

**REQUEST TO VARY DEVELOPMENT
STANDARD UNDER NEWCASTLE LEP 2012
CLAUSE 4.6 EXCEPTIONS TO
DEVELOPMENT STANDARDS**

RESIDENTIAL ACCOMMODATION

83 UNIVERSITY DRIVE, NORTH LAMBTON

08 July 2016

1. Introduction

A request to vary the development standard is made in accordance with the provision of *Newcastle LEP 2012 Clause 4.6 Exceptions to development standards* with respect of an application for residential accommodation at Lot 40, D.P. 216171 and Lot 5 D.P. 259126, 83 University Drive, North Lambton that exceeds in parts, the 8.5 metre height control nominated under *Clause 4.3 Height of buildings*.

Justification for the request should be read in conjunction with the Statement of Environmental Effects and other relevant documents accompanying the development application.

2. Relevant EPI

Newcastle Local Environmental Plan 2012 (NLEP 2012)

3. Zoning

R2 Low Density Residential

4. Zone objectives

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The proposed development will provide an appropriate variety and form of housing that is not inconsistent with the generally low density built form of the surrounding environment. The proposed higher density on the site is designed to meet the needs of both students and staff from the adjacent Newcastle University, as well as improving housing variety for the wider community. It will improve housing diversity in the area without any significant impact on the amenity and character of locality.

5. Standard being varied

Height

6. Relevant clause containing the standard

4.3 Height of buildings

7. Objectives of the standard

The objectives 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.

8. Numerical value of the standard in LEP

➤ 8.5 metres

9. Numerical value of proposed variation

Variation to height planes changes across the site and within building footprints because of site topography. The diagram below, extracted from the SEPP 65 Design Report (Smith & Tzannes), indicates the height plane, location and extent of the non-compliance as taken from the architectural model. The table is replicated below for ease of interpretation and nominates the points of maximum intrusion above the height plane. The architectural plans and design report provide further detail on the extent and location of variations and should be read in conjunction with this request.

Building	Maximum Building Height Variation (m)
Building D	3.195
Building G	3.75
Building I	0.255
Building J (Y)	3.385
Building J (T)	2.05
Building F	1.5

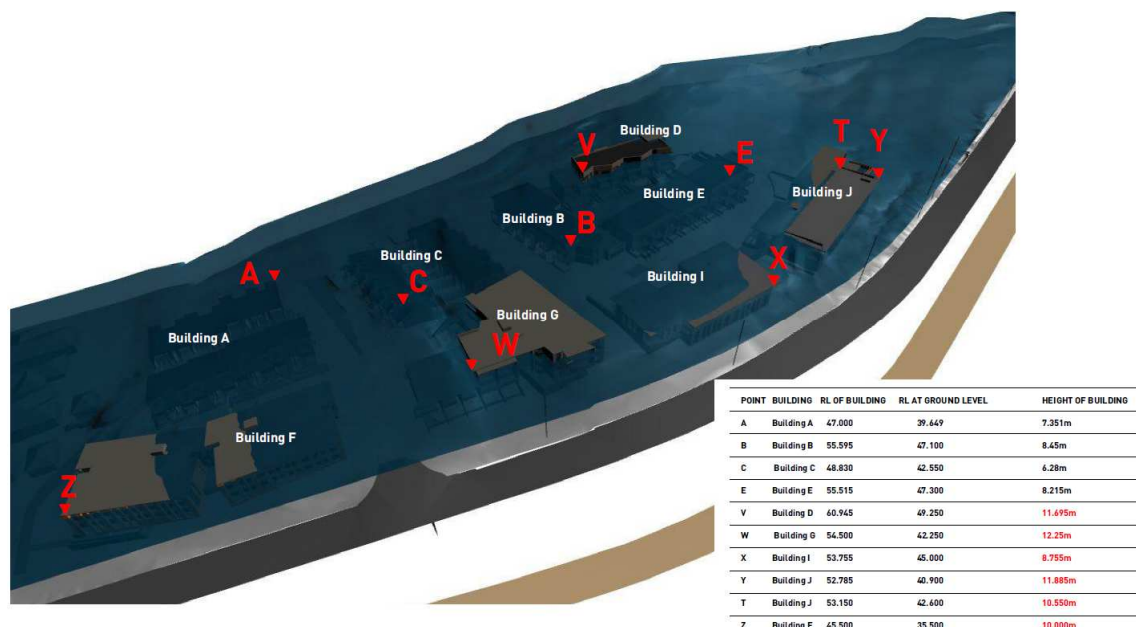


Figure 1: Height plane indicated in blue. Areas exceeding the height plane protrude through the blue.

10. Why is compliance unreasonable or unnecessary?

The scale and nature of the non-compliance subject to this variation is minor in the context of the large development site and is a result of the site topography. The standard is appropriate in the context for which it is intended, being to establish a numerical height control that ensures land can be developed without impacting on the character and amenity of an area, or having unreasonable impacts by way of overshadowing, privacy, loss of views etc for adjoining land. In this instance, the non-compliance does not adversely affect the public benefit of maintaining the standard. The site and proposed development, due to the size and location relative to nearby development, creates its own context as it is in its own landscape setting within which existing adjoining development is generally not also visible.

In applying a height development standard it is reasonable to take into account the typology proposed and the relationship to the topography. In this instance the development site is large, and the topography can be characterised as sloping and in some parts relatively steep. The site is considered unique in its size and frontage. As discussed below there are some significant constraints to development in the western portion - and as such the proposed development is concentrated to the east. The attempt is to achieve the precinct objectives with respect to a desired built form that capitalises on the proximity to the University of Newcastle and in some respects to emulate a campus style urban environment.

The buildings have been located to respect topography and define the open space domain by creating a network of streets and open spaces. Strict adherence to the height of building standard would create certain buildings with inefficient floor plates that do not comply with standards for pedestrian access under the Building Code of Australia.

The majority of the development is contained within the height plane. The non-compliances generally occur over parts of the site where there is a steep slope and allowance is made to accommodate slope within the building footprint. Those buildings that are non-compliant also contain large areas where the building is below the height control plane.

As detailed in the development application, solar access and overshadowing are such that reasonable daylight access is provided to proposed dwellings. Existing residential development on adjoining land is limited in extent but, as shown on the plans, there is little to no significant or otherwise unacceptably adverse overshadowing. This is a result of the fact that adjoining properties in Stannett Street are:

- on the eastern side of the development and retain reasonable solar access through the morning to mid-afternoon;
- the development is set back from this boundary and separated from adjacent land by a public roadway which allows reasonable access to late afternoon sun; and
- house on adjoining land are set toward the eastern boundary with reasonably large yards leading to the boundary adjoining the site.

Land to the south is zoned SP2 Infrastructure Water Supply. It contains Hunter Water Corporation water supply infrastructure and the land immediately adjoining the site boundary comprises remnant vegetation. There are therefore no adverse amenity impacts on solar access to this land.

The development site tapers toward the western boundary. It has no buildings proposed adjacent the western boundary and so it will not impact on solar access to dwellings in Turana Parade.

The form of the proposed development, being a combination of multi dwelling housing and residential flat building (RFB), are permissible within the zone. *State Environmental Planning Policy No.65* (SEPP 65) and the *Apartment Design Guide* (ADG) provides that habitable rooms for RFBs are to generally have floor to ceiling heights 2.7m. For a three storey RFB the typical height on a sloping site would be:

Level	Description	Height
Ground	Slope allowance	1.8
	Residential floor to ceiling	2.7
	Structure	0.3
Middle	Residential floor to ceiling	2.7
	Structure	0.3
Top	Residential floor to ceiling	2.7
	Roof structure	1.5
	2 Storey RFB	9
	3 Storey RFB	12

The ADG further provides that when establishing building heights for sloping sites, height planes should be modified along the street edge to allow increases in height that facilitate appropriate built form outcomes. This is the case with this development and as this is a sloping site and RFBs are permissible in the zone. The development standard is therefore considered to be unreasonable as it hinders the achievement of the site objectives, particularly those prescribed in the Newcastle Urban Strategy – A 25 year Revitalisation Plan for Newcastle – Update July 2012 (“the Strategy”) that seek housing diversity along University Drive to meet student demands associated with the University of Newcastle.

10.1 Physical constraints

Parts of the site are unsuitable for residential development due to slope instability. The remaining parts are still sloping, which, as discussed above in the context of RFB design, has implications for compliance with height planes. Further to the slope restrictions, the site dimensions create a wide but relatively shallow parcel. The extended boundary to adjoining remnant bushland creates a significant bushfire impact that sterilises land along this long boundary. The combination of slope and bushfire restrict the ability to deliver housing diversity in a suitable form and density to meet housing demand without exceeding the 8.5m height control. This is evident by the fact that even with the proposed variations the FSR is well below the allowable limit of 0.6.

10.2 Cumulative impacts

The circumstances of the proposal are considered sufficiently unique as to limit the potential whereby any subsequent proposals may benefit from any precedence and potentially undermine the value of the development standard. The case is considered sufficiently unique for the following reasons:

- The site is not within the limited growth precinct that constrains other land adjacent to the University.
- A review of aerial imagery and planning controls failed to identify any other zoned, vacant infill sites of the magnitude of this 3 hectare parcel of land.
- The size, dimensions, slope and environmental constraints of this land are unlikely to all be replicated on any significant number of land holdings elsewhere in the vicinity, and potentially within the LGA.
- The site is directly adjacent to the University of Newcastle Callaghan Campus with pedestrian and vehicle connectivity via a signalised intersection. University Drive is the only campus boundary that contains residential zoned land, and / or land that is not separated from the campus by a physical barrier such as the Newcastle bypass or the railway line.

10.3 Conclusion

Strict adherence to the height control is therefore considered:

Unnecessary as the development achieves the objective of Clause 4.3 Height of building in its current form and strict compliance would hinder the ability of the development to deliver the form and scale of development anticipated in the Strategy AND the uniqueness of the site are unlikely to be replicated and hence no precedent will be set that could otherwise undermine the objectives of the control; and

Unreasonable as no purpose would be served by requiring modification of the development to adhere strictly to the prescribed numerical standard AND because strict adherence will limit the ability of the development to deliver the housing variety and form sought through the Strategy AND the built form outcomes prescribed in SEPP 65 and the ADG cannot be achieved while complying with the prescribed numerical standard.

11. Environmental planning grounds to justify contravention

The broad environmental impacts of the development have been considered and discussed in the SEE that accompanies the development application. This and the accompanying documents should be read as background and context to this Objection. While the broad impacts of the development are considered acceptable, the following environmental planning grounds are considered to be specifically relevant to the request to vary the height of buildings standard.

- The FSR is well below that allowable for the site. Variation to the height control will allow additional floor space in a position where the best planning outcome is achieved. It facilitates bushfire mitigation, reduces site

coverage to allow more open space and landscaping, and has no significant adverse impact in terms of privacy, overshadowing or visual impact.

- Strict adherence with the height control would reduce the yield, limiting the ability of this site to contribute to infill development targets in the Lower Hunter Regional Strategy.
- Strict adherence would restrict the ability to create housing diversity and improve the availability of accommodation to meet the demands associated with the University of Newcastle, which is directly adjacent to the site, and the broader population. These are outcomes clearly identified in the local Strategy.
- Strict adherence with the development standard will compromise the ability of the design to comply with relevant provisions of SEPP 65 and the ADG which were established to improve the built form and amenity of RFBs.
- The height variations will have no significant impact on compliance with the objectives of the building height control, nor any other standard or control. The distribution of height throughout the site is an appropriate response to the site topography, particularly slope. The orientation of the site, the adjoining land uses, and the location where the variations are sought mean that any impacts are largely internalised.
- The setbacks and size of the site mean the variations to the height control are not immediately discernible from both immediately proximate and more distant locations. This is detailed further in the visual impact assessment accompanying the application.
- Maximising development on this site will deliver positive social and economic benefits by reducing demand for greenfield development at the urban fringe, improving critical mass for the efficient delivery

12. Public interest due to consistency with objectives of standard and objectives of the zone

12.1 Objectives of the zone

The Strategy does not nominate the site within a specified growth precinct. Surrounding residential land on the south of University Drive is within a limited growth precinct and carries a similar R2 Low Density Zone, 8.5m height control, and 0.6 FSR. The Strategy (p.13) identifies that Jesmond and surrounding suburbs have a high demand for student housing, and the one of the objectives is to:

Capitalise on proximity with the university and provide suitably located and designed housing and other uses in Jesmond and adjacent Lambton North along University Drive.

The failure to nominate the site within a limited growth precinct; the specific reference encouraging student housing along University Drive; and, the size and vacant infill potential of the site provide it with unique characteristics that

would be difficult to replicate for any other site seeking a similar variation, hence reducing the chance of an unfavourable precedent.

These circumstances lend themselves to the fact that although the proposed built form, density and scale of the proposal are different to existing residential development, they do make a positive contribution toward achieving the desired built form and housing outcomes prescribed in the Council's strategic plans. Further to this, while the characteristics of the development are different to existing residential development on the south of University Drive, the bulk and scale of buildings as distributed throughout the site are entirely consistent with the bulk and scale of development within the University's Callaghan campus opposite the site, north of University Drive. Campus buildings, including recently developed student accommodation, are generally multi-storey and developed in clusters intersected with native bushland corridors. This form is reflected in the proposal and provides the appropriate context through which the first objective of the development standard is achieved.

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

12.2 Objectives of the Standard

The proposed development is considered to be consistent with the objectives of the standard in that:

- The scale makes a positive contribution towards the built form by stepping with the topography
- The urban form is consistent with the proposed character and with the centres hierarchy identified in the Strategy being to "*Capitalise on proximity with the university and provide suitably located and designed housing and other uses in Jesmond and adjacent Lambton North along University Drive*"

Solar access is not unreasonable restricted by the areas of the building that exceed the height limit. This demonstrated by the shadow diagrams. The impacts of the variation have been assessed, are discussed in the development application, and are considered acceptable.

13. Conclusion

The proposed development is an appropriate outcome for the nature and context of the site. Proposed variations to the 8.5m height control facilitate a better planning and design outcome than might otherwise be achieved if alternate solutions were sought to improve the FSR within the nominated height controls. The variations allow an appropriate site specific response to constraints such as slope and bushfire, while having no significant adverse impact on other environmental outcomes such as privacy, overshadowing or visual impact. The design response is considered to be entirely consistent with the outcomes envisaged for the site in the Strategy. Strict compliance with the LEP height provisions, which appear to have been generically applied to the R2 zone, is considered unreasonable as it will hinder delivery of the strategic outcome, and unreasonable as it will not improve the environmental impacts of the development. The proposed development is considered to pass the four preconditions for the granting of consent being:

- The proposal is consistent with the objectives of the zone
- The proposal is consistent with the objectives of the HOB standard
- Compliance with the standard is unreasonable and unnecessary due to the nature and circumstances of the development and the topography of the site
- There are sufficient environmental planning grounds to warrant an approval as the development is able to achieve the objectives of the zone and will provide housing that is consistent with the desired character of the area sought by the Strategy