered that support for clause 4.6 variation request on the basis that the interaction of the FSR and height is inappropriate (ie. that it’s disconnected) and, hence unreasonable or unnecessary, is not considered justified and would not be supported on these grounds.

Any clause 4.6 request justifying a variation of the height standard on the basis that it is ‘unreasonable or unnecessary’ needs to focus of the standard itself and not be reliant on the interaction with other standards or controls. This is opposed to a circumstance where the clause 4.6 variation request may argue that the objectives of the development standard are otherwise met notwithstanding non-compliance with the numerical requirements of the standard.

Notwithstanding that the applicant’s submission on the interaction of the FSR / height is not accepted as a basis to argue that the standard is unreasonable or unnecessary, it is advised that the proposed clause 4.6 variation is considered to be acceptable and justified having regard to other elements of the applicant’s clause 4.6 variation request as assessed below.

Height - development standard is unreasonable or unnecessary in the circumstances of the case clause 4.6(3)(a)

The Land and Environment Court has provided guidance via five approaches on which clause 4.6 variations may be considered most notably in *Wehbe v Pittwater Council [2007] NSW LEC 827* by the Chief Justice Preston. While *Wehbe* has been the subject of further judicial reviews it still remains the principle case in terms of clause 4.6 variations and these five approaches continue to be applicable.

The applicant's submitted clause 4.6 variation summaries the five approaches under *Wehbe v Pittwater Council [2007] NSW LEC 827* as follows:

- i) "The objectives of the development standard are achieved notwithstanding non-compliance with the standard (unreasonable and unnecessary);
- ii) The underlying objective or purpose is not relevant to the development (unnecessary);
- iii) The underlying objective or purpose would be defeated or thwarted if compliance was required (unreasonable);
- iv) The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consent that departs from the standard (unreasonable and unnecessary); or
- v) The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard was unreasonable or unnecessary."

The applicant's clause 4.6 variation request submits that the height standard in this instance is unnecessary and unreasonable as the objectives of the development standard are achieved notwithstanding non-compliance with the standard (per point i) listed above). The applicant's clause 4.6 variation request also submits that the standard has been abandoned (point iv) above). Both of these aspects within the submitted clause 4.6 variation request are assessed in the report below.

The height development standard (clause 4.3 of the NLEP 2012) is extracted below:

**"4.3 Height of buildings**

- (1) The objectives of this clause are as follows —
  - (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
  - (b) to allow reasonable daylight access to all developments and the public domain."

The applicant's clause 4.6 variation request makes the following submissions in regard to the height standard being unreasonable or unnecessary in the circumstances of the case:

- “(a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.

The proposed development achieves this objective for the following reasons:

- i) the proposed height provides a better transition from the taller permitted built form to the south and the reduced heights to the north as acknowledged in the WMP and modified the NDCP 2012.
- ii) the proposed height is consistent with the good design principles of the ADG in attempting to achieve as much density as possible in this key location. In particular it provides for more slender tower design rather than squat bulky built form” (page 19, version E).

- “(b) To allow reasonable daylight access to all developments and the public domain.

Reasonable daylight access is provided to all surrounding developments, and the proposed height variation will not result in any detrimental impact to any sensitive land uses, as illustrated in the shadow diagram analysis submitted with the application and having regard to the SEPP 65 design statement” (page 19-20, version E).

“Compliance with the development standard is unreasonable and unnecessary because the objectives of the standard are achieved notwithstanding non-compliance with the standard. Further to the reasons identified in section 6.2 (as extracted above) (page 19) of our report above, the proposed development will meet the objectives of the standard in the following ways:

- i) The site is in the Newcastle City Centre and is identified in both regional and local planning strategies as a city centre. The Newcastle City Centre is the major centre under the hierarchy of centres in the Hunter Valley;
- ii) The scale of the development is consistent with approved developments in the area. The proposed height provides a better transition from the taller permitted built form to the south and the reduced heights to the north as acknowledged in the WMP and modified NDCP 2012;
- iii) The scale of development is consistent with the vision outlined in the WMP and the desired future character of Wickham;

- iv) The scale of development is consistent with regional strategies and plans for higher buildings around key public transport nodes; and
- v) The proposed height is more consistent with the good design principles of the ADG in attempting to achieve as much density as possible in this key location. In particular it provides for more slender tower design than squat built form.

Compliance with the development standard is unreasonable because the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required, for the following reasons:

- i) The objectives of clause 4.3 of the NLEP 2012 aim to ensure a scale of development consistent with established centres hierarchy and allow reasonable daylight access to all developments and the public domain. The proposed additional height is consistent with the future desired character of the Wickham area and its status as a part of the Newcastle City Centre (as outlined in the WMP, Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036). If compliance was required, CNs desired built form would not be achieved because it would mean that a lower, but bulkier building with inferior built form would be proposed to achieve the density set by the NLEP 2012 FSR development standard.

Compliance with the development standard is unreasonable and unnecessary because the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consent that departs from the standard. The following are examples of the Council granting consent for development that departs from the standard:

- a) DA2016/01401 21 Parnell Place, Newcastle East
- b) DA2016/01106 291 King Street, Newcastle
- c) DA2017/00700 169 Hunter Street, Newcastle
- d) DA2017/00758 139 Scott Street, Newcastle
- e) DA2016/00384 73 Railway Lane, Wickham
- f) DA2016/01209 29 Throsby Street, Wickham
- g) DA2016/01024 5 Hall Street, Wickham (now known as 65 Downie Street, Maryville)
- h) DA2016/00351 5 Wickham Street, Wickham
- i) DA2016/00385 5 Throsby Street, Wickham

- j) DA2017/01532 7 Union Street, Wickham” (page 21, version E)

The applicants have raised various elements above to support their clause 4.6 variation request which are assessed below:

- i) The desired built form intended by the WMP, in combination with the NLEP 2012, gives credence to the applicant’s argument that the proposal meets the height standard objectives by providing a better transition within the western end of the Newcastle Central Business District (CBD) area consistent with the established centres hierarchy. The proposal itself is slightly inconsistent with the WMP, in that the ‘public benefit’ aspects of the WMP have not as yet been finalised in context of the proposal. Similarly, the ‘public benefit’ aspects of the WMP have not as yet been incorporated within any draft amendment to the NLEP 2012.

Notwithstanding this, the desired built form intended by the WMP still exists within a publicly exhibited and CN adopted strategic policy and informs an intended future amendment of the NLEP 2012. The lack of the WMP public benefit resolution does not negate this intended desired built form. More so, it is considered that the existence of the desired built form intended within the WMP being adopted, without associated amendments within the NLEP 2012 establishing a clear statutory public benefit ‘mechanism’ and framework, creates the circumstance where an applicant has relied on the directions within the WMP as partial basis of their clause 4.6 variation request.

Furthermore, the WMP ‘public benefit’ requirements are specific to an individual proposal, whereas the ‘public interest’ provisions (under clause 4.6(4)(b) below) are a broad criteria measured against the outcomes under the NLEP 2012 and the wider overall community. The fact that the public benefit requirements under the WMP are not being fully met at this time is not sufficient basis to withhold support for the proposed clause 4.6 request. Further, public benefit requirements under the WMP not being met does not negate that the WMP still adopts strategically these greater heights (ie. 45m for the subject site) and indicates that these heights are appropriate and, in effect, broadly in the public interest. It cannot be the case that these allowable heights are only in the public interest if the public benefit ‘mechanisms’ are met; the public interest is broader principle than that. This balance may be altered into the future where an amendment to the NLEP 2012 specifically achieves a statutory outcome that requires a different balance via its adopted provisions (eg. repeals the operation of clause 4.6 within the WMP area altogether or incorporates specific public benefit clauses which limits the operation of clause 4.6 in some effective way).

- ii) The development does result in a better density outcome for the site within the Newcastle CBD area, compared to a height compliant

development, by proposing mixed-use residential development and increased housing options at the scale submitted. The proposed increased height, and number of dwellings, resulting from the proposed variation only further supports making "...a positive contribution to the desired built form and is considered consistent with the established centres hierarchy."

- iii) It is considered that the proposal results in reasonable daylight access. The submitted shadow diagrams demonstrate that the overshadowing generated is reasonable notwithstanding the non-compliant height. It is noted that the level of shadowing is comparable to the impacts of similar sized and designed buildings approved and / or built within the Wickham area and nearby CBD. It is further noted that a significant amount of the shadowing falls on the roadway and railway line and is not considered to have an unreasonable impact of the daylight access to the public domain.
- iv) The position of the proposal within the CBD is consistent with planning strategies encouraging use of public transport, cycling and walking. The subject site is within walking distance of the Newcastle Interchange.
- v) The applicant's last submission that "...the development standard has been virtually abandoned or destroyed by the Council's own decisions..." is not accepted and it is not considered that the applicants have justified this claim.
- vi) The list of approved DAs submitted by the applicants, to support this claim of abandonment of the height standard, is not considered to have justified this argument and does 'reach the bar' that the Council has abandoned or destroyed the standard by its decisions.
- vii) It is noted that the first four examples listed are towards the eastern end of the Newcastle CBD and are not considered to be relevant to the question of whether the standard has been 'abandoned or destroyed' as this is a distinctly different area and not analogous in context of current proposal and the relevant height development standard.
  - a) DA2016/01401 – 21 Parnell Place, Newcastle East
  - b) DA2016/01106 – 291 King Street, Newcastle
  - c) DA2017/00700 – 169 Hunter Street, Newcastle
  - d) DA2017/00758 – 139 Scott Street, Newcastle

The remaining developments detailed by the applicant's clause 4.6 submission are not considered to constitute abandonment of the height standard as discussed below:

- i) DA2016-01024 – It is noted that DA2016/1024 (which is now known as 65 Downie Street, Maryville) is a totally different form of development (ie. 33 two storey high ‘town house’ style development) to the current proposal located in a low scale suburban area which is somewhat disconnected and distant from the subject site and has no real relevance to the question of whether the standard has been ‘abandoned or destroyed’ in context of the current proposal.
- ii) DA2016/1209 – 29 Throsby Street, Wickham - Erection of 3-storey residential flat building with ground floor commercial premises – The development standard (10m) varied by 2.43m when measured to the top of the lift overrun. It is not agreed this contributes to abandonment of the height standard in context of the current proposal considering the distinctly different form and nature of development relative to the height standards.
- iii) DA2016/0351 – 5 Wickham Street, Wickham – This proposal was over a split height standard area where part of the site had a 24m height and the remaining half had a 35m height standard. The 2m variation to the 24m height standard is not considered to constitute any abandonment of the height standard having regard to the context of the proposal.
- iv) DA2016/0385 - The variation under DA2016/385 (5 Throsby Street, Wickham) consisted of a height variation of 0.556m to the 10m height standard – this hardly constitutes an abandonment of the height standard.
- v) DA2017/01532 – 7 Union Street, Wickham – The outcomes in this proposal were the result of an LEC appeal, not a decision of Council.
- vi) DA2016/0384 - The variation given for DA2016/0384 is for this actual subject site – 73-79 Railway Lane, Wickham. The current application relies on that approval DA2016/00384 to allow this development.

Overall, it is considered that the applicant has demonstrated that the proposed height variation is unnecessary and unreasonable in this instance. The architectural design of the proposal, size and scale of the variation, the applicable environmental controls and policies (eg. WMP), having regard to the position and context within the Newcastle CBD, it is considered that the proposal meets the objectives of the height standard and, on balance, it is in the public interest. The proposed design ensures that the development remains consistent with the established centres hierarchy and the represents a positive contribution to the location and desired built form notwithstanding that the proposal represents a further exceedance of the height standard in this instance and does not fully meet the public benefit mechanisms intended by the WMP.

The submitted shadow diagrams demonstrate that the proposal results in reasonable access to daylight. It is considered that the additional shadowing posed by the height variation is acceptable and reasonable having regard to the provisions of the ADG, the intended desired future character and built form for the area and the nature of the existing and approved development in the vicinity of the site especially towards the growing city centre orientated around the intersection of Hunter Street and Stewart Avenue.

Overall, it is considered that the proposed clause 4.6 variation is acceptable and, the submitted proposal, with its associated clause 4.6 variation, is in the public interest having regard to the height standard and its objectives.

**Height - That there are sufficient environmental planning grounds to justify contravening the development standard - clause 4.6(3)(b)**

The extracts and summaries below outline the applicant's submission with respect to this element of the clause 4.6 variation.

The applicants submit that the proposal meets the objects of the EP&A Act, as follows:

- i) "The proposed variation to the height standard will allow for the orderly and economic use of the site consistent with the WMP and the NDCP 2012" (page 21, version E).
- ii) "The proposed height variation will allow the delivery of more housing within a key location, assisting with affordability of housing" (page 21, version E).
- iii) "The proposed height variation will promote a better built form outcome for the site by allowing for a more slender tower form consistent with ADG Principles. The variation will also allow for a transition in height from taller buildings in the south to lower heights in the north, identified as a preferred outcome by the WMP and NDCP 2012" (page 21, version E).

The applicants submit that the proposal meets the provisions of section 4.15 of the EP&A Act, as follows:

**"SEPP 65 - Built Form**

In accordance with the SEPP 65 ADG, the (slender) tower built form, is a preferred outcome over squat podium designs, particularly in inner city areas. The proposed height variation allows the FSR to be achieved consistent with the ADG.

The proposed development will provide a superior built form outcome for the city by providing an appropriate transition from adjacent greater heights, to the south and lower heights to the north.

Improving urban design outcomes is an environmental planning ground and accordingly the variations sought can be justified.

### **Impacts of the Development**

The site is strategically located with excellent access to public transport, shops, services, recreation and entertainment. The proposed height will achieve a better housing yield on the site, that more closely reflects the desired density for the site.

Achieving higher residential densities in inner city and well-connected locations is vital to realising urban consolidation and ESD objectives. Missing opportunities to maximise densities around significant public transport infrastructure (Newcastle Interchange) undermines transport land use and environmental planning principles.

From a strategic planning perspective there are strong reasons to encourage and achieve as much development in this location as is reasonable possible.

### **Public Interest**

In considering the public interest, it is relevant to take the WMP into account. The proposed increased height is consistent with the maximum height proposed for the subject site in the Masterplan. The increased height of the proposed development is consistent with this adopted policy of CN and, therefore, CN's desired future character for the subject site and the Wickham area generally. For this reason, the additional height is an orderly and economic use and development of land and there are sufficient environmental planning grounds to justify contravening the development standard" (page 22, version E).

The applicant has submitted within their clause 4.6 variation request that the current proposal, and the associated clause 4.6 variation, is consistent with the strategic outcomes detailed within the WMP and in effect, there is sufficient environmental grounds to justify the variation, as detailed below:

#### **“Wickham Masterplan (WMP)**

The vision of the masterplan is that Wickham will continue to evolve into a diverse and dynamic mixed-use neighbourhood. Redevelopment will support increased residential densities as well as economic and employment generating uses that complement and support the adjoining emerging commercial core of the Newcastle City Centre located within Newcastle West.

The WMP:

- i) Is a detailed policy that has been the subject of significant public consultation and reflects CN's desired future character for the Wickham

area, in particular, the public interest in increasing heights in specific parts of the Wickham area in certain circumstances;

- ii) Has been adopted by the Council and the report to the Council Meeting identify actions to implement the Plan within 12 months (that is, by November 2018);
- iii) Is based on sound planning and urban design principles and is compatible with other Government policies such as the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036; and
- iv) Does not contain any significant flaws when assessed against conventional planning principles” (page 13, version E).

“The WMP identifies a height of 45m for the subject site located within the Rail Edge Precinct in order to support increased residential densities (see Figure 5 extracted below).

The WMP identifies increased height for the site, however there is no change in FSR, this acknowledges that additional height is required to achieve the allowable FSR and the desired future character of the precinct.

Consistent with the above strategic goals for this precinct, the proposed development seeks a total maximum building height of 44.99m, in order to deliver the desired increased density (housing) within the locality” (page 14, version E).

**“Summary**

In this instance, there are several environmental planning grounds that justify the contravention of the Development Standard Including:

- i) A superior built form for the site;
- ii) A better built form in the context of the city and achieving density in a key location consistent with CN’s adopted Masterplan and the NDCP 2012 for Wickham; and
- iii) The proposed development is consistent with the objectives of the B4 zone, the objectives of the height standard and the objects of the EP&A Act” (page 23, version E).

Figure 5 – Potential redevelopment densities / heights – WMP



(Source: Applicant's clause 4.6 request, page 14, version E)

The applicant has raised various elements above to support their clause 4.6 variation request which are assessed below:

- i) The proposal is consistent with the environmental and planning outcomes encouraged by the NLEP 2012, WMP, ADG and the NDCP 2012 having regard to the density, alternative housing availability options, encouraging alternative transport options, ESD and strategic planning outcomes, notwithstanding that the public benefit mechanisms with the WMP have somewhat not been met as discussed above.
- ii) The development is consistent with the intended desired future character, built form and strategic outcomes for a prime site within the Newcastle CBD. Notwithstanding the non-compliance with the current height standard, the WMP intends to allow for larger development to 45m on the subject site (as opposed to the current 24m). It is considered that were the proposal was limited to the current 24m standard it would likely, in the medium to long term, result in a lesser planning outcome than envisaged under the WMP by limiting the intended utilisation of relatively scarce resource (ie. being CBD located land with the capacity for larger mixed-use residential apartments) and this outcome would ultimately not be in the broad public interest.

Overall it is considered that there are sufficient environmental planning grounds to justify contravening the development standard in this instance and that this variation is in the public interest.

Clause 4.6 Variation Request - Further Assessment - Clause 4.6(4)

In the assessment of a clause 4.6 variation request a consent authority must be satisfied as follows:

- “(4) Development consent must not be granted for development that contravenes a development standard unless —
- (a) the consent authority is satisfied that —
    - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3);
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and
  - (b) the concurrence of the Planning Secretary has been obtained.”

Clause 4.6(4)(a) is assessed directly below and part (b) is addressed at the end in regard to assumed concurrence.

Applicant’s Written Request - Clause 4.6(4)(a)(i)

It is considered, based on the assessment contained the report above and below, that the applicant’s written clause 4.6 variation request has adequately addressed the matters required to be demonstrated by subclause 4.6(3).

Public Interest - Clause 4.6(4)(a)(ii)

The public interest element has two components under the subclause being:

- i) Objectives of the development standard (ie. clause 4.3 height); and
- ii) Objectives of the particular zone (ie. B4 Mixed Use zone).

The consent authority must be satisfied when assessing a clause 4.6 variation, that the proposed development, and its associated clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard (height) as follows:

**“4.3 Height of buildings**

- (1) The objectives of this clause are as follows —

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
  - (b) to allow reasonable daylight access to all developments and the public domain.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.”

The applicant’s clause 4.6 variation request above argues that the height development standard is unreasonable and unnecessary on the basis that the objectives of the height standard are met. The overall proposal is considered to be in the public interest, inclusive of the proposed height variation, as it is considered to be consistent with the objectives of the height standard as already assessed above in the report.

The consent authority must be satisfied when assessing a clause 4.6 variation, that the proposed development, and its associated clause 4.6 variation are in the public interest by being consistent with the objectives of the B4 Mixed Use zone as follows:

**“Zone B4 Mixed Use**

1 Objectives of zone

- i) To provide a mixture 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.
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.”

The applicant’s clause 4.6 variation request submits that the proposal is consistent with the zone objectives as follows:

“The objectives of the B4 zone are set out and addressed below:

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

The proposed development is consistent with this zone objective. The proposed development will provide an additional five storeys of residential accommodation on top of the approved mixed-use development which consists of commercial / retail uses at ground level and residential flat building above. The proposal will provide an increased supply of residential accommodation in an inner-city area characterised by a mix of

compatible and complementary land uses including residential, business, entertainment, public transport infrastructure and public open space.

- b) 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.

The proposed development is consistent with this zone objective. The proposed development will increase the residential housing yield that is ideally located relative to the Newcastle Interchange to maximise public transport patronage. The sites inner city location, with close proximity to shops, jobs, education, recreation and entertainment will promote walking and cycling as alternative modes of transport.

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

The proposed development is consistent with this zone objective. The proposed development will support the viability of the city centre (CBD, Hunter Street Mall, Honeysuckle precinct and Darby Street precinct) through an increase in population and patronage within the locality.

The proposed contravention of the Development Standard is consistent with the objectives of the B4 zone” (page 19, version E).

The applicant has raised various elements above to support their clause 4.6 variation request which are assessed below:

- i) The first limb of the B4 zone objective is very broad to the extent that it would be difficult to argue within this zone, considering the broad spread and nature of allowable uses, that a proposal is inconsistent with the objectives. The current proposal is a typical example of the expected development envisioned within this zone and within the Rail Edge Precinct (NDCP 2012 / WMP) and, as such, it is readily considered to be compatible.

It is noted as significant that the current allowable heights along Hunter Street (especially Hunter Street / Stewart Avenue) are currently 60-90m. Additionally, that all of the land along the north side of the railway line with the Wickham Rail Edge Precinct are intended to have a 45m height limit under the WMP.

The only question that remains for the current development is whether the proposed height exceedance is of such a scale and degree would make the proposal incompatible within the zone, this is not considered to be the case and the proposal is considered to be consistent with the objectives.

- ii) The proposal readily meets the second limb of the B4 zone objective. The development proposes a mixed-use retail / residential development which

will likely "...maximise public transport patronage and encourage walking and cycling." The subject site is within walking distance of the Newcastle Interchange. The only question that appears to arise would be to the term 'suitable' within the objective – it is considered that it would be difficult for a development predominately residential in nature, such as the current proposal, to be 'unsuitable' in this context of these transport objectives and, as such, it is considered that the proposal is consistent with the objectives.

- iii) The proposal is considered to broadly support the third limb of the B4 zone objective by both supporting nearby CBD locations (especially increased population and housing in close proximity to the intended future 'centre' of the Newcastle CBD at Hunter Street / Stewart Avenue) and it is considered that the development's proposed retail elements (ie. two smaller retail premises) do not adversely impact commercial centre hierarchy as it is relatively limited and of an appropriate scale within the commercial centre hierarchy.

It is further noted that the mixed-use nature of the proposal, having regard to its location within the CBD and proximity to significant public transport, meets objectives of the B4 zone. Overall, the proposal is considered to be in the public interest, inclusive of the proposed height variation, as it is considered to be consistent with the objectives of the B4 zone objectives.

Planning Secretary Concurrence - Clause 4.6(4)(b)

The proposal requires approval of the DAC due to the proposed FSR variation being above the delegation provisions for clause 4.6 variations of 10% or less (ie. the height variation being above the 10%). This is also in accordance with the provisions of clause 4.6(4)(b) (as extracted below) and the Planning Secretary's assumed concurrence requirements under planning system circular PS2020-002.

"(4) Development consent must not be granted for development that contravenes a development standard unless—

(b) the concurrence of the Planning Secretary has been obtained."

The Planning Secretary's concurrence is assumed only based on planning system circular PS2020-002.

The most recent planning system circular (PS2020-002, 5 May 2020) '...replaces Planning Circular PS18-003 and issues assumed concurrence, governance and reporting requirements for consent authorities.' "The assumed concurrence notice takes effect immediately and applies to pending development applications."

The concurrence only applies to CN (ie. does not apply to a staff member delegate) in this instance due to the height variation being greater than 10% (ie. 87.46%) as PS20-002 has the following restriction on the concurrence applying:

“The Secretary’s concurrence may not be assumed by a delegate of Council if:

- a) the development contravenes a numerical standard by greater than 10%; or
- b) the variation is to a non-numerical standard”.

Clause 4.6 – Conclusion

Overall is it considered that the submitted clause 4.6 height variation request is acceptable.

Notwithstanding that the height variation is relatively large, there are no numerical or percentage limit under the provisions of clause 4.6 regarding size of a variation which can be considered, where that variation was properly made in the opinion of the consent authority (ie. ‘Legal and General’ above).

It is considered that the submitted clause 4.6 height variation request is well founded and meets the provisions of clause 4.6(3) and principles set out in Wehbe. The clause 4.6 assessment above demonstrates that the clause 4.6 height variation request is supportable and that the provisions of clause 4.6 have been met including clause 4.6(4).

It is recommended that the submitted clause 4.6 height variation request be supported and that DAC as the consent authority note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances.

Clause 5.10 - Heritage Conservation

The subject site does not include any identified heritage items having regard to the NSW State Heritage Register and Schedule 5, Part 1 of the NLEP 2012. The site does not include an identified archaeological site or is located within a Heritage Conservation Area.

The nearest Heritage Item is located at 14 Railway Street being Lass O’Gowrie Hotel (Local Heritage Item I691). The proposal is not likely to have an adverse impact on the heritage significance of the neighbouring heritage item. The proposed development is an expected outcome of the planning controls that apply to the area and the proposed design has a four storey form for the portion of the subject site closest to the heritage item.

Clause 6.1 – Acid Sulfate Soils

The subject site is identified as containing Class 3/4 Acid Sulphate Soils (ASS). The development is likely to require works 2m or more below natural ground level.

A site specific Acid Sulfate Soils Management Plan (ASSMP) has been prepared for the development. A requirement to comply with the ASSMP is included as a recommended condition.

### Clause 6.2 - Earthworks

The proposal will involve earthworks involving excavations to approximately 2m into the ground. This is acceptable subject to conditions of consent. It is further noted that the land contamination aspects have been addressed in this report under SEPP 55 above.

### Part 7 Additional local provisions—Newcastle City Centre

The site is located within the Newcastle City Centre but it is not a 'key site' under the provisions of the NLEP 2012. 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 of Newcastle. The proposed development will meet the objectives of Part 7 of the NLEP 2012 as it allows for the redevelopment of a site for a mixed-use development consisting of 190 apartments and two commercial units.

### Clause 7.3 - Minimum building street frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The proposal is within the B4 Mixed Use zone and this clause does not apply. Notwithstanding this, the subject site has a combined frontage of approximately 109m to Railway Lane.

### Clause 7.4 - Building Separation

Clause 7.5 provides that a building on land to which the clause applies must be erected so that the distance from the building to any other building is not less than 24m at 45m or higher above ground level. The current proposal has a total height of 44.99m and this clause does not apply.

### Clause 7.5 - Design excellence

The proposal has been considered by the UDCG and is generally considered acceptable subject to several design amendments. The amended plans, subject to this assessment, have adequately addressed the recommendations of the UDCG and satisfy the design excellence criteria.

The proposal does not trigger the requirement for a design competition under clause 7.5(4). The proposal is acceptable in terms of clause 7.5, and specifically subclause 7.5(3), as detailed within this assessment report. The proposed development achieves a high standard of architectural design and is considered consistent with the intended future desired built form for the area.

**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 subject application.

**5.3 Any development control plan**

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

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

Commercial Uses - Section 3.10

This section of the NDCP 2012 applies to various land uses such as business, office and retail premises. The proposal is acceptable in relation to its impacts on the character and location of surrounding buildings, views, access and existing vegetation and topography. The proposal has been architecturally designed and will provide an active street frontage, with visual connection into commercial / retail uses at ground level.

The development is consistent with the aims and objectives of this section of the NDCP 2012. It is noted that prime design controls for this development are contained within the ADG and section 6.01.01-04 of the NDCP 2012.

Flood Management - Section 4.01

The site is subject to flooding a flood certificate was provided for the site (Ref: FLD2016/00082) and a small section of the land adjoining 6 Croft Street is noted as a flood storage area.

The flood storage area is a very small component at the north eastern corner. The impact of any filling around the area can therefore be said to have minimum impact in the overall flood storage. The development has allowed for 20% of the area to be filled in accordance with CN's requirements with the north eastern area being designed for landscaping and driveway access.

The following is noted from CN's Flood Certificate:

- 1) The PMF Flash flood level is noted as 2.98m and Ocean PMF is noted as 3.40m AHD.
- 2) 1 % AEP level for flash flood is noted as 2.05m AHD and Ocean level is noted as 2.20m AHD.
- 3) The recommended floor level is noted as 2.55m AHD.

It is however noted that Northrop Consulting Engineers have completed a more detailed site investigation and have recommended floor levels and basement levels based on their investigations.

Further, the proposed building floor levels are compliant to the CN's Flooding NDCP 2012 and are acceptable. Conditions are recommended. Accordingly, the proposal is considered to be acceptable in terms of flooding subject to conditions of consent.

#### Mine Subsidence - Section 4.03

The mine subsidence aspects have been discussed within section 4.0 of the report above. The proposal has been given approval by Subsidence Advisory NSW.

#### Safety and Security - Section 4.04

The building has been designed with safety and security being a consideration. The access to the ground floor residential foyers / residential levels will be via electronic swipe card. A combination of security alarms and lighting will be used to limit access and improve surveillance. Overall, the proposal has an acceptable combination of passive surveillance, lighting and territorial control measures to ensure that Crime Prevention Through Environmental Design (CPTED) principles have been adequately addressed.

#### Social Impact - Section 4.05

The provision of a new mixed-use development within the Wickham area is an intended outcome of CN's and State Government's planning policies to achieve diversity of housing in higher densities near the Newcastle CBD. The proposal will provide good mix of dwellings sizes being a combination of studio, one-bedroom, two-bedroom and three-bedroom dwellings within walking distance of the Newcastle Interchange.

#### Soil Management - Section 5.01

A Sediment and Erosion Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. Appropriate conditions have been recommended at **Attachment C** to address potential sediment and erosion for the entire construction period.

#### Land Contamination - Section 5.02

A detailed assessment has been discussed under SEPP 55 in regard to land contamination.

#### Vegetation Management - Section 5.03

The site is largely vacant and contains no significant trees and as such the proposal is acceptable.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05 and Heritage Conservation Areas - Section 6.02

A detailed assessment has been discussed under clause 5.10 of the NLEP 2012 in regard to heritage.

Archaeological Management - Section 5.06

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

Part 6.00 Locality Specific Provisions - Wickham - Section 6.03

The development is affected by the provisions of section 6.03. Notwithstanding that the proposal, at the time of lodgement, was subject to section 6.01 – Newcastle City Centre of the NDCP 2012, subsequent amendments, which commenced 16 November 2018, result in section 6.03 being applicable, as detailed within the associated savings provisions.

The proposal is located within the Rail Edge precinct under section 6.03. It is noted that the previously approved development (DA2016/0384) is included as part of the typology for the potential future built form within the Rail Edge precinct.

The current proposal is consistent with the vision for the precinct by contributing to the development of a high-density residential area serviced by the nearby Newcastle Interchange. The proposal incorporates ground floor retail premises which is considered an appropriate element within this precinct.

The majority of prime design controls are contained within the ADG and have been assessed under SEPP 65 above.

*6.03.02 A Setbacks to streets*

A 6m setback at the 12m street wall applies to the site. The proposal does not meet the setback at the 12m street wall height at the street front as it had been designed based on the previous 16m height (section 6.01). It is further advised that levels three and four, the height at which the 12m and 16m wall height would apply, were approved under DA2016/00384 and this proposal interlinks and relies on that approval and is not being reconsidered as part of this application.

Under the approved application DA2016/00384, a large portion of land (over 3.0m in width) is required to be dedicated along the majority of the site's frontage to increase the width of Railway Lane which meets the provisions of section 6.03. This dedication has had the effect of limiting the proposal's compliance with the street

wall height setbacks along the Railway Lane frontage. This required land for dedication is maintained as part of the current proposal.

The development provides a 16m street wall height setback on the western and eastern boundaries. The Railway Lane street front, south eastern corner and northern setbacks exceed this setback and this is assessed under the ADG section above.

#### *6.03.02 B Setbacks to neighbouring sites*

The proposal does not meet these provisions having been designed prior to the controls being adopted. It is considered that the proposal is acceptable in this instance as the design provides for a suitable degree of separation from the neighbouring sites via the combination of proposed driveways, positioning of plant rooms and blank walls at lower levels.

#### *6.03.03 A Interface to the street and B Urban Activation Spaces*

It is considered that the combination of the design at the lower levels, the land dedication along Railway Lane and the overall public domain works associated with the proposal demonstrate that the proposal is consistent with the provisions within this section of the NDCP 2012.

#### Landscape Open Space and Visual Amenity - Section 7.02

The majority of the key design controls are contained within the ADG and have been assessed under SEPP 65 above.

The landscape concept plan has been designed by a suitably qualified Landscape Architect as required under the section 7.02 as the proposal is a 'category 3' development. It is considered that the submitted plan meets the requirements of this section of the NDCP 2012.

#### Traffic, Parking and Access - Section 7.03

The development proposes 228 off street spaces and complies with the 205 required under the provisions of the NDCP 2012. It is recommended that 156 spaces be allocated to the residential units (being one per unit), 30 spaces be for visitor parking for the residential units and 16 spaces be allocated for commercial and for commercial visitors. The number of off-street car parking for cars and motorbike is adequate to service the development and is acceptable.

#### *Loading Bays*

Loading bays have been indicated on the plans at the western boundary, which has been designed for small rigid vehicles. However, the driveway access for the loading bay will act as a turning area for vehicles at the end of Railway Lane. The driveway has been designed to allow for trucks up to medium rigid vehicles (8.8m long trucks - Garbage trucks) to turn. The second loading bay is provided as an

indented parking which can be accessed from Railway Lane. This loading bay can be multipurpose as it can be an emergency bay and drop-off area as well. The third loading area is for the existing Hotel on the east.

The proposed loading areas will be able to service the development and the commercial areas for delivery and garbage pickup.

#### *Road Widening and Turning Area*

The proposal is indicating for widening of Railway Lane road width by relocating the kerb further north along the property frontage to the intersection of Railway Street. Infrastructure such as drainage pipes, kerb and gutter and kerb inlet pits are proposed as part of the widening. The proposed widening will allow for a two-way roadway to service the development and a concept plan has been provided with estimates of the road width and footpath and loading bay widths.

It has also been noted that the condition of Railway Lane along the proposed development frontage is not in a state to accommodate the proposed development. There is limited access by the public in the area due to the previous use of the road. The proposed development is changing the dynamics of the area and will increase the use of the road. The increase in demand for infrastructure is driven via the urbanisation of the area and this development will increase the number of vehicles and cyclists to / from the site.

The increase in the use of Railway Lane is directly related to the development. To service the new residents Railway Lane will need to be upgraded into a formal Road and therefore the full width of the road will need to be reconstructed to cater for the demand.

It is also noted that NSW Transport have undertaken civil works as part of the Wickham Station.

#### *Traffic Generation*

The traffic report has considered the issues surrounding traffic generation. It is noted that the land has been developed by CN and the road network and traffic movements have been analysed for this area.

#### *Pedestrian / Cyclist Movement*

Railway Lane has been designated as the most direct pedestrian / cyclist connection between Maitland Road via Albert Street Park to the Wickham Street and vice versa. It is also evident that the residents and other users of the development will be using Albert Street Park as the main recreational park and sports facility due to the proximity. It is envisaged that Wickham Station and other alternative means of transport such as cycling, walking and buses will be utilised as main means of transportation into the City due to the urbanisation of Newcastle City.

The proposed development has considered the requirements for access to / from the property by pedestrians and the connectivity to the local transport and park and have allowed for the widening of the roadway and the footpath. Subject to recommended conditions of consent the proposed development is considered satisfactory with respect to pedestrian / cyclist movements, including footpath widening, footpath network and safety.

#### *Security and Surveillance*

It is noted that there is very limited street lighting fronting the development. The development is the last residential property at the end of Railway Lane. New Street lighting and surveillance technology will be required along the laneway to ensure that the laneway is made more secure due to the increased use. As the site is within a CBD area, the street lighting will need to be provided in accordance with CN's City Centre Public Domain Manual.

New street lighting will be located on the southern side of Railway Lane (Rail Track end). This will allow for a clear accessible pedestrian path along the building frontage and mitigate the conflict with other services and street tree installation. This matter is addressed by recommended conditions of consent.

#### *Street Trees and Furniture*

The development has proposed new street trees along Railway Lane. The inclusion of street trees and any additional street furniture such as bins and seats are encouraged. In addition to these, bicycle parking can be provided in wide areas or attached to light and sign poles.

#### *Garbage Servicing*

The applicants have confirmed that the garbage will be serviced by private contractors for both the residential and commercial developments. Loading areas are available for garbage pick-up.

The garbage collection indicated on the ground floor plan adjoining the kerb has not been supported. It is required that garbage pick-up be made from loading areas and as such conditions have been recommended.

Overall the proposal is considered to be acceptable in terms of traffic, parking, access and public domain. Appropriate conditions have been recommended at **Attachment C**.

#### Section 7.05 - Energy efficiency

The application is affected by the BASIX requirements. A BASIX Certificate has been included in the documentation. The proposal complies with this section.

#### Stormwater- Section 7.06 and Water Efficiency - Section 7.07

A stormwater management strategy has been provided with the application and the stormwater management strategy and proposed stormwater design has been carried out to current NDCP 2012, Technical Specifications and industry standards, as outlined below:

#### *Stormwater Reuse and Detention*

The concept stormwater management plan and stormwater design prepared by Northrop Consulting Engineers allow for a 30 KL stormwater tank for reuse for the first two floors of the residential apartments. The tank will be connected to the new building roofs which will be the main source of supply and should be backed by mains water. A 70m<sup>3</sup> detention tank is provided which will be storing stormwater from hard surface areas and any discharge from the stormwater tank. The required On Site Detention (OSD) storage and water reuse is generally in accordance with CN requirements.

#### *Stormwater Quality Assessment*

A stormwater quality assessment has been undertaken by Northrop in order to determine the impact on the ecology of the downstream watercourse. The performance of the stormwater strategy was assessed against the Model for Urban Stormwater Improvement Conceptualisation (MUSIC) software targets set in the CN's Technical Manual and the MUSIC Link and create a Water Sensitive Urban Design (WSUD) for the development. The following features are noted in the design:

- i) Rainwater Tanks (30kL) have been provided for reuse for the first two storeys for the residential units.
- ii) Gross Pollutant Traps (GPT) has been provided as the primary treatment measure on the discharge locations.
- iii) OSD basin with capacity of 70m<sup>3</sup>.
- iv) Discharge is proposed to be connected to the new drainage system on Railway Lane.

MUSIC modelling has been done by Northrop and the submitted stormwater management plan has indicated that the development achieves the targets set by CN.

Furthermore, new street trees have been indicated on the plans. Some of these trees can be designed to allow for the stormwater treatment for the road surface before being discharged into the proposed kerb inlet pits.

#### *Drainage Connection*

The stormwater from the site is proposed to be connected to the proposed new drainage on Railway Lane. It is noted that there is a proposed road widening of Railway Lane. The proposed stormwater connections are generally acceptable.

Details for the proposed connections can be resolved at construction certificate stage and conditions are recommended.

*Maintenance and Monitoring and Safety*

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan have been provided with the stormwater management strategy.

The principles of WSUD and the requirements of the NDCP 2012 have been applied to the development. The submitted stormwater strategy reports and supporting documents have demonstrated that the development will not impact of the downstream ecology, is sustainable and can be maintained in the long term.

Accordingly, the proposal is acceptable in relation to water management and stormwater. Appropriate conditions have been recommended at **Attachment C**.

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN of \$825,966.00, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at **Attachment C**.

**5.4 Planning agreements**

A draft voluntary planning agreement associated with this proposal has been separately assessed and reported to Council by CN's Urban Planning Section.

It is advised the under the provisions of the EP&A Act, the submitted DA and voluntary planning agreement require separate assessment processes and pathways.

The current development has been recommended for approval on a deferred commencement basis and the finalisation of the voluntary planning agreement forms one of the deferred commencement conditions.

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

The application has been considered pursuant to the provisions of the EP&A Act and the Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

**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, ADG and the NDCP 2012 considerations. In addition, the following impacts are considered relevant.

View Loss

The surrounding area is relatively flat and is interspersed with larger industrial buildings. There are limited distinct views available to the surrounding properties and no direct views are enjoyed by the surrounding dwellings. The larger industrial buildings are also limiting the general outlook.

The proposal will result in a change to the general outlook in the area due to the height and scale of the proposal which replaces the existing larger industrial building on the site.

It is considered that the change to the outlook is reasonable having regard to the strategic outcomes for the area and the allowable planning controls. The overall impacts in terms of views and outlook are considered acceptable in this instance.

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

These matters have been addressed within the SEPP, the NLEP 2012 and the NDCP 2012 sections above.

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

The application was notified and advertised in accordance to the regulations and the NDCP 2012 and one submission was received. The following issues were raised in the submissions.

Issue	Comment
Concern that the JRPP should be the consent authority, not CN.	The proposal does not trigger any of the criteria under Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 for referral to the Regional Planning Panel, known previously as JRPP (eg. the proposal does not exceed a capital investment value of \$30m as detailed within the submitted cost report by a qualified quantity surveyor).

<p>It has been raised that the scope of the current application should be the entire proposal (ie. not DA2016/00384 with the addition of the proposed changes under this DA2018/00773).</p>	<p>The current application can be made in the manner submitted and relying on being interlinked with the previously approved DA.</p>
<p>The cost estimate for the proposal is questioned.</p>	<p>The cost report has been submitted by a qualified quantity surveyor and is considered to be acceptable.</p>
<p>The public benefit resulting from the 45m high proposal is questioned.</p>	<p>A detailed assessment of the proposal's height has been undertaken in the report above and the height exceedance is considered acceptable as addressed under clause 4.6 section of the report.</p>
<p>Issues raised regarding the urban form of the proposal, it's height and compliance with the requirements and intent of the ADG.</p>	<p>As noted above, a detailed assessment of the proposal's height has been undertaken in the report above and the height exceedance is considered acceptable as addressed under clause 4.6 section of the report. An assessment of the proposal's urban form and the compliance with the ADG has been undertaken within the SEPP 65 section of the report above and considered to be acceptable.</p>
<p>Concern regarding the effective solar access, natural ventilation and amenity achieved by the proposed dwellings within the development and that it does not comply with the provisions of the ADG in these respects.</p>	<p>All of these elements have been assessed and considered to be acceptable as detailed under SEPP 65 section of the report.</p>
<p>The proposed building, being over 46.5m in height, should be required to provide Public Art (ie. 1% of the total capital cost).</p>	<p>The proposed development is 44.99m in height. The public art provisions, contained within 6.01 – Newcastle City Centre, relate to developments over 45m in height or those listed as key sites in the NLEP 2012. The subject site is not mapped as a key site.</p>

## 5.9 The public interest

The proposed development is considered to be satisfactory having regard to the principles of ESD.

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 development is in the public interest and will allow for the orderly and economic development of the site.

The proposed overall development is considered to be satisfactory having regard to the provision of additional housing and retail uses within the Wickham and Newcastle City Centre area and is consistent with the strategic planning outcomes intended for the area.

## 6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions at **Attachment C** are included in any consent issued.

## ATTACHMENTS

**Item 40 Attachment A:** Draft Voluntary Planning Agreement – 73-79 Railway Lane, Wickham

**Item 40 Attachment B:** Plans and elevations of proposed development – 73-79 Railway Lane, Wickham

**Item 40 Attachment C:** Draft Schedule of Conditions – 73-79 Railway Lane, Wickham

**Item 40 Attachment D:** Processing Chronology – 73-79 Railway Lane, Wickham

**Item 40 Attachment E:** General Terms of Approval – Subsidence Advisory NSW – 73-79 Railway Lane, Wickham

**Item 40 Attachment F:** Sydney Trains Advice – 73-79 Railway Lane, Wickham

**Item 40 Attachments A - F distributed under separate cover**