

25 August 2017

The General Manager
Newcastle City Council
PO Box 489
NEWCASTLE NEW 2300



Dear Sir / Madam,

RE: APPLICATION TO VARY A DEVELOPMENT STANDARD

1 Introduction

This application seeks Council's support to vary a Development Standard, being clause 7.10A of the Newcastle Local Environmental Plan 2012. The proposed variation is justified as set out in this written request. As defined under the Environmental Planning and Assessment Act 1979, *development standards* are:

provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.*

2 Development Standard to be Varied

Clause 7.10A of Newcastle LEP 2012 (the development standard) sets a minimum lot size requirement of 1,500 square metres, which is to be satisfied in order to achieve the allowable FSR of 6:1 for the site.

The proposed development has a site area of 1,416m² and as such is provided a FSR of 3:1. It is noted that the proposed FSR for the development is 4.64:1 and has a GFA of 6,570m².

3 Justification under Clause 4.6 of Newcastle Local Environmental Plan 2012

LEP Clause 4.6 (3)

Under this Clause, development consent must not be granted for a 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.

The development standard variation that is sought in this case satisfies these two criteria, demonstrated as follows:

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

There are no objectives expressed within clause 7.10A. However, the intent of the clause is to ensure that building density, bulk and scale makes a positive contribution towards the desired built form in the locality. In this regard, the development has demonstrably achieved high quality design and amenity; a positive contribution to the urban landscape, the streetscape and the environment; and also achieves compliance with all applicable planning provisions and policies. In particular, the design accords with the design principles of SEPP 65 and achieves all of the specified design objectives within the SEPP 65 Apartment Design Guide. The shortfall of 84 square metres in the site area, to meet the 1500m² requirement, has therefore not hindered the attainment of high quality design outcome on the site, and still achieves the intended outcome of clause 7.10A.

The area forms the Hunter Street gateway to the Newcastle City Centre and as such should provide a visually pleasing entrance which establishes the city centre. Due to the areas significance, consistency of the proposed development with the vision for the area the neighbouring sites must be taken into account. It is noted that the height and scale of the building was highly supported by the UDCG, especially as this is the first lot of land within the city centre. It is described as providing a reference that you have arrived in the city centre and it provides a clear separation from other areas.

The site has only one shared boundary with an adjoining private property, which has a large site area in excess of the 1,500 square metres threshold and as such this adjoining property is subject to a maximum FSR of 6:1. Given that the neighbouring property can easily be developed to 6:1 FSR, it would diminish the sense of arrival at the city centre should the development of the site be restricted to 3:1 FSR. Allowing for the variation to the development standard will reduce the scale difference

and lead to an improved relationship between the proposed development and any future development on the neighbouring site.

Due to the sites location on a sharp corner lot, wedged between a rail corridor and Hunter Street while also having only one adjoining property, the impact of the variation is considered to be minimal. The development will not encumber any future development on the neighbouring site or their ability for that site to achieve its 6:1 FSR threshold.

As the variation would contribute to the future desired visual form for the gateway of the Newcastle City Centre and would have minimal impact on the future development of the neighbouring site, the strict application of the Clause 7.10A lot size requirement in order to achieve FSR over 3:1 is considered to be *unreasonable* and *unnecessary* in this case.

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

The proposed development achieves a high-quality design in keeping with the desired future character of the area, and in compliance with applicable Environmental Planning Instruments and Development Control Plans. The proposed development does not cause any unreasonable impact on adjoining properties or the natural or built environments as a result of its FSR. Nor does it restrict future development of the adjoining property. For this reason, strict application of Clause 7.10A would not achieve any better environmental planning outcome than the current, meritorious proposal.

LEP Clause 4.6 (4)

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that:

(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...

Objectives of the Standard

There are no objectives expressed within this development standard. Notwithstanding, the objectives for Floor Space Ratio standards under clause 4.4 of the LEP are:

- (a) to provide an appropriate density of development consistent with the established centres hierarchy,*
- (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

The proposed development is compliant with the density standards applicable for the Newcastle City Centre. The proposed development has FSR of 4.6:1, which is consistent with the maximum FSR of 6:1 which applies to the site and the street block.

Objectives of the Zone

The objectives for the B4 Mixed Use Zone within which the site exists, are:

- *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 proposal is consistent with these objectives as follows:

The proposed development comprises a mix of commercial premises and residential housing, which are compatible land uses; resulting in a development that provides housing choice as well as an active street frontage and positive streetscape contribution.

The site is highly accessible in terms of its location close to public transport services and cycleway/pedestrian network. As a result, the site has great connectivity to the employment, services and facilities within the city centre, as well as to open space and recreational areas.

The additional housing proposed in this accessible location supports the nearby commercial lands; and the proposed development incorporates a commercial component which allows for small scale retail / commercial occupants to contribute to a lively streetscape, a vibrant city atmosphere; and the provision of convenient services to support the major commercial centre.

LEP Clause 4.6 (5)

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

whether contravention of the development standard raises any matter of significance for State or regional environmental planning...

No, the variation sought to this lot size and FSR provision is unique in the circumstances of this case and does not have any environmental planning implications.

the public benefit of maintaining the development standard...

Strictly applying the Clause 7.10A FSR requirement would leave two options for this site;

- 1) to be amalgamated with an adjoining site; or
- 2) to reduce the FSR of the proposed development.

Neither of these options would achieve a greater public benefit than the proposed development. Given the gateway location of this site at the western entrance to Newcastle City Centre; the meritorious high quality design proposed; and the absence of adverse environmental impact by the development; the FSR proposed is considered appropriate for the site and considerate of its context and setting. The proposed development represents a great outcome for the site, overcoming many difficult site attributes to ensure an appropriate entry site to the West End of Newcastle City Centre and positive contribution to the public domain.

Impact of the Proposal on Neighbouring Properties

The site is on the western edge of a street block that contains five (5) sites. The adjoining site to the east is sufficient in lot size to design future development to the allowable FSR of 6:1. Clause 7.10A is not applicable to the adjoining site and it does not require amalgamation in order to achieve high quality outcome in accordance with the Newcastle City Centre objectives.

The remaining 3 lots further east range in size, as illustrated in the figure below. Two of the lots are well below the 1,500 square metres and can be developed in accordance with clause 7.10A; or amalgamate with the remaining large site, which has a lot size in excess of 1,500 square metres. The proposed development of the site therefore does not require lot amalgamation to achieve a high-quality design outcome; and does not adversely affect or hinder the development potential of neighbouring sites.

Figure 1 – Approximate site areas



4 Conclusion

The proposed variation to clause 7.10A of Newcastle Local Environmental Plan 2012 is considered justified as demonstrated throughout this written submission. The site is unique in its configuration, its location, its setting and with its neighbouring lands, including road and rail.

The current development application proposes a positive design outcome for the site which contributes to the streetscape and public domain, ensures connectivity and interaction with the locality. The proposed development does not impact the redevelopment potential of adjoining properties to similarly achieve the desired built form and character in this West End precinct of Newcastle City. The variation in this instance should therefore be supported.

In addition to the above variation it is noted that the development standard to be varied may be considered to be *Clause 7.10A – Floor space ratio for certain other development* of the Newcastle LEP 2012. As such, please find as follows a further Clause 4.6 variation alternative clause.

2 Development Standard to be Varied

This variation aims to vary *Clause 7.10A – Floor space ratio for certain other development* of the Newcastle LEP 2012 (LEP 2012). This Clause outlines the required floor space ratio for all land within Area AA of the Newcastle City Centre that is under 1,500m² covered by the LEP 2012.

Under Clause 4.4, the maximum allowable FSR for the site is 6:1 however further floor space ratio provisions are applicable to the site. Clause 7.10 and 7.10A of the LEP 2012 further sets controls for minimum floor space requirements within the Newcastle City Centre. The proposed development has a site area of 1,416m² and as such is provided a FSR of 3:1. It is noted the proposed FSR for the development is 4.6:1 as the development proposes a GFA of 6,570m². A variation to allow the proposed FSR of 4.6:1 is hereby sought.

3 Justification under Clause 4.6 of Newcastle Local Environmental Plan 2012

LEP Clause 4.6 (3)

Under this Clause, 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.*

The development standard variation that is sought in this case satisfies these two criteria, demonstrated as follows:

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

There are no objectives expressed within clause 7.10A however Clause 4.4, which represents the overall Floor Space Ratio development standard provides objectives.

The objective of Clause 4.4 are as follows:

- (a) *to provide an appropriate density of development consistent with the established centres hierarchy,*
- (b) *to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

The intent of the clause is to ensure that building density, bulk and scale makes a positive contribution towards the desired built form in the locality. In this regard, the development has demonstrably achieved high quality design and amenity; a positive contribution to the urban landscape, the streetscape and the environment; and also achieves compliance with all applicable

planning provisions and policies. In particular, the design accords with the design principles of SEPP 65 and achieves all of the specified design objectives within the SEPP 65 Apartment Design Guide.

The area forms the Hunter Street gateway to the Newcastle City Centre and as such should provide a visually pleasing entrance which establishes the City Centre. Due to the areas significance, consistency of the proposed development with the vision for the area the neighbouring sites must be taken into account. It is noted that the height and scale of the building was highly supported by the UDCG, especially as this is the first lot of land within the city centre. It is described as providing a reference that you have arrived in the city centre and that it provides a clear separation from other areas.

The site has only one shared boundary with an adjoining private property which is subject to a maximum FSR of 6:1. Given that the neighbouring property can easily be developed to 6:1 it would diminish the sense of arrival at the city centre should this site be restricted in maximum FSR. Allowing for the variation to the subject standard will reduce the scale difference and lead to an improved contrast between the development and any future development on the neighbouring site.

Due to the sites location on a sharp corner lot wedged between a rail corridor and the Pacific Highway while also having only one adjoining property the impact of the variation is considered to be minimal. The development will not encumber any future development on the neighbouring site or their ability to achieve its 6:1 FSR threshold.

As the variation would contribute to the future desired visual form for the gateway if the Newcastle City Centre and would have minimal impact on the future development of the neighbouring site the strict application of the Clause 7.10A FSR restriction is considered to be *unreasonable* and *unnecessary* in this case.

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

The proposed development achieves a high-quality design in keeping with the desired future character of the area, and in compliance with applicable Planning Policies and Development Control Plans. The proposed development does not cause any unreasonable impact on adjoining properties or the natural or built environments as a result of its FSR. Nor does it restrict future development of the adjoining property. For this reason, strict application of Clause 4.4 would not achieve any better environmental planning outcome than the current, meritorious proposal.

LEP Clause 4.6 (4)

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that:

(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...

Objectives of the Standard

There are no objectives expressed within clause 7.10A however Clause 4.4, which represents the overall Floor Space Ratio development standard provides objectives.

The objectives for Floor Space Ratio standards under clause 4.4 of the LEP are:

- (a) to provide an appropriate density of development consistent with the established centres hierarchy,*
- (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

The proposed development is compliant with the density standards applicable for the Newcastle City Centre. The proposed development has FSR of 4.6:1, which is consistent with the maximum FSR of 6:1 which applies to the site and the street block under Clause 4.4 alone.

By incorporating design elements that contribute to the urban landscape, street scape, and surrounding environment the high-quality design of the proposed development makes a positive contribution towards the desired built form for the Newcastle City Centre and the surrounding area. In addition, the proposal achieves compliance with all applicable planning provisions and policies.

Objectives of the Zone

The objectives for the B4 Mixed Use Zone within which the site exists, are:

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

The proposal is consistent with these objectives as follows:

The proposed development comprises a mix of commercial premises and residential housing, which are compatible land uses; resulting in a development that provides housing choice as well as an active street frontage and positive streetscape contribution.

The site is highly accessible in terms of its location close to public transport services and cycleway/pedestrian network. As a result, the site has great connectivity to the employment, services and facilities within the city centre, as well as to open space and recreational areas.

The additional housing proposed in this accessible location supports the nearby commercial lands; and the proposed development incorporates a commercial component which allows for small scale retail / commercial occupants to contribute to a lively streetscape, a vibrant city atmosphere; and the provision of convenient services to support the major commercial centre.

LEP Clause 4.6 (5)

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

whether contravention of the development standard raises any matter of significance for State or regional environmental planning...

No, the variation sought to this FSR provision is unique in the circumstances of this case and does not have any environmental planning implications.

the public benefit of maintaining the development standard...

Strictly applying the Clause 7.10A FSR requirement would leave two options for this site:

- 1) to be amalgamated with an adjoining site; or
- 2) to reduce the FSR of the proposed development.

Neither of these options would achieve a greater public benefit than the proposed development. Given the gateway location of this site at the western entrance to Newcastle City Centre; the meritorious high quality design proposed; and the absence of adverse environmental impact by the development; the FSR proposed is considered appropriate for the site and considerate of its context and setting. The proposed development represents a great outcome for the site, overcoming many difficult site attributes to ensure an appropriate entry site to the West End of Newcastle City Centre and positive contribution to the public domain.

Impact of the Proposal on Neighbouring Properties

The site is on the western edge of a street block that contains five (5) lots. The adjoining site to the east is sufficient in lot area to design future development to the allowable FSR of 5:1. Clause 7.10A is not applicable to this adjoining site and it does not require amalgamation in order to achieve high quality outcome in accordance with the Newcastle City Centre objectives.

The remaining 3 lots further east range in area size with the smaller two separated by the larger lot as illustrated in figure 1 below. Due to being significantly smaller in area the two smallest lots are likely candidates to be amalgamated to enhance future development within the block.

Due to the layout of the lot the bulk and scale of the proposed development will be similarly matched by the adjoining lot if developed in the future. The proposal will not inhibit future development of the adjoining site or the other sites within the block. The variation will minimise any impacts on the local amenity and will achieve the desired outcome for the Newcastle City Centre.

The proposed development of the subject site therefore does not require lot amalgamation to achieve a high-quality design outcome; and does not adversely affect or hinder the development potential of its neighbouring sites.

Figure 1 – Approximate site areas



4 Conclusion

The proposed variation to Clause 7.10A of Newcastle Local Environmental Plan 2012 is considered justified as demonstrated throughout this written submission. The site is unique in its configuration, its location, its setting, and with its neighbouring lands, including road and rail.

The current development application proposes a positive design outcome for the site which contributes to the streetscape and public domain, ensures connectivity and interaction with the locality.

It does not impact the potential redevelopment of adjoining properties to similarly achieve the desired built form and character in this West End precinct of Newcastle City.

The variation in this instance should therefore be supported.

Yours sincerely,

Samuel Newman
Town Planner
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