

**JOINT REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST**

Panel Reference	2016HCC026
DA Number	DA 2016/00384
LGA	Newcastle City Council
Proposed Development	Demolition of the existing buildings and construction of a 10 storey mixed use development including 156 residential units, two commercial units, two basement levels for parking and associated site works.
Street Address	73-79 Railway Lane, Wickham
Applicant Owner	P Blake Wickham Lands Pty Ltd
Date of DA lodgement	8 April 2016
Number of Submissions	Two
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	The proposal is listed within Schedule 4A of the <i>Environmental Planning and Assessment Act 1979</i> , being development over \$20 million.
List of all relevant s79C(1)(a) matters	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Urban Renewal) 2010 • State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development • Newcastle Local Environmental Plan 2012 (LEP) <p>Development Control Plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 (DCP) • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Appendix A - Conditions of consent</p> <p>Appendix B - Documents submitted with the application</p> <p>Appendix C - Applicant's request for a Clause 4.6 variation</p>

	Appendix D – Consultation with Department of Primary Industries - Water Appendix E – Consultation with Ausgrid Appendix F - Urban Design Consultative Group Report Appendix G - Consultation with RMS Appendix H - Legal advice from applicant regarding the Right of Way for the Hotel
Report prepared by	Newcastle City Council
Report date	13 December 2016

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes / ~~No~~**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **~~Yes~~ / ~~No~~ / ~~Not~~ **Applicable****

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

These clauses have been addressed within the body of the report below.

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **~~Yes~~ / ~~No~~ / ~~Not~~ **Applicable****

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **~~Yes~~ / ~~No~~ / ~~Not~~ **Applicable****

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **~~Yes~~ / ~~No~~**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development Application (No. 2016/00384) was originally lodged with Council seeking consent for a 15 storey mixed use development. The development consisted of 206 residential units, two commercial units and two basement levels for parking. An initial assessment of the application was made and Council advised the proponent that the proposal would not be supported due to the significant height variation, being 48m in an area with a maximum height limit of 24m.

The application was subsequently amended to reduce the overall scale of the development and the modified proposal is now seeking consent for:

- Demolition of the existing buildings;
- Construction of a ten storey mixed use development, with a podium element of four storeys (i.e. four podium levels and six storeys);
- 156 residential apartments (17 studios, 30 x 1 bedroom and 109 x 2 bedroom units).
- Two basement levels of parking consisting of 204 parking spaces;
- Two commercial units (387m² and 573m² respectively);
- A courtyard garden element between the two commercial units at the ground floor; and
- Associated site works.

The site is zoned 'B4 Mixed Use' under Newcastle Local Environmental Plan 2012 (LEP). The proposed use is permissible with consent as a *mixed used development* (i.e. *commercial premises* and *residential flat building*) in the B4 Mixed Use Zone.

The proposal was placed on public exhibition for a period of 30 days from 26 April 2016 to 25 May 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations, 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Two (2) submissions were received during the notification period.

The application was referred to the Mine Subsidence Board, Rail Corporation (Sydney Trains), Department of Primary Industries - Water, NSW Roads & Maritime Services and Ausgrid in accordance to the provisions of s91 of *Environmental Planning and Assessment Act 1979* and State Environmental Planning Policy (Infrastructure) 2007.

The key issues raised in the assessment relate to:

- Height, urban design and visual impacts;
- Amenity impacts;
- Traffic, vehicular access and road dedication; and
- Land Contamination.

The proposal exceeds the height standard under the Newcastle LEP 2012 and the applicant has submitted a Clause 4.6 request to vary the standard.

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposed development is listed within Schedule 4A of the EP&A Act, being general development over \$20 Million. The proposed development has a capital investment value of \$52,690,000 (amended proposal).

The application is recommended for approval, subject to the conditions contained in **Appendix A**, and inclusive of the Clause 4.6 request to vary the height standard.

1. INTRODUCTION

This report provides a detailed overview of the development proposed at 73-79 Railway Lane, Wickham. The proposal involves the demolition of the existing buildings and the erection of a ten storey building containing two commercial units and 156 residential apartments. The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with 23G and Schedule 4A EP&A Act, as the development has a capital investment value of over \$20 million, at \$52,690,000 (amended proposal).

2. BACKGROUND

The application was originally lodged for a 15 storey mixed use development. Council staff raised significant concerns in regards to the height of the development, which greatly exceeded the 24m height limit for the site. The applicant subsequently submitted an amended proposal reducing the bulk and scale of the development, as shown in the following table, as the originally lodged development was not supported.

	Original Proposal	Current Proposal
Height of building	48m	24m
number of Apartments	206	156

Wickham Masterplan

The 'Wickham Masterplan' project is aimed at investigating and potentially reviewing the planning controls within the Wickham area. The project will consider, amongst other matters, whether the applicable height and floor space ratios (FSRs) should be revised. Council has prepared an initial discussion report which has publically exhibited. Council is currently considering the outcomes of the public exhibition in combination with various technical reports and advice from government agencies. It is anticipated that the Masterplan will be further reported to Council in 2017.

The current application has not been assessed on the basis that there is a future possibility that heights or FSRs may change in the area. The application has been assessed on a 'standalone' basis in this respect as there is no indication as to what changes may occur in the future. In addition, Council's strategic planners have reviewed the proposal and confirmed that any future possible changes to height and FSR under the Wickham Masterplan cannot be relied on to support the current application.

Notwithstanding the draft nature of the Wickham Masterplan, the potential for future road connections adjacent and near the subject site (i.e. extension of Railway Lane) has been considered in the assessment of the application. The road widening discussed within the report is essential for the development in terms of traffic and vehicular access, and the final amended layout will integrate with possible future plans to extend Railway Lane.

Council's Senior Development Engineer has assessed the proposed against the draft details of the Wickham Masterplan currently available and advised as follows:

'Meetings have been held with internal stakeholders including Council's Traffic, Asset Team and Urban Planners and comments from the stakeholders have been considered as part of the assessment.'

The Wickham Masterplan discussions and the urban strategy for Wickham seems to be indicating that Railway Lane will be the main link between Albert St Park and Maitland Rd, thus creating a link to the new Wickham Train exchange.'

Council's Traffic Section has indicated that there is a need for Railway Lane to be widened to allow for an interim two way movement to service the development. There is potential works also required at the intersection of Railway St, Station St and Railway Lane for pedestrians from the development to access the future Wickham Station. Discussions included the need for pedestrian amenity for the new residents and commercial users and connectivity to the Park and the new Wickham Station.'

On this basis, conditions have been placed on the consent to ensure that road widening, intersection and public domain works occur as part of the development. This is consistent with the objectives of the draft Wickham Masterplan as it currently stands.

3. SITE DESCRIPTION

The development is proposed on 73-79 Railway Lane, Wickham (see Figure 1) and is zoned B4 Mixed Use under the Newcastle LEP 2012 (see Figure 2).

Figure 1: Aerial Map

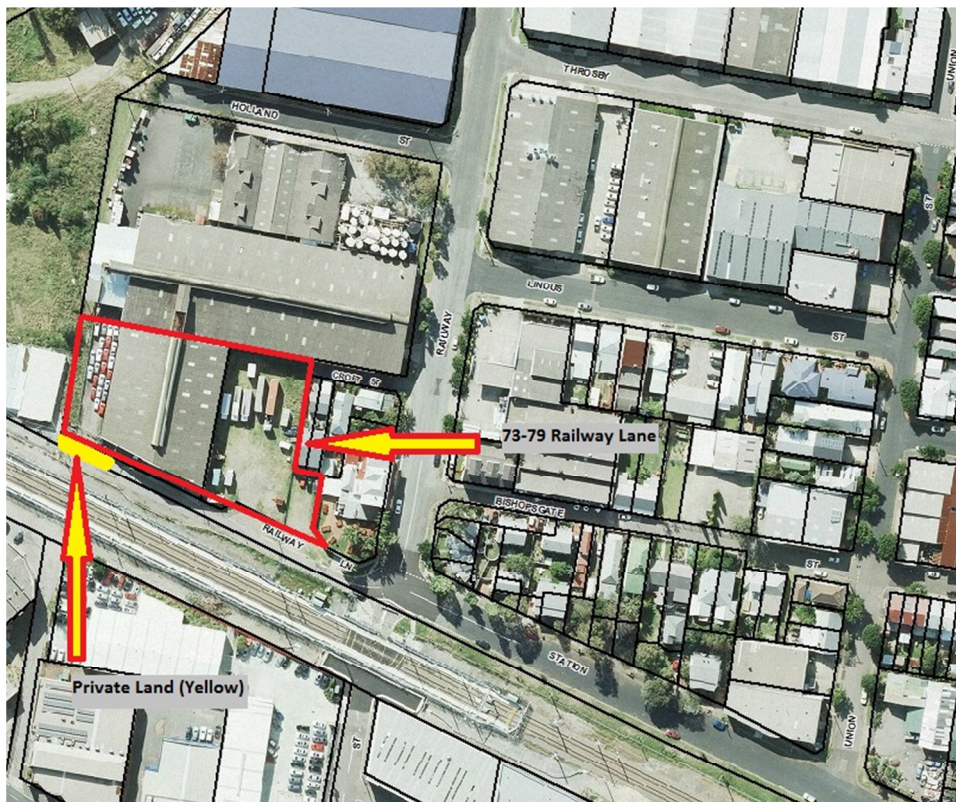
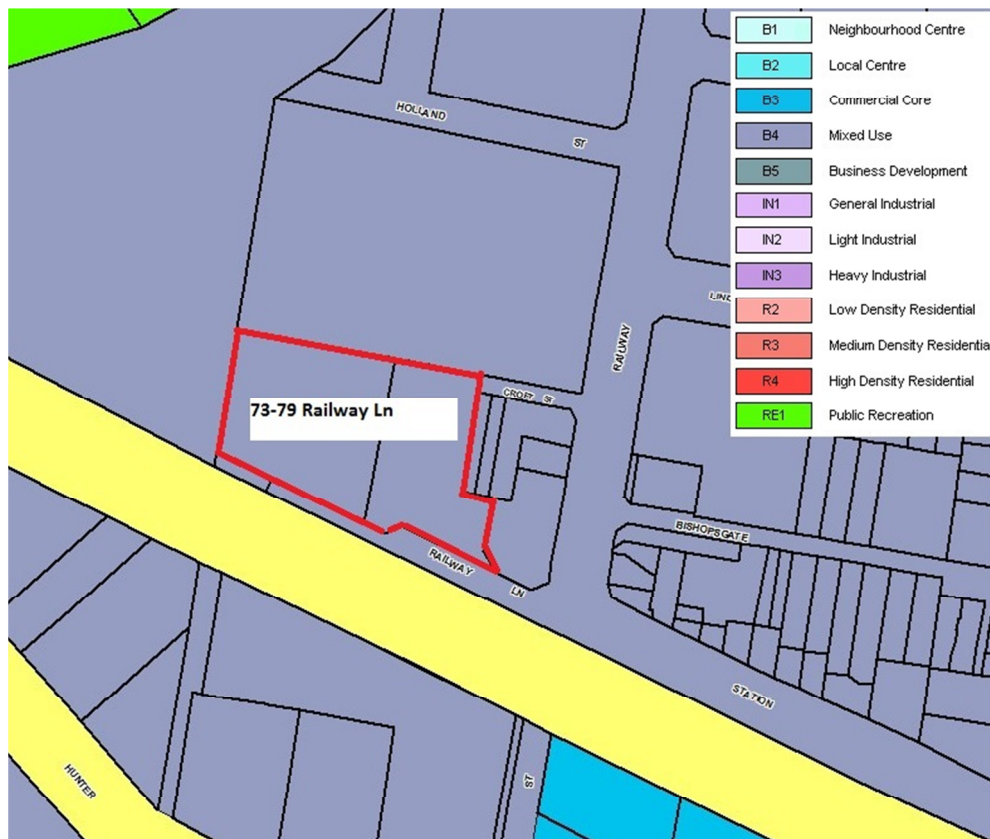


Figure 2 - Zoning Map



The site is currently occupied by a large industrial building and associated yard, which is used for storing and servicing of vehicles. The site is irregular in shape and has an area of 4,556m². The site adjoins Railway Lane to the south, with the railway corridor located on the southern side of Railway Lane.

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 Newcastle LEP 2012).

The subject site and surrounding area is relatively flat in level. Photos of the subject site are included in Figures 3-6 below.

Figure 3: Looking towards the west along Railway Lane from the corner of Railway Street.



Figure 4: Looking towards the northwest across 73 Railway Lane (adjacent rear of Lass O'Gowrie Hotel).



Figure 5: Looking towards the east along Railway Lane (79 Railway Lane in foreground).



Figure 6: Looking north along Railway Street (Lass O'Gowrie Hotel to the left of the picture).



The table below details the attributes which affect the subject site:

Table 1: Land Attributes

Attribute	Affected/Criteria
Land Contamination	Yes
Flood Prone Land	Yes
Bushfire Prone Land	No
Mine Subsidence District	Yes
Zoning	B4 - Mixed Use
Height	24.0 Metres
Floor Space Ratio (FSR)	4.0:1
Heritage Item/Heritage Conservation Area	No However, the site is located adjacent to Local Heritage Item I691 - Lass O'Gowrie Hotel
Acid Soil Sulphate	Class 3/4
SEPP 71 Coastal Zone	Yes

4. PROPOSAL

The amended application seeks consent for:

- Demolition of the existing buildings;
- Construction of a ten storey mixed use development, with a podium element of four storeys (ie four podium levels and six storeys) and a height of 29.9m;
- 156 residential apartments (17 studios, 30 x 1 bedroom and 109 x 2 bedroom units).
- Two basement levels of parking consisting of 204 parking spaces;
- Two commercial units (387m² and 573m² respectively);
- A courtyard garden element between the two commercial units at the ground floor; and
- Associated site works.

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

5. PLANNING ASSESSMENT

5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

5.1.1 Section 23G – Joint Regional Planning Panels

The proposal is listed within Schedule 4A of the Environmental Planning and Assessment Act 1979, being development over \$20 million.

Section 23G and Schedule 4A (3) of the EP&A Act requires the Joint Regional Planning Panel (JRPP) to determine applications for general development over \$20 million in value. The capital investment value of the original application was \$68,045,000 including GST. The amended design has a capital investment value of \$52,690,000 including GST. The application is to be determined by the Hunter and Central Coast Regional Planning Panel.

5.1.2 Section 91 – Integrated Development

The proposal is integrated development pursuant to Section 91 of the EP&A Act as approval is required from Mines Subsidence Board and the Department of Primary Industries - Water.

Department of Primary Industries - Water

The application was referred to the Department of Primary Industries - Water in accordance to the provisions of s91 of *Environmental Planning and Assessment Act, 1979* and the *Water Management Act, 2000*. The *General Terms of Approval* have been issued by the Department and are incorporated within the conditions at **Appendix A** and the advice is extracted in full at **Appendix D**.

Mine Subsidence Board

The application was referred to the Mine Subsidence Board in accordance to the provisions of s91 of *Environmental Planning and Assessment Act, 1979*. Advice from the Board has not been received within the 40 day period given under 91A(5) *Environmental Planning and Assessment Act, 1979*, and as such, conditions requiring that separate mine subsidence approval be obtained have been recommended within **Appendix A**.

Sydney Trains

Clause 86 of the SEPP requires concurrence from Sydney Trains for development that involves the penetration of ground to a depth of at least 2m below ground level within 25m of a rail corridor. The application was referred to Sydney Trains on 20 April 2016 and no response has been received to date. Clause 86(5) allows the consent authority to grant consent to development without concurrence if 21 days has passed since the notice has been provided and concurrence has not been granted.

5.1.3 Section 79C Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.79C (1) EP&A Act as follows:

5.1.3.1 Section 79C(1)(a)(i) provisions of any environmental planning instrumentState Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 and 21 of the SEPP require the Joint Regional Planning Panel to be the determining authority for development included in Schedule 4A of the Act. This includes applications for development which are over \$20 million in value.

The capital investment value of the original application was \$68 million including GST. The amended design has a capital investment value of \$52,690,000 including GST.

State Environmental Planning Policy (Infrastructure) 2007

The 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 have raised no objections to the proposal subject to standard criteria regarding electricity supply and construction safety requirements as detailed within **Appendix E**.

The potential for acoustic impacts from the nearby railway line has been assessed by Council's Environment Protection Officer in accordance with Clause 87 of the SEPP as follows:

'Acoustics'

A theoretical acoustic assessment was carried out by RCA Acoustics dated April 2016 to support the proposed development. The noise assessment demonstrates that provided the recommendations as set out in Section 6 of the report are applied (i.e. glazing, external wall construction and ventilation requirements) and followed,

compliance with internal noise level requirements will be achieved. This will be addressed by an appropriate condition of consent.'

A condition has been included in the consent to ensure that the recommendations of the acoustic assessment are adopted in the construction of the development.

On this basis, the provisions of the SEPP in regards to acoustic impacts from the railway line and impacts on the electricity network have been met.

The proposal involves traffic generating development as identified in Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 as there are more than 200 vehicles associated with the development. The application was referred to the Roads and Maritime Services for comment on the 15 April 2016. The RMS provided comments on the 25 August 2016 stating that the application does not meet the requirements for referral and they have no objection to or requirements for the development (**refer to Appendix G**).

State Environmental Planning Policy (Urban Renewal) 2010

This policy aims to facilitate the orderly and economic development of sites in and around urban renewal precincts. The site is identified in the Newcastle Potential Precinct Map and the development has a capital investment value of over \$5 million. Development consent cannot be granted unless the consent authority is satisfied that the development is consistent with the objectives of developing the precinct for urban renewal and does not restrict or prevent:

- *higher density housing or commercial or mixed development;*
- *future amalgamation of sites; or*
- *access to future public transport in the precinct.*

The proposed development meets the objectives of the SEPP as it will provide for higher density mixed development in an area that will have easy access to public transport in the future. The site also does not restrict future development opportunities in the area. Further, the design and assessment of the development has also taken into consideration linkages to public transport and public domain works, including the objectives and aims of the draft Wickham Masterplan.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (SEPP) (BASIX) 2004 applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

Accordingly the provisions of the SEPP apply to the current development proposal. In this regard the applicant submitted a BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is included on the development consent requiring such commitments to be fulfilled.

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

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The application has been assessed by Council's Senior Environment Protection Officer and is considered acceptable subject to conditions of consent, as recommended at **Appendix A**. The officer's detailed assessment is included below:

'Contamination

The applicant submitted to Council a Phase 1 Environmental Site Assessment prepared by RCA Australia dated March 2016 to support the proposed development. The RSU (ie Regulatory Services Unit) has reviewed the report and noted areas of contamination were suspected on site. The consultant recommended that a Phase 2 (intrusive) assessment to be carried out on site to determine the full extent of contamination across the site. While the RSU acknowledged that there will be minimal access to soils due to the extensive excavation works required for the basement carpark, the site immediately adjacent to the north (Fuchs Lubricants) could potentially have contaminated the groundwater that may affect the subject site. In line with the recommendations made by the RCA report, the applicant was to have regard for any potentially contaminated groundwater on the subject site.

A Phase 2 Environmental Assessment prepared by RCA Australia dated October 2016 was carried out and submitted to Council. The Phase 2 Assessment confirmed the presence of contaminated material in excess of the NEPM human health criteria. A range of contaminants were identified in samples across the subject site which included fibrous cement sheeting, lead, hydrocarbon, PAH and a suite of metals. Given the extensive excavations required for the basement carpark, RCA concluded that the site could be made suitable once the contaminated material was excavated and removed off site. As a result RCA recommended that a Remedial Action Plan (RAP) be developed addressing the excavation and removal of all the contaminated material.

A RAP prepared by RCA Australia dated November 2016 was submitted to Council to address the contamination at the subject site. The RAP states "The remediation goal is to undertake works which will render the site suitable for the development of a proposed multi-storey complex consisting of two (2) levels of basement car park with commercial and residential use on the ground floor and residential apartments on the above storeys. The excavation and removal of site soils to depths of approximately five (5) metres below ground level (MBGL) will be required to be undertaken with associated dewatering works." The RSU will seek to address this with a condition of consent.

The groundwater at the subject site was identified as not suitable for human consumption, however the RAP states "Exposure to groundwater may occur during the proposed development works at the site through dermal contact and ingestion where excavation of soils exposes the groundwater present at the site. There is no noted use of groundwater on site therefore it is considered there is no pathway for exposure to final site receptors after remediation works have been completed." The RSU will seek to address this with a condition of consent.'

On this basis, it is considered that the provisions of SEPP 55 have been met and appropriate conditions have been placed on the consent.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

This policy applies to the submitted development and aims to improve the quality of residential flat development. Clause 28(2) of the SEPP requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), the design quality of the development when evaluated in accordance with the design quality

principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

As required pursuant to clause 50 of the *Environmental Planning and Assessment Regulation 2000*, the application has been supported by a SEPP 65 design verification report prepared by a qualified designer (architect) outlining how the development achieves the 10 design quality principles. A further revised Statement was submitted to address the UDCG report and the amended design.

Excerpts and commentary of the main points of the Urban Design Consultative Group (UDCG) are provided below (the complete UDCG comments are attached at **Appendix F**):

Built Form and Scale

The proposed development comprises a U- shaped plan form rising 10 stories with the lower four levels expressed as a brick faced podium extending east over the basement vehicle entry. This is commended in principle in that it would assist in creating a comfortable pedestrian scale at ground level. Roof-top gardens are proposed above the main structure and the lower extended podium. A large, landscaped court is proposed to the inner area of the U- shaped plan.

The development is proposed in a location of evolving residential apartment buildings in close proximity to the proposed rail interchange. The development was previously proposed as much higher paired towers, but remains [at approx. 30 m] in excess of the allowable 24m height limit and 600mm above a height which was claimed to have been agreed in discussions with Council planners. There appears to be no justification for exceeding the LEP height limit, and if this were to be approved on the subject site, change to the limit on other similar sites in the zone would also have to be reviewed. It is considered that at least the residential floors should be within the height control, perhaps with the option for communal facilities and service cores exceeding the height.

The continuous elevations about the U shaped plan present as a larger form than other recent developments in the setting.'

The applicant's response to this design principle is partly extracted below:

'Wickham is currently in a transition period with the suburb developing as the western gateway to Newcastle's city centre, and future potentially its CBD. With increased height limits compared to surrounding suburbs, a future predominance of larger consolidated land holdings and high rise developments will become commonplace in the area.

Recent approvals in the area include buildings eight storeys and over and several applications have been lodged with Newcastle City Council for residential buildings of ten storeys with plant rooms above.

The proposal is in keeping with the future strategic vision for the area, rather than the current state. The proposed Railway Lane Development has a height of 27.7m, as measured from the street to the top of the building. (30.7m to top of proposed Plant Level). The proposed building will be one of the first larger buildings in this immediate area, but the location is seen to be appropriate for such a development, considering its transitional context and relationship to future transport infrastructure.

In terms of built scale, the building height is broken down in three levels; an underground basement, a 4 storey podium, a 4 story u-shaped upper part and above this a stepped-in top level. The fragmentation of the building program into these elements ensures that the building is not overwhelming in its scale when viewed from the street level or adjacent residences.'

The development has generally been supported by the UDCG and the issue of the height variation is addressed under the Clause 4.6 discussion below.

Landscape

The group recommended stairs rising to the lawn in the central court be staggered or have wide treads to improve the sense of a continuous open space and, similarly, that raised planters for trees about the lawn be limited to 500mm in height.

The inclusion of natural light to the upper level of the basement carpark by way of roof-lights integrated into the landscape design was recommended by the group.'

The latest revision of the amended plans incorporates the rising stair arrangement. The light wells to the basement have not been incorporated in this instance within the landscape design. Council is aware that the light wells conflict with the mechanical ventilation system achieving the required ventilation under the Australian Standards and Building Code of Australia.

Amenity

Deletion of the cross-over corridor as suggested above in 'Sustainability' is strongly recommended. This would both improve the amenity of the two central units on each of levels 2 to 8, and create a better sense of community for residents living in units served by each of the two lift cores.

It was recommended that the upper roof-top common areas incorporate small covered areas and wind protection, and be separated into two parts, each serving the residential units accessed from the nearest lift core.

Resolution of street parking and issues of street widening and ownership need to be clarified in relation to the ability for pedestrians to move about the inner side of the angled parking bays.'

The layout of floors 2 to 8 has not been changed within the current amended design in terms of the 'cross-over' corridors. It is noted that the nominated change would contribute to internal privacy conflicts.

The roof top terrace common areas have been provided with covered areas and wind protection and have been broken into separate smaller areas.

Significant amendments have been made to the Railway Lane design with the removal of the street parking, redesign of the loading bays, widening of the public road and inclusion of the footway and street trees within the public domain via dedication. Additionally, an easement for public access will be provided within the forecourt area between the two towers.

Housing Diversity and Social Interaction

Whilst not specifically discussed, the number of apartments and the variety including studios caters to the identified market in this evolving location. The predominance of two bedroom apartments over studios or single bed apartments provides flexibility for most occupants.

The group recommended relocation of the lounge recesses from the cross over corridors to the lift lobbies.'

The layout of floors 2 to 8, and associated removal of the lounge elements, has not been changed within the current amended design in terms of the 'cross-over' corridors as discussed under point 6.

Aesthetics

The group supported the use of brick cladding to differentiate the lower podium levels noting that this would benefit from articulation as a plane set forward of the wall line or detailed with a raised top [potentially to the window line above].

The group recommended variation in the upper roof line to break up the extended skyline.'

The current amended proposal has incorporated these recommendations including the brick facade for the podium level and the variation within the rooftop line via the combination of architectural fins and the roof terraces over the common areas.

Apartment Design Guidelines

In addition to consideration of the 10 design quality principles, Clause 30 of the SEPP also requires Council to have regard to the recent publication 'Apartment Design Guide' (ADG) produced by the NSW Planning and Environment. The relevant quantitative guidelines under the ADG are discussed below:

2A Primary Controls:

The proposed amended development is considered acceptable in relation to the above guidelines on building form. The development provides for a scale and form which is considered to be appropriate having regard to the current strategic directions for the area. The proposal's street presentation is considered to be suitable and the development offers a good interface with the public domain having a large central courtyard opening to Railway Lane and two commercial units offering street activation. The proposal also provides for appropriate building depth and bulk, with a suitable degree of landscaping on the site and within the streetscape.

2B Building Envelopes:

The proposed amended development is considered to be acceptable in relation to building envelopes. The development will exceed the primary street front setback at the podium level (3.5m) which is acceptable having regard to the unique nature of Railway Lane in terms of width and alignment, irregular shape of the subject site relative to the street alignment and the public benefit outcomes achieved. The road dedication results in the podium effectively having a zero setback to Railway Lane which is also consistent with several recently approved multi-storey developments within the Wickham area. It is further noted that the zero setback is only for the closest corners of each building as the proposed development's alignment is stepped relative to Railway Lane.

2C Building Height:

The proposed development exceeds the height limit. This issue is discussed under Section Clause 4.3 Height of Buildings and Clause 4.6 Exception to Development Standards below. The height of the proposed building and the variation to the 24 metre development control is considered acceptable.

2D Floor Space Ratio:

The proposed development complies with FSR control (4.0:1) specified by the LEP 2012, being 3.22:1. The proposed density is considered acceptable.

2E Building Depth:

The design and depth of the proposal in relation to the site and its irregular shape is acceptable and was also supported by the UDCG. The two tower design provides for a variety of articulating elements to ensure that the massing and bulk of the building is reduced and is responsive to the context of the site. The design, layout and depth of apartments are considered to be generally acceptable (i.e. the 'cross-corridors' being the only issue raised by the UDCG that the amended design did not address in this respect).

2F Building Separation & 3F Visual Privacy

Building separations are the distance measured between the building envelopes or buildings. The separation distances between the buildings contribute to the urban form and ensure reasonable and appropriate levels of amenity and open space between buildings having regards to the nature of the development, its character and location within the city centre.

Street Setback

The building separation at the street front to Railway Lane should be 3.5m under the Newcastle DCP 2012 (i.e. City West precinct). As discussed above, this setback is not achieved as a result of the road dedication provided and is acceptable in this instance.

Western Setback

The proposal has a 9.0 metre setback to the western boundary up to the eighth storey and then 12.0 metres for the ninth storey which complies with the ADG.

Eastern Setback

The proposal has a variable setback to the eastern boundary. The majority of the building has a 9.0m setback to the eighth storey and then 12.0 metres for the ninth storey which complies with the ADG.

The lower floors up to the fourth floor have a variable setback with a minimum of 1.2m. Floors two to four only have two bedroom windows on the elevation, which are screened and are acceptable in terms of privacy impacts.

Northern Setback

The proposal has a variable setback to the northern boundary. The majority of the building has a 3.0m setback to the eighth storey and then 6.0 metres for the ninth storey.

The ground storey setback is between 0.5m to 1.8m and is considered to be acceptable. Storeys two to four also have a variable setback of between 0.5 to 1.8m. This setback is acceptable as the proposal has no windows or openings facing to the north. It is noted that the proposal under the ADG should achieve a 3.0m minimum setback. However, the design was considered to be acceptable by the UDCG.

Storeys five to eight have a setback of 3.0m and is acceptable as the proposal has no windows or openings facing to the north. It is noted that the proposal under the ADG should achieve a 4.5m minimum setback. However, the design was acceptable by the UDCG.

Storey nine has a setback of 6.0m and is acceptable with the inclusion of the fin wall extension for privacy. It is noted that the proposal under the ADG should achieve a 12.0m minimum setback. However, the design was considered to be acceptable by the UDCG. Conditions recommending further amendment of the proposed fin walls have been included at **Appendix A** to minimise privacy impacts.

Alternatively, the removal of the two northern most apartments on the ninth storey would achieve compliance with the ADG, but this is not considered necessary in this particular instance.

Basement

The basement is largely proposed at zero setbacks along the northern boundary with variable setbacks for the eastern and western boundaries.

Internal Setback/Privacy

The internal separation between the towers is over 23.0 metres and is acceptable in terms of visual privacy. It is noted that the removal of the 'cross-corridors' between the two towers (i.e. modified to become residential apartments) as recommended by the UDCG would potentially result in privacy issues in terms of the internal separations.

2G Street Setbacks:

As discussed above under 2B, the development will exceed the primary street front setback at the podium level. However, this is acceptable having regard to the unique nature of Railway Lane and the public benefit outcomes achieved as part of the overall development.

3B Orientation

The proposal is considered to be acceptable in terms of its orientation. The overshadowing impacts of the development are considered to be acceptable largely falling onto railway lands to the south. The overshadowing is discussed in more detail under the Clause 4.6 assessment below.

3C Public Domain

The proposed design incorporates two ground floor commercial units separated by landscape gardens and an open public domain area towards Railway Lane. Additionally, the proposal will be dedicating approximately 3.0m of land along the Railway Lane frontage of the site due to the irregular shape of the land and narrowness of Railway Lane. This ensures that the roadway is of a suitable width and the footway and associated proposed street trees will be within the public domain. Additionally, an easement for public access will be provided within the forecourt area between the two towers.

3D Communal and public open space & 3E Deep Soil Zones

The proposal achieves over 40% landscape area exceeding the minimum 25% under the ADG and is acceptable in terms of solar access to the communal area. The proposed landscape design incorporates large garden and open space areas at the ground floor (inclusive of significant deep soil plantings) and a roof top communal area.

3G - 3J Access

The proposal is considered to be acceptable in terms of vehicular and pedestrian access. The proposal has sufficient motor vehicle, motor bike and bicycle parking.

4A Solar Access

At least 70% of the living rooms and private open space areas within the development achieve two hours of sunlight between 9am and 3pm on the 21 June, which meets the requirements of the ADG.

4B Natural ventilation

The design of the proposed apartments is acceptable in terms of natural ventilation and cross ventilation.

4C Ceiling heights

The proposed floor to ceiling height meets the minimum requirements under the ADG, with the proposal being 3.0m for the apartments and 3.4m for the commercial units (ie this is inclusive of the floor widths).

4D Apartment size and layout

All of the proposed apartments exceed the minimum sizes under the ADG as included below. The layout and design of the apartments is considered to be acceptable.

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

4E Private open space and balconies

Each of the proposed apartments is provided with balconies which achieve the minimum width and areas required under the ADG as detailed below:

Dwelling type	Minimum area	Minimum depth
Studio apartments	4m ²	-
1 bedroom apartments	8m ²	2m
2 bedroom apartments	10m ²	2m
3+ bedroom apartments	12m ²	2.4m

4J Noise and pollution

The acoustic impacts on the proposal have been addressed within the applicant's acoustic report as assessed by Council's Environment Protection Officer, see Section **5.1.3.1**.

ADG Miscellaneous

The remaining aspects of the ADG have been addressed within the UDCG's assessment of the proposal including such sections as 4F-4H & 4K Common Circulation, Storage, Acoustic Privacy and Apartment Mix. These design aspects of the proposal are acceptable.

Newcastle Local Environmental Plan 2012

Clause 1.3 – Land to which Plan applies

Newcastle Local Environmental Plan 2012 (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned B4 - Mixed Use under the Newcastle LEP 2012 and the zone objectives and provisions are detailed below:

Zone B4 Mixed Use

1 Objectives of zone

- *To provide a mixture of compatible land uses.*
- *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.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

2 Permitted without consent

Environmental protection works; Home occupations

3 Permitted with consent

Boarding houses; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Camping grounds; Caravan parks; Cemeteries; Dual occupancies; Dwelling houses; Eco-tourist facilities; Electricity generating works; Farm buildings; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Heavy industrial storage establishments; Heavy industries; Helipads; High technology industries; Open cut mining; Resource recovery facilities; Rural industries; Secondary dwellings; Semi-detached dwellings; Sewage treatment plants; Truck depots; Vehicle body repair workshops; Waste disposal facilities; Water recycling facilities; Water supply systems'

The proposal is a mixed use development of apartments with two larger commercial units which are permissible and compatible land uses within the zone. The proposed development is defined as a *residential flat building* and *commercial premises* (i.e. being known as a *mixed use development*) under the Newcastle LEP 2012 within the subject zone as detailed below.

'mixed use development means a building or place comprising 2 or more different land uses.'

'residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.'

Note. Residential flat buildings are a type of residential accommodation—see the definition of that term in this Dictionary.'

'commercial premises means any of the following:

- (a) business premises,*
- (b) office premises,*
- (c) retail premises.'*

The proposal is considered to meet all of the zone objectives. The subject site is close to the Newcastle Central Business District and public transport (i.e. the new Wickham interchange is approximately 400m to the east). The provision of mixed use development in this area of Wickham is in keeping with the zone objectives and the intended strategic planning outcomes under the Newcastle LEP 2012 and the Newcastle DCP 2012.

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 24.0m (see Figure 7 below).

It is confirmed that the *building height* as defined under the Newcastle LEP 2012 is inclusive of plant and similar as detailed below:

'building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.'

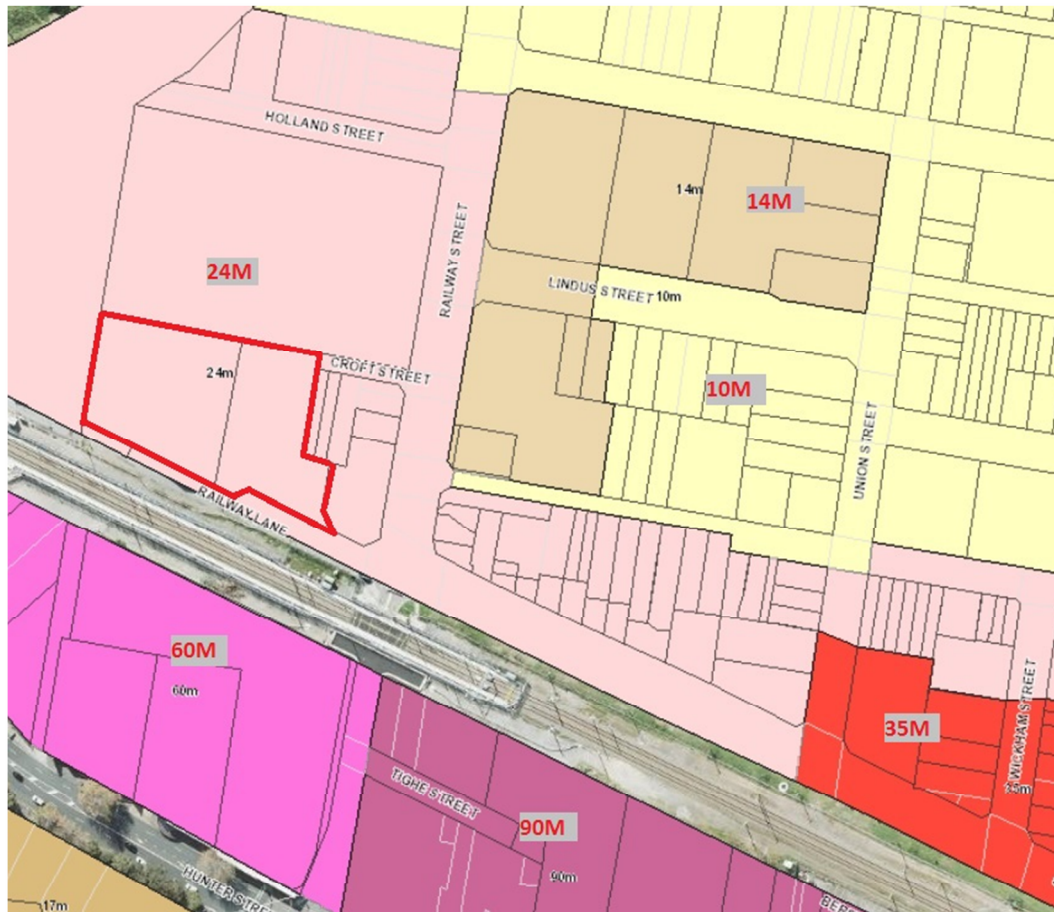
The height of the proposed development exceeds the 24.0 metre height standard as follows:

- The top of the ninth storey is 27.4m
- The top of the roof terrace and plant areas is 29.9m
- The top of the architectural fin walls is 31.1m

It is noted that the ninth storey occupies the majority of the 'u-shaped' floorplate proposed whereas the roof top terrace and plant areas occupy approximately 30% of the tenth storey. Furthermore, it is noted that the roof top fin walls are considered to constitute an *architectural roof feature* under Clause 5.6 of the Newcastle LEP 2012, which are not included for the purposes of determining the *building height* and compliance with the height standard under the Newcastle LEP 2012.

The applicant has submitted a Clause 4.6 variation request as part of the application seeking variation to the 24.0 metre height standard, as it is considered to be unreasonable or unnecessary in the circumstances of the case. The Clause 4.6 variation is addressed in detail below and the applicant's Clause 4.6 variation request is attached in **Appendix C**.

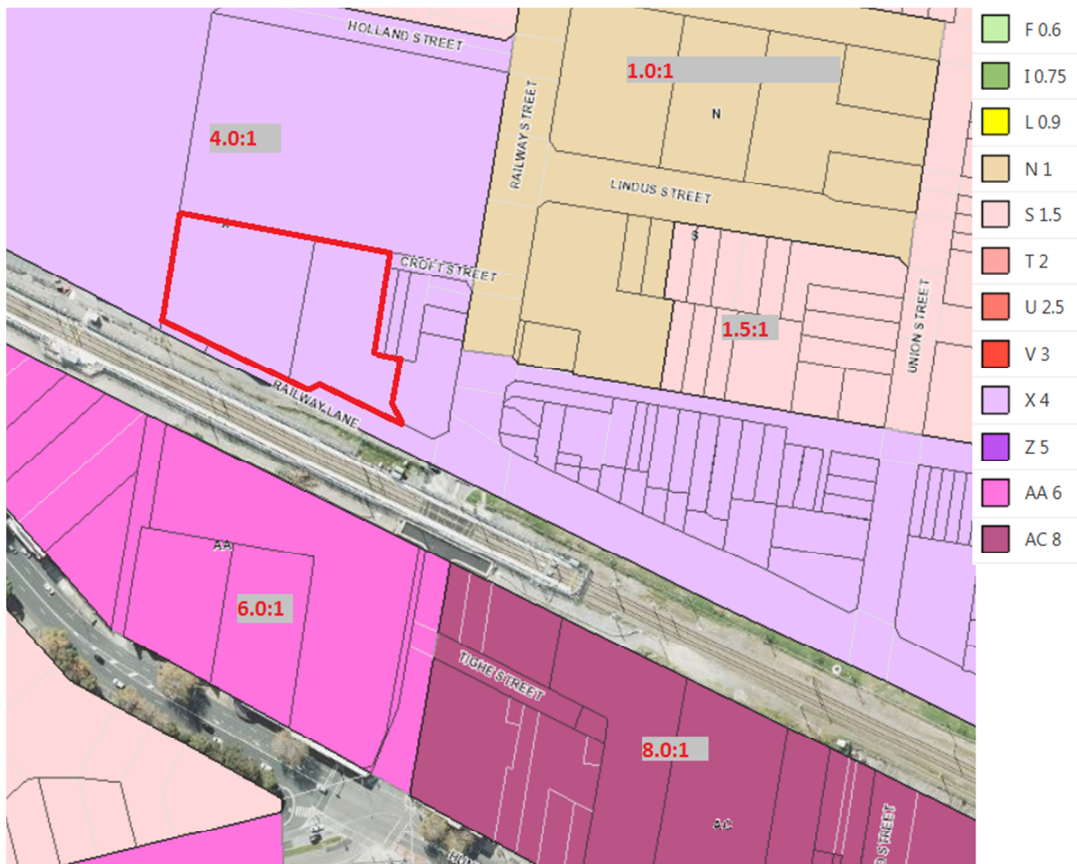
Figure 7 - Heights under Newcastle LEP 2012



Clause 4.4 Floor Space Ratio

The maximum floor space ratio for the site is 4.0:1. The proposed amended development has a floor space ratio of 3.22:1 which complies with this requirement (see Figure 8 below).

Figure 8 - FSR under Newcastle LEP 2012



Clause 4.6 Exception to Development Standards

The applicant has submitted a detailed request for the variation of the height (Clause 4.3) development standards under Clause 4.6 of the Newcastle LEP 2012. The applicant's Clause 4.6 variation request is included in full at **Appendix C**. It is noted that the Clause 4.6 variation request is based on the original design (i.e. 48m high) but it has been determined that this request is still applicable to the lower amended design (i.e. 29.9m high).

To allow variations to development standards under the Newcastle LEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3) (i.e. the applicant's Clause 4.6 variation request is attached at **Appendix C**). Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest, is consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

The Clause 4.6 request to vary the height standard, as it applies to the current amended design, is supported and a detailed assessment is included below.

Preliminary

Firstly, it is noted that the subject site previously enjoyed a height limit of 60m and an FSR of 6.0:1 until 15 June 2012 when the Newcastle LEP 2012 was amended. This was a result of the Department of Planning's urban design review of the Newcastle City Centre under the provisions of the State Environmental Planning Policy (Urban Renewal) 2010 and changes to the LEP and DCP in relation to the City Centre.

The Clause 4.6 variation request secondly queries whether the changes to the height (24.0m) and FSR (4.0:1) under the Newcastle LEP 2012 is practical in terms of urban planning and design outcomes. It is suggested that the reductions to previous height and FSR within Wickham/Newcastle West Precincts is too great and should be amended further. Additionally, it is argued that on the subject site, the current controls discourage a more 'slender' urban design form which is preferable over a shorter and blockier form.

While it is agreed that a slender form is preferable over a blockier form, a blockier form only arises where a development aims to maximise both the allowable height and FSR. A smaller development (i.e. number of units and FSR) could achieve a slender form. It is not accepted that a Clause 4.6 variation should be supported on this basis, notwithstanding concerns of the interaction of the available FSR and height standards.

As noted previously, Council's strategic planning section is currently undertaking a review of the Wickham area and is investigating whether the applicable planning controls should be revised (i.e. 'The Wickham Masterplan'). It is unknown at this stage what changes, if any, will be proposed in terms of height and FSR standards (and it is likely to be sometime in 2017 before the Wickham Masterplan is further reported to Council).

Clause 4.6(3)

The applicant's written request for the Clause 4.6 variation must demonstrate the proposal is justified under Clause 4.6(3) (a) & (b), as follows:

- (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.'*

It is considered that the applicant's Clause 4.6 variation request (as attached at **Appendix C**) meets these requirements as detailed above. It is considered that the urban design, visual impacts, overshadowing, visual and acoustic impacts are acceptable.

Clause 4.6(4)

The consent authority must not grant consent to a Clause 4.6 variation unless it is satisfied with the matters under Clause 4.6(4) as detailed below:

- (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 Secretary has been obtained.'*

The detailed assessment below addresses Clause 4.6 and specifically Clauses 4.6(3) and 4.6(4) demonstrating that these clauses have been satisfied.

Height Standard Variation (Cl4.6(3))

The applicant's written submission contends that the variation to the height standard should be supported as the resultant impacts are acceptable and it would be unreasonable and unnecessary in this instance to require strict compliance in this instance.

It is considered that the impacts resulting from the amended proposal are acceptable and, as such, it is recommended that support for the variation be given.

Height Standard Variation Cl 4.6(4)(a)(i))

It is considered that the applicant has satisfactorily addressed the provisions of Clause 4.6(3) as detailed above and contained within **Appendix C**.

Height Standard Variation Cl 4.6(4)(a)(ii))

Height Standard Objectives

The height objectives under Clause 4.3 are 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.'*

Following an assessment of the proposal under the provisions of the Apartment Design Guideline (ADG) and the objectives of the Newcastle LEP 2012 (i.e. zone and height objectives), it has been determined that the scale of the amended development (i.e. 29.9m high) makes a positive contribution to the desired form intended under the adopted planning controls and the hierarchy of the area. It is further noted that the reduction of the top two storeys (i.e. ninth storey apartments and the roof top terrace) would not significantly improve the development and, conversely, may lessen the overall planning outcomes for the site.

The submitted shadow diagrams show that the impact of the development is reasonable in terms of its overshadowing impacts. The majority of the shadows fall onto the neighbouring roadway and railway line.

Zone Objectives- Height Cl 4.6(4)(a)(ii)

The proposed development is in the public interest and the variation to the height standard is consistent with the objectives of clause 4.3, as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. The proposal also allows for reasonable daylight access to the public domain and nearby developments.

Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore or on the amenity of the foreshore through overshadowing or loss of views from a public place. The site contains little vegetation at present and therefore the development will not have a negative impact on existing ecosystems or biodiversity in the area. An adequate stormwater management system has been proposed as part of the development to minimise any impacts from water and effluent disposal.

Clause 5.6 Architectural Roof Features

It is advised that the fin walls at the top of the building are considered to constitute an architectural roof feature and, as such, do not contribute to the *building height* of the proposal in terms of the height standard (i.e. which is relevant to the proposed Clause 4.6 variation request discussed above). These fins are approximately 1.2 meters above the roof top terraces and plant areas and are considered to offer architectural articulation and relief to the skyline appearance of the development.

'5.6 Architectural roof features

- (1) *The objectives of this clause are as follows:*
 - (a) *to permit variations to maximum building height standards only where roof features contribute to the building design and overall skyline,*
 - (b) *to ensure that the majority of the roof is contained within the maximum building height.*
- (2) *Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
- (3) *Development consent must not be granted to any such development unless the consent authority is satisfied that:*
 - (a) *the architectural roof feature:*
 - (i) *comprises a decorative element on the uppermost portion of a building, and*
 - (ii) *is not an advertising structure, and*
 - (iii) *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) *will cause minimal overshadowing, and*
 - (b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.'*

Clause 5.9 Preservation of trees or vegetation

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

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 Newcastle LEP 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 a significant adverse impact on 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 on 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 has submitted an acid sulphate soil management plan which has been assessed by Council's Environment Protection Officer and is acceptable subject to conditions of consent.

Clause 6.2 Earthworks

The proposal will involve significant earthworks involving excavations at least two storeys into the ground. This is acceptable subject to conditions of consent. It is further noted that the land contamination, water and mining aspects have been addressed in this report under SEPP 55 and the Integrated Approvals sections.

Part 7 Newcastle City Centre

The site is located within the Newcastle City Centre but it is not a *Key Site* under the provisions of the Newcastle LEP 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 LEP as it allows for the redevelopment of a site for a mixed use development consisting of 156 apartments and two large commercial units.

Clause 7.5 Design Excellence

The proposal has been considered by the UDCG and is generally considered acceptable although concern was raised with the proposed height. The height aspects have been addressed in regard to the Clause 4.6 variation request above.

The proposal does not trigger the requirement for a design competition under Clause 7.5(4).

Overall it is considered that the proposal is acceptable in terms of Clause 7.5, and specifically subclause 7.5(3) (ie as included below), as detailed within this assessment report.

- (3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:*
 - (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
 - (c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,*
 - (d) how the development addresses the following matters:*
 - (i) heritage issues and streetscape constraints,*
 - (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (iii) bulk, massing and modulation of buildings,*
 - (iv) street frontage heights,*
 - (v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (vi) the achievement of the principles of ecologically sustainable development,*
 - (vii) pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (viii) the impact on, and any proposed improvements to, the public domain.'*

5.1.3.2 Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

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

5.1.3.3 Section 79C(1)(a)(ii) any development control plan (and section 94 plan)

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below.

Section of DCP	Comment
Section 3.10 Commercial Uses	This section of the DCP 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. It is noted that prime design controls for this development are contained within the Apartment Design Guidelines and Section 6.01.01-04 of the Newcastle DCP 2012.
Section 4.10 Flood Management	<p>The site is subject to flooding and the proposal has been assessed by Council's Senior Development Engineer and is acceptable, as detailed below, subject to conditions of consent.</p> <p>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 St is noted as a flood storage area.</p> <p>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 Council requirements with the north eastern area being designed for landscaping and driveway access.</p> <p>The following is noted from Council's Flood Certificate:</p> <ul style="list-style-type: none"> • The PMF Flash flood level is noted as 2.98m and Ocean PMF is noted as 3.40m AHD. • 1 % AEP level for flash flood is noted as 2.05m AHD and Ocean level is noted as 2.20m AHD. • The recommended floor level is noted as 2.55m AHD. <p>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.</p> <p>Northrop has reviewed Council's Flood Certificate and Flood Planning Policy and the following has been recommended by Northrop:</p> <ul style="list-style-type: none"> • The proposed basement parking access driveway has been set at 2.70m AHD. • The proposed ground level floor is to be set at 2.70m AHD. <p>The plans have been amended to reflect the recommended flood levels by the consulting engineers. Fire exits and other areas which require protection for up to PMF levels have been indicated on the plans.</p> <p>The submitted plans are compliant with Council's flooding requirements in the DCP and a number of conditions have been placed on the consent in this regard.</p>
Section 4.03 Mine Subsidence	The mine subsidence aspects have been discussed within Section 5.1.2 of the report above.

Section 4.04 Safety & Security	The building has been designed with safety and security being a consideration. The application is considered to be in accordance with this section.
Section 4.05 Social Impact	The provision of a new mixed use development within the Wickham area is an intended outcome of Council's and State Government's planning policies to achieve diversity of housing in higher densities near the Newcastle Central Business District.
Section 5.01 Soil Management	A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been placed on the consent to ensure such measures are in place for the entire construction period.
Section 5.02 Land Contamination	A detailed assessment has been discussed under SEPP 55 in regards to land contamination.
Section 5.03 Tree Management	The site is largely vacant and contains no significant trees and as such the proposal is acceptable.
Section 5.05 and 5.07 Heritage Items and Heritage Conservation Areas	A detailed assessment has been discussed under Section 5.1.3.1 - Clause 5.10 of the LEP in regards to heritage.
Section 6.01 Newcastle City Centre - West End Locality Provisions	<p>The site is located within the West End Character Precinct under the Newcastle DCP and the proposal is considered to be consistent with the aims of the Newcastle DCP 2012.</p> <p>The majority of prime design controls are contained within the Apartment Design Guidelines (ADG) and have been assessed under SEPP 65 above.</p> <p>The other remaining controls are discussed below.</p> <p><i>A1 - Street Wall Heights</i></p> <p>A 6m setback at the 16m street wall applies to the site. The proposal meets this requirement largely 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.</p> <p><i>A2 - Building Setbacks</i></p> <p>A primary street front setback of 3.5m applies to the site and the development does not comply and this is assessed under the ADG section above.</p>
Section 7.01 & 7.02 Building Design Criteria, Landscape, Open Space and Visual Amenity	<p>The majority of the key design controls are contained within the Apartment Design Guidelines (ADG) and have been assessed under SEPP 65 above. The proposal is considered to be acceptable in terms of its amenity impacts as detailed below.</p> <p><i>Views</i></p> <p>The surrounding area is relatively flat and is interspersed with larger industrial buildings. There are limited distinct views available to the</p>

	<p>surrounding properties and no direct views are enjoyed by the surrounding dwellings. The larger industrial buildings are also limiting the general outlook.</p> <p>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.</p> <p>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.</p> <p><i>Noise</i></p> <p>The application has been assessed by Council's Senior Environment Protection Officer under the SEPP Infrastructure section and is considered to be acceptable subject to conditions included in Appendix A.</p> <p><i>Utilities and Services</i></p> <p>The existing site is already used for industrial purposes and, as such, has access to all utilities including electricity, telephone, water and sewer. The application will be required to obtain a Section 50 from Hunter Water Corporation to address any amplification requirements resulting from the development. Similarly, the development will be required to make an application to Ausgrid to address any requirements for electricity supply upgrades. A waste management strategy has been submitted to address construction and operational wastes and is acceptable.</p>
<p>Section 7.03 Traffic, Parking and Access</p>	<p>The proposal has been assessed by Council's Senior Development Engineer and is considered to be acceptable, as detailed below, subject to conditions of consent.</p> <p><u>Pedestrian Network and Access</u></p> <p>It is noted that Railway Lane has been designated as the most direct pedestrian/cyclist connection between Maitland Rd via Albert St Park to the Wickham St and vice versa (i.e. within the Wickham Masterplan). It is also evident that the residents and other users of the development will be using Albert St 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 a means of transportation into the City due to the urbanisation of Newcastle City.</p> <p>In view of the above and in response to Council requests, it is noted that the 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. A concept plan has been provided to address Council concerns.</p> <p><u>Footpath Widening</u></p> <p>It is noted that the applicants were advised of the footpath widening at Pre-DA stage where Council stated that the development will need to provide for a setback within the ground floor to allow for footpath widening to match the width on the existing footpath on the eastern end.</p>

The proposed ground floor layout from the eastern end to the western end of the property has allowed for widening of the footpath or for pedestrian access. With 156 Units and two large commercial areas, it is expected that the pedestrian traffic generation from this development together with the future connections to the park and the train station result in a need to have a designated pedestrian pathway along Railway Lane.

However, it is noted that sections of the proposed new footpath will need to be dedicated to Council as road reserve and the areas adjoining the indented loading bay in front of the public open space will need to be reserved as a public right of way. This will ensure that road network and pedestrian connectivity is achieved.

Footpath Network and Safety

Pedestrian links will need to be provided for the new residents and users of the site to access areas such as the waterfront, recreational walkways along the foreshore, Wickham Station and other upcoming shopping and leisure areas such as Throsby St. A pedestrian crossing at the intersection of Railway St/Railway Ln/Station St is required to allow for a safe passage for the new residents. Discussions with Council's Traffic Team have led to the suggestion for pedestrian crossings at this intersection, however further design refinement will need to be done as part of the Roads Act S138 assessment stage.

Traffic and Parking

The following information is noted:

Off-Street Parking

Parking provided by the development (DA) as follows:

	Car Parking	Motorbike	Bicycles
Required under DCP	205 Residents - 156 Visitors for Residents - 30 Commercial - 17	14 Includes residents and commercial	177 (total) Residents - 156 Visitors for Residents - 16 Commercial - 5
Proposed	204 Recommended breakdown as follows: Residents - 156 Visitors for Residents - 30 Commercial - 16	14	86 (Class 2 - Medium Security Level)

The number of off-street car parking for cars and motorbike is adequate to service the development and is acceptable.

It is however noted that neither the Statement of Environmental Effects nor the Traffic Report has given a breakdown on the distribution of the parking. Based on the above and Council parking calculations noted in the table above, it is recommended that 156 spaces be allocated to the

residential units (being 1 per unit), 30 spaces be for visitor parking for the residential units and 16 spaces be allocated for commercial and for commercial visitors.

Bicycle Parking

The DCP requires provision of one bicycle space per unit as well as visitor bicycle parking spaces. The commercial development is also required to be provided with visitor bicycle spaces. It can therefore be said that the development has provided for approx. 48% of the required bicycle spaces. There is space available within the basement parking area to provide for additional bicycle parking. It is recommended that 14 additional bicycle spaces be provided within the basement as Class 2 storage, with medium security. This will allow for a total of 100 spaces. Additional spaces can be provided if the need arises and can be resolved by strata.

The ground floor area including the public areas can be fitted with bike racks to allow for additional visitor spaces (low security) for both the residents and commercial users. It is therefore recommended that 15 additional bicycle spaces be located within the ground floor area for visitors. This can be done via a combination of private and public open spaces.

Loading Bays

A total of three loading bays have been indicated on the plans. The western loading bay will act as a turning area for vehicles as well at the end of Railway Lane. The driveway has been designed to allow for a medium rigid vehicle (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 used for multipurpose as it can be an emergency bay and drop-off area as well. The third loading area on the east is a loading area for the adjoining hotel and will also be available to the subject site.

The three 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 the Railway Lane road width by relocating the kerb further north along the property frontage to the intersection of Railway St. 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 was 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 and from the site.

The increase in use of Railway Lane is directly related to the development. In order to service the new residents Railway Lane will need to be upgraded to formalise the 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 are undertaking civil works for the Wickham Station.

Traffic Generation

The traffic report has considered the issues surrounding traffic generation. It is noted that the Wickham Masterplan is currently being developed by Council and the road network and traffic movements in this area are being analysed. With the new Wickham Train Station, there will be a lot of changes to the road network in the vicinity of the site.

In consideration of the above factors, and noting the recommendations on the traffic report, it can be stated that the development can be sustained in terms of the traffic numbers.

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 located within a CBD area, the street lighting will need to be provided in accordance with Council's City Centre Public Domain Manual.

It is suggested that new street lighting 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 will mitigate the conflict with other services and street tree installation.

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.

Footpath Access, Right of Way and Land Dedication

It is noted that the revised design for the road reserve has indicated that the indented loading bay will be at the edge of the proposed line of land to be dedicated as road reserve. An additional area adjoining the loading bay, being designed as a right of way with 24 hours access will be required to allow for pedestrian movements. The right of way will need to extend a minimum of two metres within the property and extend at least two metres either side of the loading bay and will need to be kept clear at all times (not to be gated).

The footpath along the northern side should be made publically accessible and will need to be dedicated to Council as a road reserve. Detailed plans are required to be submitted with the Roads Act Section 138 application and dedication can be finalised prior to occupation of the ground floor area.

Owner Consent for Western End of Railway Lane

It is noted that part of the Railway Lane along the western end is owned by Rail Corporation NSW. The applicant has completed a search on the title of the land and has noted that there is a right of access to the western end of Railway Land.

Right of Way for the Hotel

The subject site includes land that is identified as a right of carriageway

	<p>(ROW), which enables truck servicing the adjoining hotel to load and unload. The proposal involves the construction of elevated units over the ROW, leaving a clearance of 6.1 metres. The applicant has provided legal advice (refer to Appendix H of this report), demonstrating that the construction of these units is reasonable, given that there is no substantial interference with the hotel's ability to utilise the ROW for servicing their operation. It is noted that since the lodgement of the application, the proposal has been amended to delete a first floor unit, to increase the clearance height for the ROW.</p>
Section 7.05 Energy Efficiency	<p>The application is affected by the BASIX requirements. A BASIX Certificate has been included in the documentation. The proposal complies with this section.</p>
Section 7.06 & 7.07 Stormwater, Water Efficiency	<p>The application has been assessed by Council's Senior Development Engineer and is considered to be acceptable subject to conditions of consent, as detailed below:</p> <p>Northrop Consulting Engineers have been engaged by the applicants to undertake the stormwater assessment for the development. A stormwater management strategy has been provided with the development application and progressive responses to Council comments have been addressed by Northrop. The stormwater management strategy and proposed stormwater design has been carried out to current Council DCP, Technical Specifications and industry standards.</p> <p><i>Stormwater Management, Stormwater Reuse and Detention</i></p> <p>The concept stormwater management plan and stormwater design prepared by Northrop Consulting Engineers have allowed 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.</p> <p>A 70m³ detention tank is provided which will store stormwater from hard surface areas and any discharge from the stormwater tank.</p> <p>The required OSD storage and water reuse is generally in accordance with Council requirements.</p> <p><i>Stormwater Quality Assessment</i></p> <p>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 MUSIC software targets set in the Council's Technical Manual and the MUSIC Link and create a Water Sensitive Design for the development. The following features are noted in the design:</p> <ul style="list-style-type: none"> • Rainwater Tanks (30 kilo litres) have been provided for reuse for the first two storeys for the residential units. • Gross Pollutant Traps (GPT) has been provided as the primary treatment measure on the discharge locations. • On Site Detention (OSD) basin with capacity of 70m³. • Discharge is proposed to be connected to the new drainage system on Railway Lane. • A landscaped swale is proposed to the west which will treat the stormwater for the western end.

	<p>MUSIC modelling has been done by Northrop and the submitted stormwater management plan has indicated that the development achieves the targets set by Council.</p> <p>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.</p> <p><i>Drainage Connection</i></p> <p>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 (see details in traffic below). The proposed stormwater connections are generally acceptable. Details for the proposed connections can be resolved at construction certificate stage and conditions are recommended.</p> <p><i>Maintenance & Monitoring and Safety</i></p> <p>The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan has been provided with the stormwater management strategy.</p> <p><i>Conclusion</i></p> <p>The principles of WSUD and the requirements of the DCP have been applied to the development. The submitted stormwater strategy reports and supporting documents have demonstrated that the development will not impact on the downstream ecology, is sustainable and can be maintained in the long term.</p>
Groundwater Management	<p>Comments have been received from Dept. of Primary Industries (MPI - formally known as NSW Office of Water). The proposed development will highly likely affect the groundwater table as there are two levels of basement. General terms of approval have been provided by MPI and in addition, a separate approval will be required to be attained from MPI (Groundwater Licence) prior to any extraction of groundwater.</p> <p>The discharge of the groundwater may be done to Council's drainage system. If this is the case, then the applicant will need to obtain a separate approval from Council for the proposed discharge of any groundwater. An Environmental Engineer or consultant will need to determine the method to treat the groundwater prior to discharge to Council's drainage system. In this regards, the applicants will need to provide Council evidence that MPI have approved the groundwater licence.</p> <p>Conditions are recommended to ensure that the process for groundwater discharge and approval from MPI is attained.</p>
Section 7.08 Waste Management	<p>The waste management was addressed under 7.01 Building Design Criteria of the DCP above and is considered to be acceptable.</p>
Section 8.00 Public Participation	<p>The proposal was placed on public exhibition for a period of 30 days from 26 April 2016 to 25 May 2016 in accordance with the Environmental Planning & Assessment Act 1979 (EP&A Act), Environmental Planning & Assessment Regulations, 2000 (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Two submissions were received during the notification</p>

	<p>period.</p> <p>A summary of the submissions received for the amended proposal are included within Section 5.1.3.9 below.</p>
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Newcastle Section 94A Development Contribution Plan

The application attracts Section 94A Contributions pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the Newcastle Section 94A Development Contributions Plan. A contribution of 2% of the cost of development would be payable to Council as determined in accordance with clause 25(j) of the *Environmental Planning and Assessment Regulation 2000*.

5.1.3.4 Section 79C(1)(a)(iia) Planning agreements

No planning agreements are relevant to the proposal.

5.1.3.5 Section 79C(1)(a)(iv) the regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act* and *Regulation 2000*. In addition, compliance with AS 2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government's vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

To achieve this vision the Government has set four goals for the region:

- *The leading regional economy in Australia*
- *A biodiversity-rich natural environment*
- *Thriving communities*
- *Greater housing choice and jobs*

The proposal is consistent with the aim of providing greater housing choice in existing communities, close to jobs and services and well supported by public transport and walking and cycling options.

Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years. The current proposal will contribute to achieving this planning outcome via the provision of an additional 156 apartments in a mix of studio, one bedroom and two bedroom apartments.

5.1.3.6 Section 79C(1)(a)(v) Coastal management plan

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

5.1.3.7 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

These matters have been addressed within the SEPP, NLEP 2012 & DCP sections above including design aspects, acoustic, traffic, parking and heritage impacts.

i) Flora and Fauna.

There is no remnant native vegetation located on the subject land and the proposed development therefore has no adverse impact on native flora, fauna, wildlife corridors or critical habitat.

5.1.3.8 Section 79C(1)(c) the suitability of the site for the development

These matters have been addressed within the SEPP, NLEP 2012 & DCP sections above.

5.1.3.9 Section 79C(1)(d) any submissions made in accordance with this act or the regulations

The amended application was notified and advertised in accordance to the Regulations and Newcastle DCP 2012 and two submissions were received. The following issues were raised in the submissions.

Objection	Comment
<u>Amenity Issues</u> <ul style="list-style-type: none"> • Overshadowing and loss of sunlight to existing premises/beer garden. • Potential increase in acoustic/amenity complaints - conflict between future residents and existing hotel. • Internal air-conditioning rooms throughout apartment building - not on balconies - concerns with acoustic impacts. • Concern that an air report should be undertaken to protect future residents from existing pollution in the area. 	<ul style="list-style-type: none"> • The overshadowing impacts on the neighbouring beer garden are considered to be acceptable. • The change in land uses neighbouring the existing hotel are not a basis to modify or restrict development. Notwithstanding this, a condition of consent has been recommended requiring potential acoustic impacts to be mitigated. • Any air condition systems will be required to meet the Australia Standards in terms of noise generation. • It is not agreed that an air report is necessary for the current proposal.
<u>Design & Aesthetic Issues</u> <ul style="list-style-type: none"> • Adequate recycling and garbage rooms. • Good ventilation in all common areas. • Adequate floor space ratio for balcony areas. • Activation and integrating architecture and landscaping within Wickham Park and nearby public domain. • Modern open ventilated foyer. • Wider internal corridors. 	<ul style="list-style-type: none"> • The proposal has residential and commercial garbage rooms for each proposed tower which is acceptable. • The cross ventilation, balcony area and dimensions, foyer design and floor layouts (including corridors) were all assessed and considered to be acceptable by the UDCG. • The proposal has been amended to have interaction with the intended likely roadway/access changes under the Wickham Masterplan.
<u>Traffic & Infrastructure Issues</u> <ul style="list-style-type: none"> • Loss of right of carriageway/easement. • Concern that the proposal has insufficient parking. 	<ul style="list-style-type: none"> • The proposal has been amended to maintain the right of carriageway. Further discussion on this issue is contained in section 7.03 of the DCP.

<ul style="list-style-type: none"> • Concern regarding access for emergency vehicles within the Wickham area. Access/space for garbage truck by not loading garbage on the street. • Underground power - not power poles. • Pathways, traffic calming and safe havens for pedestrians. • Adequate loading zones. 	<ul style="list-style-type: none"> • The proposal has been assessed by Council's Senior Development Engineer and is considered to be acceptable in terms of parking. • The access, loading bays, pedestrian pathways and proposed road layout have been amended and are considered to be acceptable by Council's Senior Development Engineer. • It is expected that the power would be underground but this is subject to requirements of Ausgrid.
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5.1.3.10 Section 79C(1)(e) the public interest

The development is in the public interest as it will enable the orderly and economic development of the site.

6. CONCLUSION

Subject to a number of relevant conditions as recommended in the attached draft condition schedule, the proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the Environmental Planning and Assessment Act 1979.

7. RECOMMENDATION

- A. THAT the Hunter and Central Coast JRPP, as the consent authority, notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and JRPP considers the objection to be justified in the circumstances and is consistent with the aims and objectives of the relevant LEP clauses; and
- B. THAT the Hunter and Central Coast JRPP, as the consent authority, approve development consent to DA2016/00384 (2016HCC026 DA) for the demolition of the existing buildings and construction of a ten storey mixed use development including 156 residential units, two commercial units, two basement levels for parking and associated site works at 73-79 Railway Lane, Wickham, pursuant to Section 80 of the EP&A Act subject to the conditions in Appendix A; and
- C. THAT those persons who made submissions be advised of the determination.

APPENDIX C

CLAUSE 4.6 (NEWCASTLE LEP 2012) – REQUEST FOR CONTRAVENTION OF THE 24M MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARDS.

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1.0 INTRODUCTION

Blake Organisation are seeking Development Consent from Newcastle City Council for a proposed mixed use development (residential flat building (206 units) and commercial premises (two tenancies total 960m²), at 69 - 79 Railway Lane, Wickham. The proposal is described in further detail within the Statement of Environmental Effects that this report forms part of.

The proposed development will result in a new 15 storey building consisting of a podium design with ground level commercial development fronting the street and two residential towers above. The development will have a main roof height of 48m with blade walls extending a further 1m above. The proposal exceeds the prescribed height limit shown on the building height map (24m) under Clause 4.3(2) of NLEP 2012.

The applicant under Clause 4.6 of the LEP proposes this objection to the development standard to enable the application to be approved.

The site provides an excellent opportunity to make a quality contribution to the desired future character of the area, and the revitalisation of Wickham. The objective of the development is to enable the site to develop to its fullest potential, contributing to the revitalisation of the area, capitalising on the sites proximity to the new Wickham Interchange (public transport infrastructure) shops and service within the CBD and open space, and ensuring a design outcome that not only positively contributes to the evolving neighbourhood but also acknowledging the adjoining industrial and heritage buildings.

It is considered in this instance that a fully compliant design would result in a poorer design outcome.

The proposed development (with the additional height) is a superior outcome for the site, being architecturally designed to achieve a balance between maximising the capacity of the site whilst still achieving the requirements of SEPP 65 and the associated Apartment Design Guide. The proposal will provide appropriate amenity for future residents, and have acceptable impacts on adjoining and surrounding development.

The design approach seeks to deliver the available site FSR in a slender tower format instead of a block form. This objection has been prepared in pursuit of this approach.

Discussion with Newcastle City Council Strategic Planners indicate that they are supportive of additional height on the subject site, especially given the prime location, with respect to the new Wickham Transport Interchange, as well as the city centre.

The following report addresses the requirements of Clause 4.6 and demonstrates that Council can consent to the proposed development on the grounds of the objection made.

2.0 VARIATION SOUGHT

The standard to which exception is sought under Clause 4.6 of Newcastle LEP 2012 is Clause 4.3 of the NLEP 2012 which prescribes a maximum building height of 24m for the site (refer **Figure 1** below).

The proposed development has a maximum building height of 49m (main roof height of 48m with 1m blade walls on top).

A variation of 25m to the height control of 24m to permit an overall development height of 49m, is sought to allow the proposed development to proceed.

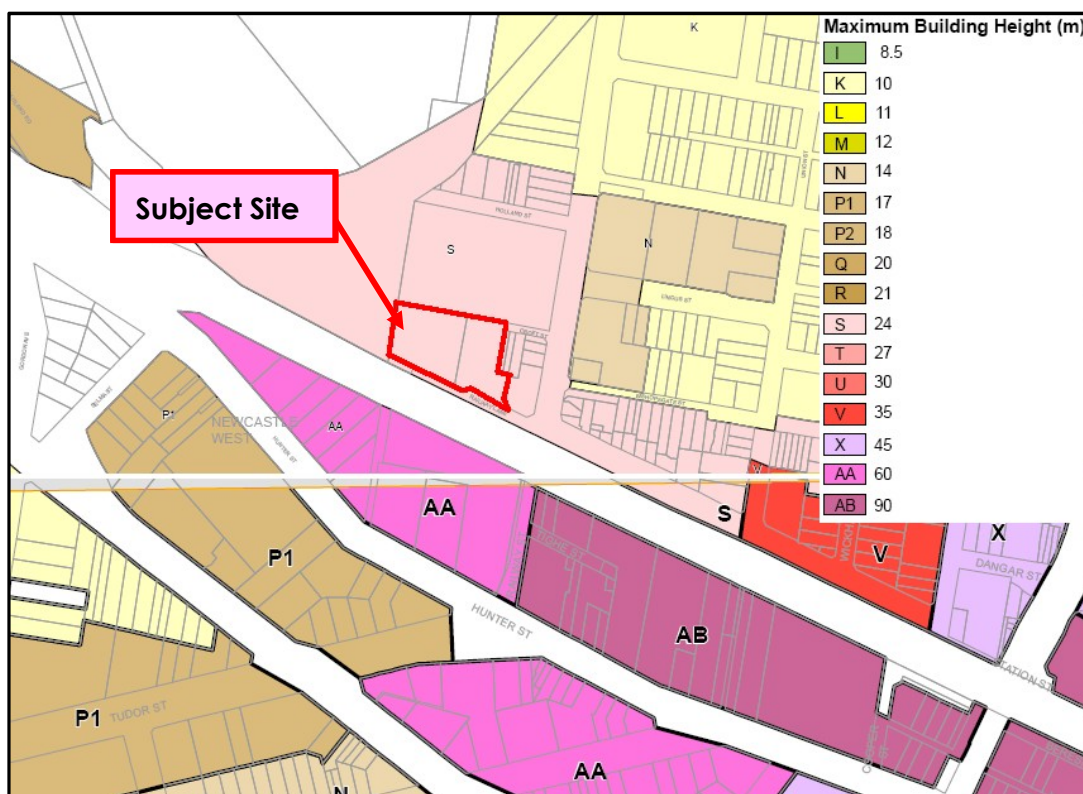


Figure 1 – Extract from Newcastle LEP 2012 Maximum Building Height Map.

3.0 GROUNDS FOR VARYING THE STANDARD

The subject site is ideally located within the inner city to provide high density residential development that will support the renewal of the city, and capitalise on the sites proximity to the new Wickham Transport Interchange, Wickham Park, the Newcastle Foreshore and Honeysuckle Precinct, the CBD, and Market Town Shopping Centre (Refer **Figure 2** below). The locality can offer future residents a lifestyle opportunity with high amenity and excellent access to public transport, and public open space, as well jobs, education and everyday community services and facilities.

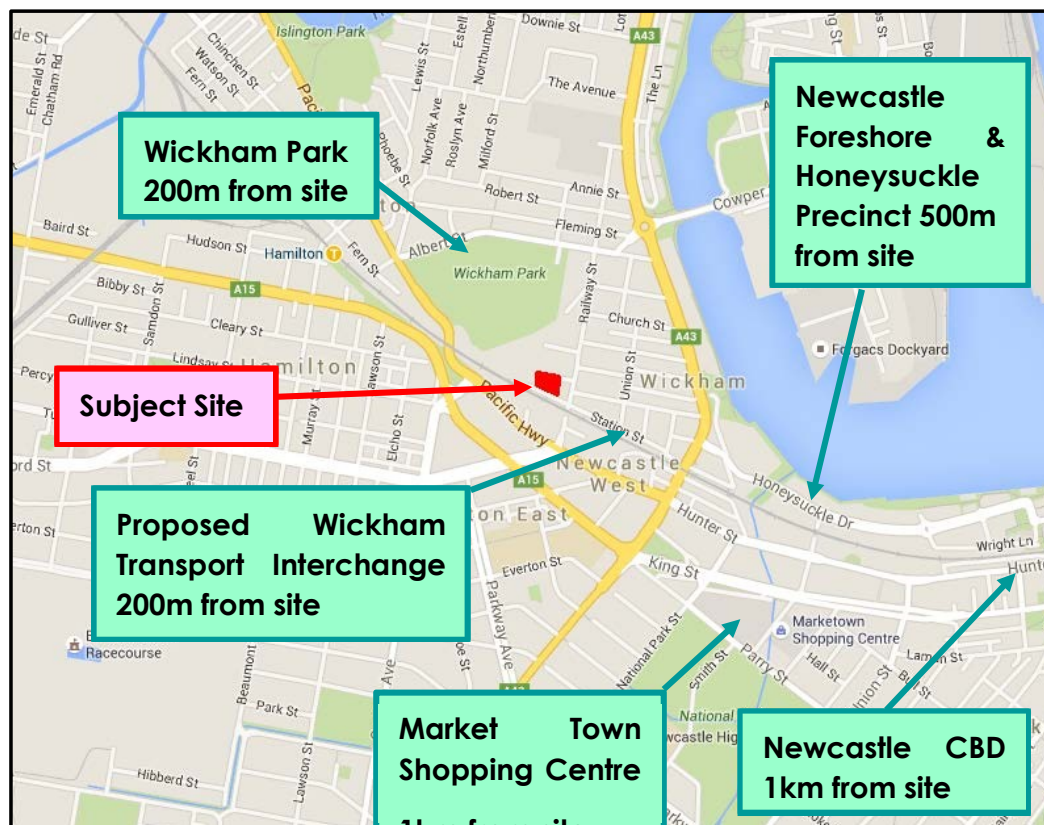


Figure 2 – Locality Plan.

The proposed development aligns with Council's planning strategies and controls for the locality which promote increased densities to improve the contribution Wickham makes to the functionality, vibrancy and liveability of Newcastle City.

The proposed development is also consistent with the objectives and strategies of the Lower Hunter Regional Strategy, and the Draft Plan for Growing Hunter City, which supports increased densities and heights, in and around the city centre. These strategic documents detail many benefits to compact settlement within the city centre, including:

- Better use of existing infrastructure, and reduced travel by placing people, jobs, education and services closer together;

- Proximity to public transport will reduce reliance on car travel, which is a better outcome for the environment and Newcastle traffic congestion;
- Reduce the need to develop the urban fringe which has cost savings in terms of cost of infrastructure delivery and is a better outcome in terms of conservation;
- A need for additional housing and housing types to support the growing population; and
- Higher density housing within Newcastle will contribute to the revitalisation and renewal of the City centre.

From a strategic planning perspective there is therefore strong reason to achieve as much development outcome in this location as is reasonably possible. This is consistent with the broad principles of urban consolidation and Ecologically Sustainable Development. Indeed, this is consistent with the Act itself which has as an objective the efficient use of land.

Accordingly, achieving floor space as close as is reasonably possible to the available FSR for the site of 4:1 is considered to be responsible planning. This 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 (ortower).

The slender built form (tower) approach is considered to be more aesthetically pleasing for achieving larger floor space, as it prevents large block like appearance and promotes a skyline that has separation and space around tower forms. Best practice urban design principles generally support the slender built form approach. This is evidenced in the Apartment Design Guideline as follows:

- 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).” The proposed development is for two towers on a podium
- 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.

- Page 32 in particular identifies relationships between height and FSR and provides relevant diagrams for residential flat buildings, see below.

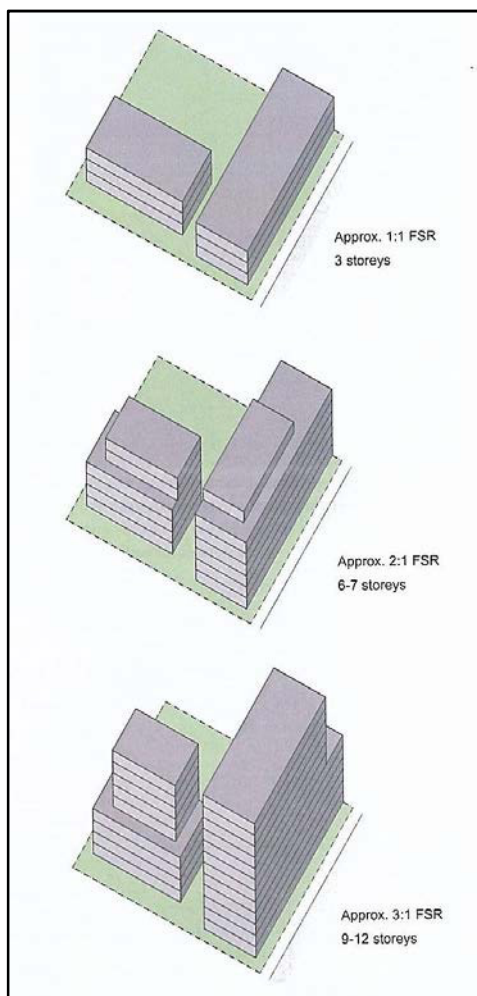


Figure 3 – Sketches from Apartment Design Guide page 32.

It can be seen that a 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 Council for this site should therefore adopt a height of around 14 – 17 storeys or 38m to 46m in height conservatively. The height to the predominate roofline of the proposed development is 38m.

The slender tower form is also generally supported in the Apartment Design Guide, it provides for buildings with appropriately sized building floor plates and building depths that provide superior amenity to residents in terms of access to solar, cross ventilation and views from buildings.

If the preferred slender design approach was to be adopted for the site, but within the height limit under the LEP, a significant loss of building floor space would result. This would result in a poor planning outcome noting that it is highly desirable in this strategic location to achieve as much density as is reasonably possible.

Accordingly, a design outcome that promotes both the preferred slender built form outcome, maintaining near the maximum FSR but that exceeded the height was explored.

(Note: it can be seen that the additional height is not proposed to get an unreasonable floor space, but is proposed to get a better urban design outcome).

Below we consider the context and potential impact of the additional height proposed.

In **Figure 1** above we can see that the site is positioned adjacent heights within the city, to the south of the site, of 60m and 90m, significantly greater than that of the subject site. It is considered that a height of 38m as proposed within this context is acceptable and serves as a transition between development to the south and then to the north. It is considered that within the context of the overall city structure the proposed height would be acceptable, and would not look out of place.

The subject site was originally prescribed a maximum building height of 60m and an FSR of 6:1 when the Newcastle LEP 2012 was gazetted on 15th June 2012 (refer **Figures 4** and **5** below). 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 29th July 2014.

The NURS cited reasons for the change of height control on the subject site which included '*testing has confirmed a lack of feasibility*' and '*transition is needed between the taller city building and surrounding lower scaled areas*'; the proposal is consistent with these statements.

As previously stated It is considered that a height that is a transition between the taller buildings to the south is acceptable and the proposed height of 38m achieves this more appropriately compared with the current LEP height of 24m and the former LEP height of 60m.

A meeting was held with Council's Strategic Planners to discuss the proposed height for the site. It is understood that Council was supportive of additional height given the proximity to the proposed Wickham Transport Interchange. We understand that Council is again reviewing heights for this site and Wickham as a whole.

Given the commercial arrangements surrounding the current option to purchase the site, this development opportunity is time limited and such as the proponent seeks to submit the Development Application prior to the Master Plan review of the area and zone, height and FSR controls. To this end it, compliance with the standard would mean a missed opportunity for the site and the contribution it can make to the overall growth and revitalisation of Wickham and the city centre generally.

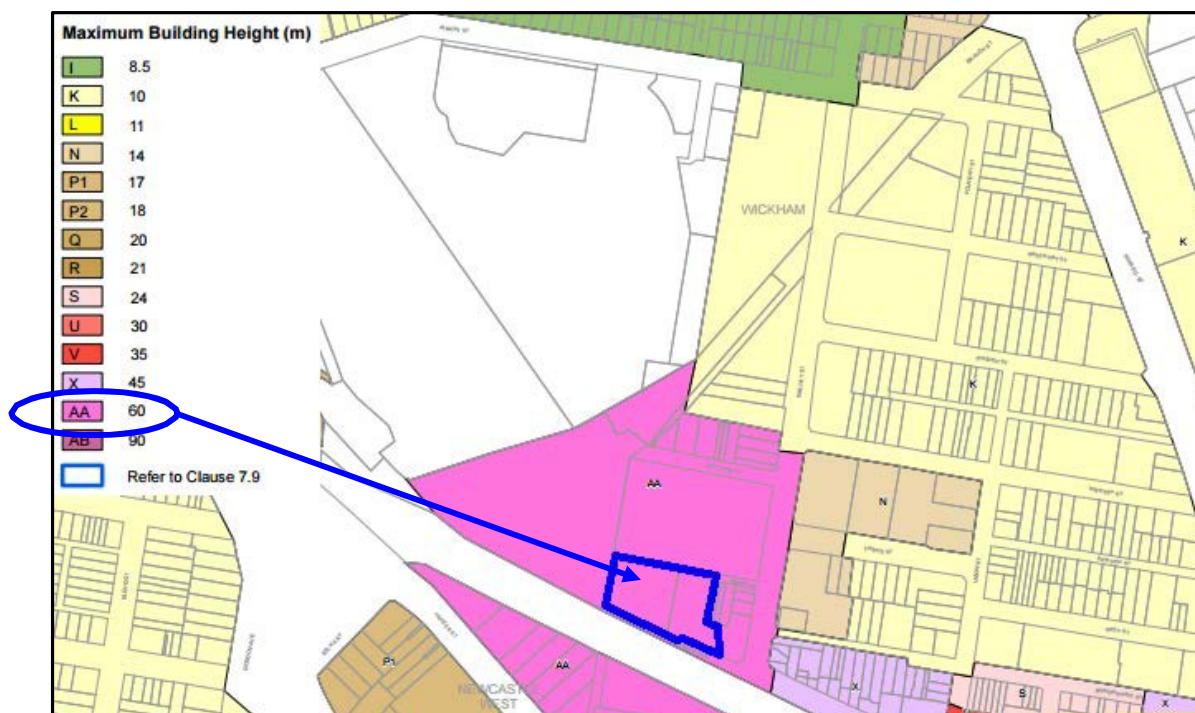


Figure 4 - Repealed Newcastle LEP 2012 Height Map (15.06.12 – 28.07.14).

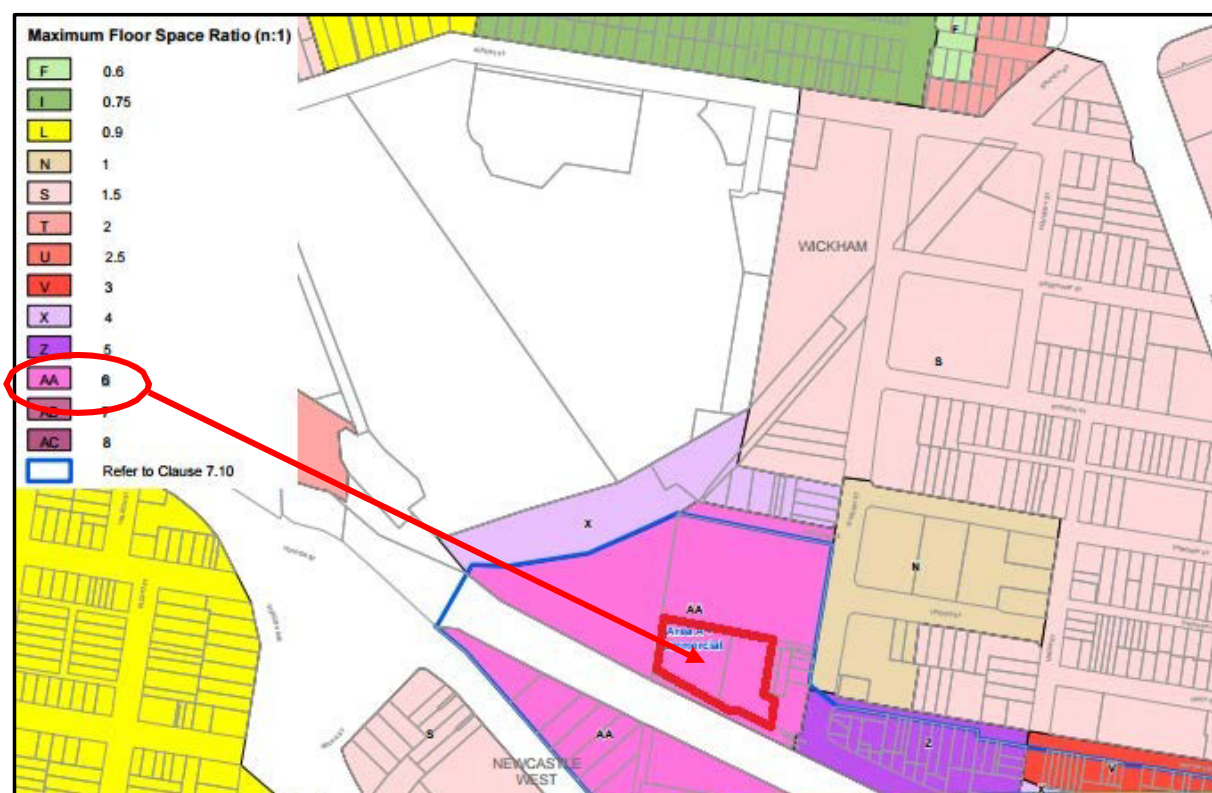


Figure 5 - Repealed Newcastle LEP 2012 FSR Map (15.06.12 – 28.07.14).

4.0 LAND USE ZONE AND HEIGHT OBJECTIVES

With consideration to the grounds of objection above the following considers the variation relative to the objectives of the Zone and the Height as provided for under the LEP.

4.1 LANDUSE ZONE & OBJECTIVES

The subject site is zoned B4 Mixed Use Zone under the Newcastle Local Environmental Plan 2012. The objectives of the B4 zone are to:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposed development, with the varied height, remains consistent with the objectives of the B4 Mixed Use Zone providing integrated high density residential and commercial development within a city central location. The subject site is well located with respect to public transport, and is within close proximity to the CBD, Hunter Street and Honeysuckle precinct to promote walking and cycling as alternative transport. The proposal 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.

4.2 CLAUSE 4.3 – HEIGHT OF BUILDINGS

The objectives of Clause 4.3 (Height of Buildings) are outlined within the LEP as follows:

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

It is considered that the variation sought provides a better opportunity at achieving this objective compared with compliance with the height standard within the LEP. This is particularly the case given also the planning objective of ensuring that the development provides as much as reasonably possible of the FSR given the sites strategic location.

The proposed slender (tower) built form on top of podium is consistent with best practice urban design for residential buildings in urban areas as outlined in the Apartment Design Guide. By allowing the additional height the building will be consistent with this best practice approach.

The slender tower form will make a greater contribution toward the desired outcomes for the city compared with a reduced height squat building.

The proposed height in this location will not appear out of context, noting the available heights under the LEP on land to the south of the site.

(b) to allow reasonable daylight access to all developments and the public domain,

The proposed height does not interfere with this objective being achieved as demonstrated in the documentation and plans submitted with the Development Application.

3 PREVIOUS CASELAW

Wehbe v Pittwater Council (2007) NSWLEC 827 established a series of five tests for variation of a development under the former SEPP 1 provisions.

The Whebe tests for variation of a development standard are outlined and addressed as follows:

i) The objectives of the standard are achieved notwithstanding the noncompliance with the standard.

As demonstrated above, the proposed development is consistent with the objectives of the standard.

ii) The underlying purpose is not relevant in the circumstances.

The underlying purpose is more likely to be achieved via the proposed alternative to the standard.

iii) The purpose of the standard would be thwarted if compliance was required.

If compliance with the standard was required, then consistency with the objectives of the standard would not be achieved to the same level, noting the preference of the Apartment Design Guide to achieve a more slender tower form.

The squat perimeter building that would result from the 24m height is not as consistent with the purpose of the standard as would be the increased height which allows in achieving the available FSR a more slender tower built form.

iv) The standard has been abandoned via previous approvals.

Not argued.

v) *The zoning is unreasonable.*

Not argued.

More recently in *Moskovich v Waverley Council* [2016] NSWLEC 1015 it was found that the Whebe tests are still applicable for a Clause 4.6 variation with the qualification that previously it was required to determine achievement of the objectives of the standard, whereas under Clause 4.6 it should only be necessary to determine consistency with the objectives of the standard.

5.0 MATTERS FOR CONSIDERATION UNDER CLAUSE 4.6

The relevant matters to be dealt with under Clause 4.6 for the purpose of the variation are addressed below, in the following order,

- Subclause 3;
- Subclause 4; and
- Subclause 5.

Subclause 1 is dealt with in the conclusion.

Subclauses 6 – 8 are not applicable to this application.

3(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Compliance with the development standards in relation to maximum building height under Clause 4.3 is both unreasonable and unnecessary in this particular instance for the reasons outlined above and summarised again as follows:

- Compliance with the standard is both unreasonable and unnecessary as the proposed development (including the additional height) achieves the objectives of the standard imposed under Clause 4.3 of NLEP 2012.
- Compliance with the standard is unreasonable, as it would result in a sub standard design outcome for the site, and an inferior housing product. It would significantly limit the sites potential to contribute to the desired growth and renewal of the city centre, and how the design would contribute to the city skyline.

- Compliance with the standard is unreasonable & unnecessary given the context of nearby height limits. The proposed development will not appear out of character with the locality.
- Compliance with the standard is unnecessary as the proposed development will have no negative impacts on adjoining development. The superior design is consistent with the requirements of SEPP 65 and the associated Apartment Design Guide, not only ensuring a premium housing product, but also ensuring no overshadowing, visual privacy, acoustic impacts for adjoining neighbours.

3(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

This report has established that there are sufficient environmental planning grounds to justify the proposed variation, noting in particular:

- The strategic location of the site with respect to the Wickham, Transport Interchange, the CBD, and public open space, and in consideration of Council's planning objectives for the locality the pursuit of achieving as much FSR as possible is good planning practice and consistent with urban consolidation objectives and ESD principles. This being the case there is sufficient planning grounds to vary the height to achieve a better distribution of FSR in a more slender tower form consistent with the Apartment Design Guide ;
- Notwithstanding the proposed increase in height, the proposal still achieves the objectives of the height control, and the B4 zone objectives.

4(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

The relevant matters have been addressed.

4(a)(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

The proposed development is in the public interest as it will make a quality contribution to the overall growth and revitalisation of the Newcastle City Centre. It will provide additional housing in an ideal location close to the Wickham Transport Interchange (within 200m) and shops, services and recreation.

Notwithstanding the proposed height, the proposal achieves the objectives of the height control, and the B4 zone objectives.

4(b) The concurrence of the Secretary has been obtained.

Council can assume the concurrence of the Director General under Planning Circular PS08-003 Variations to Development Standards. The circular applies to variations to development standards made under planning instruments that adopt Clause 4.6 of the Standard Instrument.

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and**

The proposed development does not raise any matters of significance for State or regional environment planning.

The subject site is located in the city centre which is an appropriate location to accommodate additional height. Newcastle City is acknowledged as a regional city in both the Lower Hunter Regional Strategy and the Draft Plan for Growing Hunter City,

and the proposal is consistent with the objectives and strategies under these strategic documents (as detailed above in **Section 3.0**).

- (b) the public benefit of maintaining the development standard, and**

In the circumstances (detailed within this report) there is no public benefit to maintaining the standard in this instance. It is considered that a greater public benefit is achieved by allowing the proposed height.

- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.**

No relevant matters have been identified.

6.0 CONCLUSION

Blake Organisation is seeking to vary the allowable height for the redevelopment of the subject site for the purpose of a mixed use development (residential flat building and commercial premises) in Wickham.

The objectives for variation of the standards (Clause 4.6(1) of Newcastle LEP 2012) are:

- (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.**

The considerations under clause 4.6 have been addressed in preceding sections. Council can approve a variation to height in accordance with the requirements of Clause 4.6.

The objectives of clause 4.6 are satisfied as:

The proposed variation sought is consistent with an appropriate degree of flexibility in respect of the standard and the particular circumstances; and

The flexibility specifically allows a better outcome for the site, and the potential contribution it can make to the overall growth and development of Wickham and the Newcastle City Centre.

This variation request has demonstrated that application of the strict numeric standard is unreasonable and unnecessary as the objectives of the standard are achieved by the proposal.

The proposal has significant environmental planning merit having minimal impact on adjoining properties and identifiable public benefits.

The development is in the public interest being consistent with the objectives of the height standard and the B4 mixed use zone.

The concurrence of the Director General can be assumed.

There are no matters of state or regional planning significance engaged by the proposal as it is essentially a local matter under Newcastle LEP 2012. The public benefit is more likely to be served by flexibility in regard to the height standard, which will assist in Council meeting both environmental planning and strategic outcomes for the LGA, rather than strict numeric compliance with the standard.