

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

RESIDENTIAL ACCOMMODATION

**VICTORY PARADE AND NEWCASTLE ROAD,
WALLSEND**

24 August 2015

1. Introduction

A request to vary the development standard is made in accordance with the provisions of *Newcastle LEP 2012 Clause 4.6 Exceptions to development standards* with respect of an application for residential accommodation at Lots 95-98, DP9755, Lot J DP1340, Lot 21 DP807401 and Lot 222 DP1078733, being 10-16 Victory Pde and 147A-149A Newcastle Rd, Wallsend. The development exceeds in parts, the 10 metre height control nominated under *Clause 4.3 Height of buildings*.

Justification for the request to vary this standard should be read in conjunction with the Statement of Environmental Effects and the plans accompanying the development application.

2. Relevant EPI

Newcastle Local Environmental Plan 2012 (NLEP 2012)

3. Zoning

R3 Medium Density Residential

4. Zone objectives

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow some diversity of activities and densities if:*
 - *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - *there will be no significant adverse impact on the amenity of any existing nearby development.*
- *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
 - *has regard to the desired future character of residential streets, and*
 - *does not significantly detract from the amenity of any existing nearby development.*

The proposed development is consistent with the objectives of the zone. It will provide an appropriate variety and form of housing in a medium density setting that is not inconsistent consistent with the emerging density and character of the area. The development will help to consolidate Jesmond urban town centre by increasing the population base in a walkable catchment. The proposed built form seeks to mitigate any adverse environmental impacts and is considered appropriate for the characteristics of the site and the context of this development.

5. Standard being varied

Height of building control

6. Relevant clause containing the standard

Clause 4.3 Height of buildings

7. Objectives of the standard

The objectives of the standard 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

- 10 metres

9. Numerical value of proposed variation

The proposed variations to the height of building are detailed in a summary table and diagram at Appendix 1 to this report. It lists the points of intrusion above the height plane, the maximum of which is 3.379 metres above the 10 metre height plane.

10. Why is compliance unreasonable or unnecessary?

The standard is appropriate in the context for which it is intended, being to establish a numerical height control for development that will ensure 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. However, the scale and nature of the non-compliance subject to this variation is a result of the characteristics and topography of the site. It is also considered appropriate given the size and scale of the development and the considerable areas given to open space, landscaping, movement networks and infrastructure requirements.

The non-compliances do not adversely affect the public benefit of maintaining the standard. In applying the height development standard it is reasonable to take into account the development typology and relationship to the site topography. In this instance the development site is reasonably large, and the topography can be characterised as sloping with inconsistent variation in levels from historical mine subsidence and past land use activities that modified the land form. The site is also reasonably unusual with its extensive frontage to public open space and limited common boundary with existing residential development. The extended frontage to the constrained Ausgrid land to the west and the industrial land to the north restrict potential amenity impacts to and from adjoining land. It creates a valuable opportunity to maximise

development in this R3 zone and deliver the objectives of the substantial growth precinct with respect to capitalising on proximity to Jesmond centre.

The buildings have been located to respect the topography and maximise height / density / FSR in a location that has little external impact. Strict adherence to the height standard would limit the yield and be contrary to the objectives of the local strategy and the LEP. As depicted on the appended building height plans diagram, the majority of the development is within the height plane.

As detailed in the development application, solar access and overshadowing are such that reasonable daylight is provided to the proposed dwellings. Existing residential development on adjoining land is limited in its extent and there is little adverse overshadowing. This is a result of the fact the adjoining residential properties are either on the other (eastern) side of Victory Parade or to the north of the development so as to retain good solar access.

The property to the south contains extensive public open space (Brickworks Park). The boundary setbacks and location of facilities in this open space mean there are few adverse impacts on solar access. Land to the west contains an electricity easement and drainage line. The existing commercial buildings (Ausgrid) are set well back from the common boundary and there are little to no adverse impacts. The industrial zoned land immediately north is tilt slab construction built to the southern boundary, so there is no direct interface or opening and hence no impact on its solar access or amenity.

Residential flat buildings (RFB) are permissible in the zone. *State Environmental Planning Policy No.65* (SEPP 65) and the *Apartment Design Guide* (ADG) provide that habitable rooms should have floor to ceiling heights of 2.7m. For a typical design on a sloping site the height would be:

Level	Description	Height
Basement	Fully below natural level or absorbed in slope allowance	0
Ground	Slope allowance	1.8
	Residential floor to ceiling	2.7
	Structure	0.3
Middle	Residential floor to ceiling	2.7
	Structure	0.3
Middle	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
	4 storey RFB	15

As can be seen from the table, making allowances for the level changes on the site, a typical three storey RFB would exceed a 10m height plane. Further to this the ADG provides that when establishing building heights for sloping sites the street edges should provide allowances to increase height to facilitate appropriate built form outcomes.

The development standard is considered unreasonable in this regard as it hinders the achievement of the ADG and the broader planning objectives, particularly those prescribed in the Newcastle Strategy that seek housing diversity and higher density housing to reinforce urban centres.

10.1 Physical constraints

Parts of the site are sloping with uneven transition from mining impacts and modification associated with previous land uses. As discussed above, in the context of RFB design, this has implications for compliance with height planes.

The extended boundary to the adjoining drainage line creates flood restrictions that sterilise part of the land as flood storage. This limits the ability to provide further housing at ground level and the variation to height allows the additional floor space to be provided where it achieves the best planning outcome.

The combination of level change and flooding restrict the ability to deliver medium density housing in the form of RFBs without exceeding the 10m height control. This is evident by the fact that even with proposed variations in height, the site FSR of 0.76:1 is below the allowable limit of 0.9:1.

10.2 Cumulative impacts

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

- The site is characterised as a substantial growth precinct.
- The adjacent public open space provides a high level of amenity that would be of significant benefit to residents of medium – high density housing and this development should seek to capitalise on this and maximise housing delivery to take advantage of this.
- The site is in close proximity to Jesmond urban centre with good pedestrian and vehicle connectivity via the signalised intersection at Victory Parade and Newcastle Road.
- A review of aerial imagery and planning controls failed to identify other zoned, vacant infill sites of the size and locational advantage of this land in the general vicinity.

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. Strict compliance would hinder the ability of this development to deliver the form and scale of development anticipated in the Newcastle Urban Strategy and would also make no significant difference to the daylight access of adjoining land; 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, form and density sought through the Newcastle Strategy AND the built form outcomes in SEPP 65 and the ADG cannot be achieved at the allowable FSR 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 should be read as background and context to this request. While the broad impacts are considered acceptable, the following environmental planning grounds are considered to be specifically relevant to the request to vary the standard relating to the height of buildings.

- The FSR is below that allowable for the site. Variation in height control will allow additional floor space in a position where the best planning outcome is achieved. It facilitates flood mitigation, reduces site coverage to allow more open space and landscaping, and has no significant adverse impact in terms of privacy or overshadowing.
- Strict adherence with the height control would reduce the yield and limit the ability of this site to contribute to infill development targets in the Lower Hunter Regional Strategy.
- Strict adherence with the development standard will compromise the ability to comply with SEPP 65 and the ADG which have been established to improve built form and amenity of RFBs.
- 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 the uneven levels caused by historical mining and past land use activities.
- The orientation of the site; nature of adjoining land uses; and location of the buildings where the variations are sought mean that any direct impacts are largely internalised.
- Site and development characteristics mean height variations are not immediately discernible from immediately proximate and more distant locations.

- 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 of housing.

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

12.1 Objectives of the zone

The Newcastle Urban Strategy nominates the site as predominately within a substantial growth precinct (the excluded land was previously zoned industrial). This means that although the proposed built form, density and scale are different to historical residential development, they do make a positive contribution toward the desired built form and housing outcomes prescribed in the Council's strategic plans. Further to this, the bulk and scale of buildings distributed throughout the site are entirely consistent with the bulk and scale of a recently constructed RFB on adjacent land on Victory Pde. This built form is reflected in the proposal and provides the appropriate context through which the first two objectives of the zone are achieved.

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 - *does not significantly detract from the amenity of any existing nearby development.*

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, stepping with the topography and providing both vertical and horizontal modulation of building mass.
- The urban form is consistent with the proposed character and centres hierarchy identified in the Newcastle Urban Strategy.

- Daylight is not restricted by the areas of the building that exceed the height limit.

13. Conclusion

The proposed development is an appropriate outcome for the nature and context of the site. Proposed variations to the 10m 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. Height variations to allow a site specific response to constraints such as levels and flood constraints, have 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 Newcastle Urban Strategy. Strict compliance with the LEP height provisions, which appear to have been generically applied to the R3 zones, is considered unnecessary as it will hinder delivery of the strategic outcome, and unreasonable as it will not improve the environmental impacts.

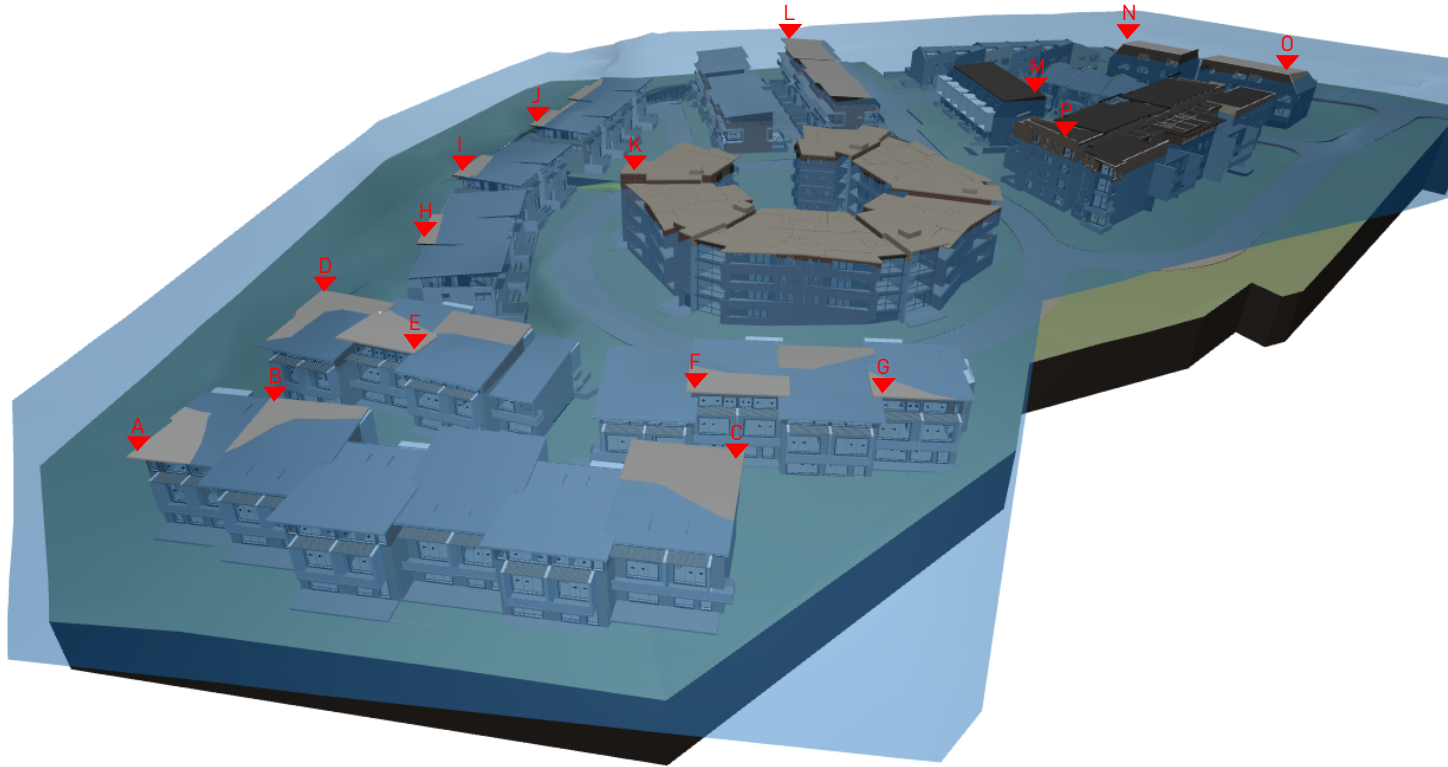
The proposed development is considered to pass the four preconditions for the granting of consent being:

1. It is consistent with the objectives of the zone.
2. It is consistent with the objectives of the HOB standard.
3. Compliance with the standard is unreasonable and unnecessary in the circumstances of the development.
4. There are sufficient environmental planning grounds to support the variation as the development achieves the objectives of the zone and will deliver housing that is consistent with the desired character of the area as detailed in the Newcastle Urban Design Strategy.

Appendices:

Building Height Plan Diagram (Smith & Tzannes)

Height Variation Table (Smith & Tzannes)



BUILDING HEIGHT PLANE DIAGRAM

THE BRICKWORKS

14_070

REV

POINT	BUILDING	EXISTING GROUND LEVEL	HIGHEST POINT ABOVE EXISTING GROUND LEVEL	MAXIMUM HEIGHT OF BUILDING	VARIATION
A	Building M	15.103	25.807	10.704	0.704
B	Building M	16.5	26.857	10.357	0.357
C	Building M	16.7	27.607	10.907	0.907
D	Building K	14.253	25.343	11.09	1.09
E	Building K	15.474	25.843	10.369	0.369
F	Building L	16.106	26.907	10.801	0.801
G	Building L	16.908	27.307	10.399	0.399
H	Building I	14.767	24.985	10.218	0.218
I	Building I	14.525	24.985	10.46	0.46
J	Building H	13.617	24.486	10.869	0.869
K	Building J	15.43	28.32	12.89	2.89
L	Building F	16.5	28.472	11.972	1.972
M	Building C	18.35	28.657	10.307	0.307
N	Building E	19.526	32.197	12.671	2.671
O	Building E	20.529	32.197	11.668	1.668
P	Building B	18.074	31.453	13.379	3.379