

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

Panel Reference	2016HCC026
DA Number	DA2016/00384
LGA	Newcastle City Council
Proposed Development	Demolition of the existing buildings and erection of 10 storey mixed use development including 150 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	08/04/2016
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 No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development • State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004 • 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>This addendum report has been prepared to address additional matters arising following the JRPP's deferral of the application on 13 December 2016. These documents are in addition to, or amendments to, those attached to the original report to the JRPP:</p> <p>Appendix A - Amended Conditions of consent</p> <p>Appendix B - Amended Architectural, Landscape Plans and Amended Acoustic Report</p> <p>Appendix C - Amended Applicant's request for a Clause 4.6 variation</p>

	Appendix D - JRPP Determination dated 13 December 2016 Appendix E - Consultation with Subsidence Advisory NSW Appendix F - Consultation with Sydney Trains Appendix G - Councils original assessment report
Report prepared by	Newcastle City Council
Report date	Electronic Determination - September 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? Yes

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?
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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? No

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? 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

ADDENDUM ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

JRPP Resolution 13 December 2016

Development application (No 2016/00384) was reported to the Joint Regional Planning Panel (JRPP) on 13 December 2016 with a recommendation for approval.

The JRPP resolved to defer determination of the application in order that the following matters could be addressed (a copy of the JRPP's determination is attached in full at **Appendix I**):

- Applicant prepares amended plans which increase the boundary setbacks to the northern and eastern boundaries to address privacy, acoustic, solar access and ventilation issues.
- The amended plans include a landscape strip along the eastern side of the communal area adjacent to the pub (i.e. Lass O'Gowrie) on the eastern boundary of the site.
- The amended plans make no changes to the height and a small decrease to the FSR of the proposal.
- A revised acoustic assessment be undertaken to further address the acoustic impacts of the existing hotel adjacent the eastern boundary,
- Confirm that the legal right of way can be maintained during construction.
- Council pursue formal comments from *Sydney Trains* and *Subsidence Advisory NSW*.
- Council provide a supplementary report to address the matters above for '*...subsequent consideration by the Panel by electronic means*'.

This addendum report has been prepared to address those additional matters arising following the JRPP's deferral of the application and should be read in conjunction with the original assessment report.

Background

The development application (No. 2016/00384) has been amended and the revised design seeks consent for:

- Demolition of the existing buildings and erection of 10 storey mixed use development including 150 residential units, two commercial units, two basement levels for parking and associated site works.

The amended design is broadly the same as the design originally reported to be JRPP, except where it has been altered to address the issues resulting from the deferral of the proposal by the JRPP (e.g. increasing setbacks to northern and eastern boundaries).

The key issues raised in the assessment relate to:

- Height, urban design, setbacks and visual impacts
- Amenity impacts
- Impacts and interaction between the proposal and the existing hotel (i.e. Lass O'Gowrie)

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 amended design maintains the same height as the original design reported to the JRPP.

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

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 addendum report addresses the development proposed at 73-79 Railway Lane, Wickham as required to be amended by the JRPP resolution dated 13 December 2016. The amended proposal involves the demolition of the existing buildings and the erection of a ten storey building containing two commercial units and 150 residential apartments.

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 23G and Schedule 4A EP&A Act, as the development has a capital investment value of more than \$20 million, excluding GST.

2. BACKGROUND

The proposal has been further amended to address issues arising from the JRPP's deferral of the proposal as detailed at **Appendix I**.

It is advised that the amended proposal is largely the same as to the design previously reported to the JRPP except those areas which address the JRPP's concerns, notably:

- Increased northern and eastern setbacks.
- The increased northern setback has resulted in the design of the dwellings adjacent to the northern boundary becoming smaller or being deleted, ie several units have decreased in size from 1 bedroom units to studio units.
- Alteration of the layout and position of the proposed dwellings at the south eastern corner of the site to address both the setbacks and acoustic concerns. This has resulted in a reduction in size from two-bedroom dwellings to one-bedroom dwellings (Units 3.21 and 2.21).

It is further advised that the overall profile and height of the proposal is unchanged from the design previously reported to the JRPP. Due to the increased setbacks and the changes to the footprint, the development now proposes a reduction of six units (now 150) compared to the 156 originally presented to the JRPP on 13 December 2016.

3. SITE DESCRIPTION

Please refer to the details provided within the original JRPP report (13 December 2016).

4. PROPOSAL

The amended application now lodged with Council is seeking consent for:

- Demolition of the existing buildings.
- The erection of a 10 storey building with a podium element of four stories (i.e. 4 storey podium and 6 stories above podium level).
- A total of 150 residential units (16 x studios, 24 x 1 bedroom and 110 x 2 bedroom).
- Two basement levels of parking involving 204 parking spaces.
- A ground floor level that includes two commercial units (386m² and 572m²).
- A courtyard garden element between the two commercial units at the ground floor level.

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)

This addendum report has been prepared to address those additional matters arising following the JRPP's deferral of the application and should be read in conjunction with the original assessment report.

5.1.1 Section 91 – Integrated Development

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

Subsidence Advisory NSW

The application was referred to the Subsidence Advisory NSW in accordance to the provisions of s91 of the EP&A Act.

Advice from Subsidence Advisory NSW had not originally been received within the 40 day period, under s91A(5) of the EP&A Act, when the application was reported to the JRPP on 13 December 2016.

Subsidence Advisory NSW has now issued their approval for the proposal. The *General Terms of Approval* that have been issued are incorporated within the conditions at **Appendix A** and the advice from Subsidence Advisory NSW is provided in full at **Appendix J**.

This partly addresses the following aspect of the JRPP's previous resolution:

- (b) The Council formally seek comments from Sydney Trains and the Mine Subsidence Board again, with a request to provide expedited comments, given the long time elapsed since the referral(s);

5.1.2 Section 79C Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s79C (1) EP&A Act as follows:

5.1.2.1 Section 79C(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The proposal was referred to Sydney Trains under the provisions of Clause 85 and 86 the ISEPP to seek their comments regarding the potential impacts of the proposal, being adjacent to the rail corridor (ie acoustic/vibration, construction and maintenance issues). Sydney Trains have raised no objections to the proposal subject to conditions of consent on a *deferred commencement* basis as detailed within **Appendix A** and the advice from Sydney Trains is provided in full at **Appendix K**.

Along with the previous comments regarding an integrated development response from Subsidence Advisory NSW, this addresses the following aspect of the JRPP's previous resolution:

- (b) The Council formally seek comments from Sydney Trains and the Mine Subsidence Board again, with a request to provide expedited comments, given the long time elapsed since the referral(s);

The applicants have also provided a revised acoustic report to ensure that all matters raised in relation to the ISEPP and the JRPP's deferral, as detailed below, were addressed:

- iv. Confirms that the acoustic assessment has been undertaken in accordance with the relevant guidelines referred to in SEPP (Infrastructure) 2007; and considers cumulative impacts and the actual/approved capacity of the adjoining beer garden to the east of the site and its operation as an entertainment venue; and that the design will achieve compliance with the noise requirements in the relevant guidelines referred to above and through what design measures

The revised acoustic report has regard to the ISEPP acoustic guideline document *Development Near Rail Corridors and Busy Roads – Interim Guideline 2008* and the proposal is considered to be acceptable in this respect. The revised acoustic report also addresses the acoustic impacts from the adjacent hotel.

Council's Senior Environment Protection Officer has assessed that the proposal is acceptable in relation to rail noise, vibration and acoustic impacts from the adjacent hotel, and has provided the following advice:

'Acoustics

A theoretical acoustic assessment was carried out by RCA Acoustics dated June 2017 to support the proposed development. The assessment has modelled the cumulative impacts from rail noise and the operation of the adjoining hotel inclusive of the beer garden associated with the entertainment venue against the requirements for internal noise levels. The acoustic assessment demonstrated that provided the recommendations in Section 6 (which set out the glazing and construction requirements) are applied, internal noise levels (of 35dB in sleeping areas and 40dB in living areas) will comply with AS/NZS2107-2000, the Office of Environment and Heritage (OEH), Department of Planning & Infrastructure (DoPI), and Newcastle City Council (NCC) guidelines. This will be addressed by an appropriate condition of consent.

Section 6 of the Acoustic Assessment addresses mechanical ventilation; however there is no discussion surrounding the noise levels associated with any plant. As such Council will seek to condition the development such that the acoustic consultant carries out an assessment once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This has been addressed within the recommended conditions of consent.'

A number of conditions are recommended to address the acoustic issues associated with the development.

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

The proposal originally considered by the JRPP had been assessed by Council's Urban Design Consultative Group (UDCG), having regard to the SEPP and the Apartment Design Guidelines (ADGs) and was considered to be acceptable.

The JRPP's deferral of the proposal (13 December 2016) required the amended proposal to address the following:

- i. Setback the eastern two levels above the loading area and adjoining the pub to the east a minimum of 3m from the boundary, with associated internal redesign which also ensures no east-facing windows and provides for a landscaped strip at the communal rooftop area above the units at least 1m wide and of appropriate depth to support plants which may grow down the eastern elevation;
- ii. Setback the two towers at least 3m for the lower 4 levels and 6m from the northern side boundary above level 4, with the northern elevations revised to include secondary window openings and design elements which make use of the lighting and ventilation opportunities to the north, while not providing for future adverse privacy impacts between buildings if the neighbouring site to the north is developed (such as by use of high sill window openings);

The amended plans address these criteria, providing for increased setbacks while resulting in a reduction in the overall number of proposed dwellings, as well as a minor change in the mix of dwelling types.

The amended design has incorporated a single highlight window on the eastern elevation (ie level one) which has been assessed acoustically and is considered acceptable. It is further considered that this window will not result in any privacy impacts as it only directly services a walk-in-wardrobe.

The windows of the northern elevation are each provided with privacy screens to maintain light and ventilation while minimising privacy impacts.

The amended landscape plan provides for a comprehensive landscaped setback to the eastern boundary.

The applicant's consultant provides the following outline of the design changes, having regard to the JRPP's initial resolution:

- *"Amended plans have been submitted to Council showing the eastern two levels above the loading area and adjoining the pub to the east setback a minimum of 3m with the necessary redesign to delete east facing windows. In addition a landscape strip has been provided at the communal rooftop area above the units at exceeding 1m wide with suitable depth to support plants that can grow down the eastern elevation.*

The amended design has had the effect of reducing the number of units from 156 back to 150. We have updated the Clause 4.6 Objection to reflect the amended design. This has only required us to reference a reduced number of units. We have also now referenced in the updated Clause 4.6 objection the fact that the Wickham Masterplan has been exhibited and identifies a greater height for the site beyond that of the current LEP and greater than that proposed by the development.

- *The two towers have been setback a minimum of 3m for the lower 4 levels and setback 6m above level 4 as requested by the JRPP. In addition windows have been included to make use of north facing light and ventilation. Privacy has been maintained where required by the use of screening."*

It is considered that the applicant's amended proposal has addressed the issues raised by the JRPP's resolution. The northern and eastern setbacks have been increased as required. The northern elevation has also been provided with comprehensive privacy screens. The eastern setback has been increased and the design of the proposed dwellings altered to provide blank walls towards the east where necessary, to address acoustic issues.

Newcastle Local Environmental Plan 2012 (LEP)

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 24.0m.

The *building height* as defined under the LEP 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 JRPP's deferral of the proposal (13 December 2016) required the amended proposal to increase proposed building setbacks while ensuring that:

- iii. In making the above changes, the FSR and height is not to increase beyond that proposed;

The height of the amended proposed development exceeds the 24.0 metre height standard, as follows, and is it confirmed that the proposed heights are unchanged from the previous design considered by the JRPP:

- The top of the 9th storey is 27.4m high
- The top of the roof terrace and plant areas is 29.9m high
- The top of the architectural fin walls is 31.1m high

While a Clause 4.6 variation request, seeking variation to the 24.0 metre height standard is considered in the original assessment report, an amended Clause 4.6 variation request has been submitted, for the reasons described by the applicant's consultant, as follows:

"The amended design has had the effect of reducing the number of units from 156 back to 150. We have updated the Clause 4.6 Objection to reflect the amended design. This has only required us to reference a reduced number of units. We have also now referenced in the updated Clause 4.6 objection the fact that the Wickham Masterplan has been exhibited and identifies a greater height for the site beyond that of the current LEP and greater than that proposed by the development."

It is considered that the amended Clause 4.6 variation request is acceptable and is consistent with the variation considered within the original assessment report provided to the JRPP (13 December 2016). The proposed increases to the northern and eastern setbacks, decreases to the number of dwellings, and changes to dwelling mix, decrease in FSR and exhibition of the Wickham Masterplan do not materially change the support of the original Clause 4.6 variation as detailed in the report presented to the JRPP on 13 December 2016. None of these proposed

changes increase the impacts of the proposal or exacerbate any further the context of the proposed Clause 4.6 variation to the height standard.

A copy of the amended Clause 4.6 variation request is attached in **Appendix C**. The amended Clause 4.6 request to vary the height standard is considered to be acceptable and recommended for support, subject to the conditions contained in **Appendix A**.

5.1.2.2 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

Acoustic and Amenity Impacts

The cumulative impacts of rail noise/vibration and operation of the hotel (inclusive of the beer garden) has been assessed by Council's Senior Environmental Protection Officer and is considered to be acceptable subject to conditions contained in **Appendix A**.

Comments made by Council's Senior Senior Protection Officer are included within section 5.1.2.1 above.

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

A submission was made to the original proposal that the development would impact on the existing right of way that the adjoining hotel utilised for vehicular access over the south eastern corner of the site.

The proposal, as previously reported to the JRPP, had already been amended to ensure that adequate vehicular access with a height clearance of approximately 5.6 metres was provided over the right of way.

The JRPP, as part of the resolution to defer the application, sought confirmation that access would be available during construction as follows:

- v. Confirms the legal Right of Way to the adjoining site to the east will be able to be maintained through construction;

The applicant's consultants have provided the following response to the issue:

- Our client advises that the legal Right of Way in favour of the adjoining site (hotel) will be maintained during construction of the proposed development and no objection is raised to a condition to this effect being imposed on the consent.

It is considered that this is an acceptable outcome and appropriate conditions of consent been recommended in this respect at **Appendix A**.

6. AMENDED TRAFFIC AND PARKING ASSESSMENT

The traffic and parking assessment by Council's Senior Development Engineer has been amended, as follows, to address the decrease in the proposed apartment numbers to 150 apartments:

"Off-Street Parking"

Parking provided by the development (DA) as follows:

Table 1

Car Parking	Motorbike	Bicycles
204 <i>Recommended breakdown as follows:</i> <i>Residents - 150</i> <i>Visitors for Residents - 30</i> <i>Commercial - 16</i> <i>Surplus - 8</i>	14	86 (Class 2 - Medium Security Level)

Parking rates as per the DCP:

Table 2

Car Parking	Motorbike	Bicycles
205 (total) <i>Residents - 150</i> <i>Visitors for Residents - 30</i> <i>Commercial - 17</i>	14 (total) <i>Includes residents & Commercial</i>	170 (total) <i>Residents - 150</i> <i>Visitors for Residents - 15</i> <i>Commercial - 5</i>

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

It is however noted that neither the DA Statement of Environmental Effects nor the Traffic Report has given a breakdown on the distribution of the parking. Based on the parking calculations in Table 1 above, it is recommended that 150 spaces be allocated to the residential units (being 1 per unit), 30 spaces be for visitor parking for the residential units and 17 spaces be allocated for commercial tenancies, including commercial visitors.

Bicycle Parking

The DCP requires the provision of 1 bicycle space per unit and visitor bicycle parking spaces as well. 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. 50% 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 with the basement as Class 2. This will bring the total number of bicycle spaces to 100. 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 with the ground

floor area for visitors. This can be done via a combination of private and public open spaces.

The proposal is considered to be acceptable in terms of traffic and parking, subject to the inclusion of recommended conditions of consent attached in **Appendix A**.

7. CONCLUSION

It is considered that all of the matters raised in the JRPP's resolution to defer the proposal have been addressed by the additional information and the amended design that have been submitted and the proposal is considered to be acceptable.

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 consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*.

8. RECOMMENDATION

- A. THAT the Hunter and Central Coast JRPP notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012 (as attached to this report and the previous report presented to the JRPP on 13 December 2016), against the development standard at Clause 4.3 Height of Buildings, and JRPP considers the objection to be justified in the circumstances and consistent with the aims and objectives of the relevant LEP clauses; and
- B. THAT the Hunter and Central Coast JRPP determine to grant consent to DA2016/00384 (2016HCC026 DA) for the demolition of the existing buildings and erection of 10 storey mixed use development including 150 residential units, two commercial units, two basement levels for parking & associated site works at 73-79 Railway Lane, Wickham, pursuant to Section 80 of the EP&A Act and subject to the conditions in **Appendix A**; and
- C. THAT those persons who made submissions be advised of the determination.