

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

JRPP No	2017HCC050
DA Number	DA2017/01399
Local Government Area	Newcastle
Proposed Development	Demolition of buildings and erection of a 14-storey shop top housing development, consisting of 149 residential units, three commercial units, four levels for parking for 165 cars and associated site works.
Street Address	38 Hannell Street, 2-4 Bishopsgate Street and 13 Dangar Street, Wickham.
Lot & DP	Lot 1 DP 1224328, Lot 1 DP 715924 & Lot 1 DP 999530 and land subject to Road Closure Application (TR017/01524)
Applicant	Thirdi 38 Hannell St Pty Ltd
Owner	Hannell St Developments Pty Ltd, Australasian Conference Association Ltd, PA Grob, BJ Holland and Newcastle City Council (ie Bishopsgate Street road reserve)
Number of Submissions	Three
Regional Development Criteria	Section 4.5 of the <i>Environmental Planning and Assessment Act 1979</i> and Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011 requires the Joint Regional Planning Panel to determine applications for general development with a capital investment value (CIV) over \$30 million. The proposed development has a CIV of \$38,766,313.
List of All Relevant s4.15 Matters	<p>Environmental planning instruments</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Urban Renewal) 2010 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No.55 - Remediation of Land • State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development • State Environmental Planning Policy (Coastal Management) 2018 • Newcastle Local Environmental Plan 2012 <p>Development Control Plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012

	<ul style="list-style-type: none"> Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	Appendix A - Plans and Elevations Appendix B - Draft Schedule of Conditions Appendix C – RMS referral comments Appendix D – UDCG comments Appendix E - Clause 4.6 Exception to Development Standards
Recommendation	Approval
Report by	Newcastle City Council
Report date	12 July 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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

No
(Has been addressed in the body of the assessment report)

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?

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

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

A development application (DA2017/01399) has been lodged with Council, seeking consent for:

- Demolition of all structures on the site.
- A shop top housing development comprising of 149 residential units, 500m² of commercial/retail floor area and 165 car parking spaces.

It is noted that the application, as lodged, proposed 165 units and 177 car spaces. However, during the assessment of the application this figure was amended to the number stated above.

The proposal was placed on public exhibition for a period of 14 days from 16 November 2017 to 30 November 2017, in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012. One submission was received during the notification period. In addition, Council received two late submissions after the exhibition period closed.

The key issues raised in the assessment relate to:

- Height, urban design and visual impacts
- Amenity impacts
- Relationship of the building to nearby heritage items
- Traffic impacts and site constraints
- Road closure

In accordance with Section 4.5 of the EP&A Act and Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011, the Joint Regional Planning Panel is the determining authority for applications with a capital investment value (CIV) over \$30 million. The proposed development has a CIV of \$38,766,313.

1. INTRODUCTION

This report provides an overview and assessment of the development proposed at No.38 Hannell Street, No.2-4 Bishopsgate Street, No.13 Dangar Street, Wickham and a portion of the Bishopsgate Street road reserve. The proposal involves the demolition of the buildings on the site and the erection of a 14-storey building containing three commercial/retail units and 149 residential apartments.

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 4.5 of the EP&A Act, as the development has a capital investment value of over \$30 million. The development is valued at \$38,766,313. It is noted that Schedule 4A of the EP&A Act, which identified applications over \$20 million in capital investment value to be determined by the Joint Regional Planning Panel, was repealed on 2 March 2018.

2. SITE DESCRIPTION

The suburb of Wickham continues to evolve from a semi-industrial area at the outer fringe of the Newcastle City Centre into a mixed use urban neighbourhood and is subject to a master plan that was adopted by Council on 28 November 2017.

The proposed development comprises of three parcels of land with a total site area of 2646m². The subject land is known as No.38 Hannell Street, No.2-4 Bishopsgate Street and No.13 Dangar Street, Wickham. The site also includes land that is subject to a Road Closure Application (TR017/01524) as discussed below. The site is positioned on the western side of Hannell Street, on the corner of Hannell Street and Bishopsgate Street, and adjoins the cul-de-sac of Dangar Street, as shown in Figures 1 and 2 below.

The site has a curved frontage of approximately 61 metres onto the western side of Hannell Street and a frontage of approximately 45 metres onto the southern side of Bishopsgate Street.

The part of the site known as No.38 Hannell Street is currently vacant. The part of the site known as No.2-4 Bishopsgate Street is occupied by a two-storey industrial style building and No.13 Dangar Street contains a single-storey building with associated parking.

A locally listed heritage item is located directly north of the site at 54 Hannell Street, Wickham (ie former Wickham Public School), which is accessed from the northern side of Bishopsgate Street. An eight-storey shop top development consisting of commercial/retail spaces on ground floor and residential apartments above is located adjacent to the site to the west. This development is close to completion. Figures 3 to 6 indicate the current buildings located on the site and its surrounds.

Road Reserve

There is a small parcel of land on the northern side of No.2-4 Bishopsgate Street, Wickham which is currently part of the road reserve, owned by Newcastle City Council. The land was acquired for road widening purposes, which have not proceeded. The land does not have the appearance of being a public road.

Council resolved to close this portion of the road reserve and sell the land to the adjoining owner at the Ordinary Council Meeting of 27 March 2018.

With respect to the land that is currently part of the road reserve, the application was lodged with owner's consent from Council's Manager of Property Services.

The sale of the road reserve was raised in one of the public submissions. The foreshadowed road closure and sale of this isolated pocket of road reserve, which is redundant to Council requirements as a public road, has gone through a formal process that has been confirmed by a resolution of Council. It is noted that a similar parcel of road reserve in Bishopsgate Street has previously been closed and absorbed into the adjacent No.12 Bishopsgate Street.



Figure 1: Location of the site at No.38 Hannell Street, No.2-4 Bishopsgate Street and No.13 Dangar Street, Wickham. The area identified in blue is the road reserve.



Figure 2: Aerial Map of the site at No.38 Hannell Street, No.2-4 Bishopsgate Street and No.13 Dangar Street, Wickham. Note this does not show the recently constructed development at 12 Bishopsgate Street.



Figure 3: Looking along Hannell Street with the subject site to the left.



Figure 4: Looking down Dangar Street with the site to the right.



Figure 5: Looking across the site towards the local heritage item - former Wickham Public School at 54 Hannell Street, Wickham.



Figure 6: Looking across the site to the west to a shop top housing development at No.12 Bishopsgate Street, Wickham.

3. PROPOSAL

The application seeks consent for a shop top housing development comprising of 149 residential units, 500m² of commercial/retail and 165 car parking spaces. The proposal also includes the demolition of all structures on the site to facilitate the redevelopment of the site.

It is noted that the application as lodged proposed 165 units and 177 car spaces, however, during the assessment of the application this figure was amended to the respective numbers stated above.

The proposal includes two 14-storey residential towers above a three-storey podium. Both towers are approximately 46.6m high, being 1.6 metres in excess of the height of buildings development standard, to include the roof top communal spaces. The podium with parapet is approximately 11.6 metres high and it comprises three commercial tenancies on the ground floor and two levels of apartments spread around car-parking above.

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

4. PLANNING ASSESSMENT

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

4.1.1 Designation of Consent Authority

Section 4.5 of the EP&A Act requires the Joint Regional Planning Panel to be the consent authority for general development over \$30 million in capital investment value. The capital investment value of the application is \$38,766,313. As such, the application is to be determined by the Hunter and Central Coast Regional Planning Panel.

4.1.2 Section 4.15 Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in section 4.15(1) of the EP&A Act, as follows:

4.1.2.1 Provisions of any environmental planning instrument

State 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 of the SEPP requires the Joint Regional Planning Panel to be the determining authority for development included in Schedule 7 of the SEPP, which includes general development over \$30 million in value. At the time of lodgement of the application, this threshold was \$20 million.

The capital investment value of the application is \$38,766,313, with the Hunter and Central Coast Joint Regional Planning Panel being the determining authority.

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 therefore 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; or
- future amalgamation of sites; or
- access to future public transport in the precinct.

The proposed development will meet the objectives of the SEPP as it will enable the redevelopment of a number of parcels of land in one large mixed use development.

State Environmental Planning Policy 71 (Coastal Protection) (SEPP71)

SEPP71 does not apply to the Newcastle City Centre, as identified in Newcastle Local Environmental Plan 2012.

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 was made on 23 March 2018, and supersedes previous policies including SEPP71, SEPP14 and the coastal zone clause in Newcastle Local Environmental Plan 2012. As this application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP does not apply to the proposal.

Accordingly, for the purposes of this assessment, this SEPP is considered to be a draft Environmental Planning Instrument. In this regard, the proposal is considered to be acceptable having regard to the relevant considerations under this SEPP.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. Schedule 3 of the ISEPP relates to traffic generating development and requires certain applications to be referred to the RTA (now known as the RMS). The application was referred to the RMS as it is located in close proximity to a classified road.

The application was referred to RMS on 10 November 2017 and a written response was received on 21 June 2018. Traffic related issues are discussed in further detail under Section 5.1.3.7 Traffic Generation and Transport.

The potential for acoustic impacts from road noise, light rail and port related activities has been assessed by Council's Environment Protection Officer in accordance with Clause 87 of the ISEPP.

In relation to acoustic issues Council's Senior Environment Protection Officer has made the following comments:

'A noise impact assessment for the proposed mixed-use development was carried out by a qualified acoustical engineer. The report has demonstrated that the site is suitable for the intended purpose, providing the recommendations of the report are implemented to address external noise including road noise, light rail and port activities. Table 9 of the report

provides a schedule of minimum glazing, wall and roof construction to meet the requirements of the EPA and RMS.

The exposed facades of the building have been designed to ensure maximum noise level from heavy vehicles are below 55-60dB(A) as the upper limit generally considered to be the threshold at which awakenings may occur.

Ultimate selection of appropriate acoustic attenuation design measures will be subject to the final detailed building design elements and further advice and written approval by a qualified acoustical engineer which will be required as a condition of consent.

Three commercial tenancies are proposed on the ground floor of the premises however details of the specific use of these areas has not been provided. As such standard commercial hours of operation are recommended to be applied to these areas'.

A condition of consent has been recommended to require compliance with the recommendations of the acoustic report. The provisions of the ISEPP are considered to have been met.

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

State Environmental Planning Policy (Building Sustainability Index: 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," (ie contains one or more dwelling).

Accordingly the provisions of the SEPP apply to the current development proposal and the applicant has submitted a BASIX Certificate. The certificate lists the commitments to achieve appropriate building sustainability. A condition is recommended, requiring that such commitments be fulfilled.

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

In relation to contamination issues Council's Senior Environment Protection Officer has made the following comments:

'Due to the subject land having been used for various industrial/commercial landuses over several decades which may have contaminated parts of the site as well as the proposed change to a more sensitive landuse a detailed contamination assessment has been requested by Council. The detailed assessment indicated an area of hydrocarbon contamination in the vicinity of former underground storage fuel tank on part of the site. The general site was found to have been filled with between 1.8 m to 3.5 of material which contained sand, gravel, ash and slag gravel and indicated relatively minor exceedances the of health screening levels in respect to benzo-a-pyrene and

metals. Some asbestos fragments were also identified at some locations in surface soils of the site. The results of groundwater testing suggest the general absence of gross groundwater impact from the upper PAH and metal- impacted filling within the site. Groundwater hydrocarbon impact is present in the vicinity of the former underground fuel infrastructure.

To address this contamination a remediation action plan (RAP) has been prepared by the applicant. The RAP indicates that the area of hydrocarbon contaminated soil in the vicinity of the fuel storage tank will be excavated, remediated and validated and the rest of the site will be subject to capping by the building footprint and a suitable marker layer will be installed to mark areas of historical contaminated fill. A long term environmental management plan will then be applied to the site and will require notification of Council's planning certificate for the land.

Council is satisfied with this remedial approach as contamination exceedances identified were fairly minor and can be easily managed, a significant amount of fill is located on the site which would result in substantial cost and disruption to remove, clean imported soil will be required to raise ground level and the general remediation approach is consistent with nearby developments including the Honeysuckle area.

As long term management of contamination which exceeds appropriate health screening levels for the intended landuse is proposed it is recommended that a condition of consent be applied which requires, prior to the issue of an OC, that a site auditor to review the relevant contamination documentation and validation report at the completion or remedial works and issue a site audit statement to ensure the land has been made suitable for the proposed landuse'.

Based on the preliminary contamination report, Council's Regulatory Services Unit is satisfied that the contamination issues identified can be addressed by condition, as recommended in **Appendix B**, and accordingly the proposal is considered to meet the requirements of SEPP 55.

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

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. The SEPP requires the consent authority to take into consideration the advice of a Design Review Panel and 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.

Council's Urban Design Consultative Group (UDCG) reviewed the application on 15 November 2017 and 22 February 2018. A full copy of the Group's comments from each meeting is provided in **Appendix C** and a summary of the Group's advice in relation to the ten design principles is provided in the table below.

Design Quality Principles	Assessment
Principle 1: Context and Neighbourhood Character	<u>Applicant's response:</u>

<p><u>UDCG comments:</u></p> <p>The site is part of the rapidly changing area of Wickham that has been rezoned for high-density residential and commercial redevelopment. It comprises a large part of a block zoned as B3 Commercial Core with an FSR of 5:1 and maximum height of 45 metres. The site is close to the new Wickham transport interchange and the Throsby Creek/Harbour waterfront.</p> <p>On the adjoining site at the corner of Bishopsgate and Charles Streets there is a 10-storey residential block under construction. On the immediately opposite side of Bishopsgate Street is Wickham Public School, listed as a local Heritage Item. Its relationship to the development is one of the design challenges that has not yet been satisfactorily resolved or demonstrated.</p>	<p>Refer to the response contained within Aesthetics 9(b). The relationship to the school has been carefully considered in the updated submission.</p> <p><u>Council officer comments:</u></p> <p>The amended design has carefully considered the recently completed development at 12 Bishopsgate Street, Wickham by increasing the setback on level 3 (podium level) to minimise the potential impact on residents. The proposed new building is of a form, scale and massing that is generally compatible with the future character of the area and the adjoining heritage item. The proposed palette of materials, colours and textures are acceptable having regard to the tones of the area. As such, it is considered that the proposed development will not diminish the cultural significance of the heritage item.</p>
<p>Principle 2: Built Form and Scale</p> <p>Two, 14-storey (+ rooftop communal space) residential towers are proposed above a 3-storey podium. Both towers are approximately 46.6 metres high — being 1.6 metres in excess of the LEP control. However, if the height exceedence is only for access to the communal rooftops, and it is well setback from the edge of the tower form, the UDCG believe that it should be acceptable.</p> <p>The podium with parapet is approximately 11.6 metres high and it comprises three commercial tenancies on the ground floor and two levels of apartments sheathing car-parking above.</p> <p>While the two towers are proposed to be the same height, they have been modelled and expressed in different ways, responding to comments in the previous UDCG report.</p> <p>In general, the location, scale and massing of the towers and podium are appropriate (although see comments under Amenity and Aesthetics hereafter).</p>	<p><u>Applicant's response:</u></p> <p>No action required.</p> <p><u>Council officer comments:</u></p> <p>The built form and scale of the development is considered to be acceptable and meets the requirements of the SEPP.</p>

<p>Principle 3: Density</p> <p>Compliant and acceptable.</p>	<p><u>Council officer comments:</u></p> <p>The subject site is located within the Wickham precinct. Having regard to the density of development envisaged for this precinct under the provisions of Newcastle Local Environmental Plan 2012, the density of the proposed development is considered acceptable.</p>
<p>Principle 4: Sustainability</p> <p>The response to sustainability remains unclear although the applicants state that they are working to accommodate a more refined set of systems and standards. On a site of this scale additional initiative beyond BASIX are encouraged, for example solar energy collection and rainwater recycling at least for landscape watering.</p>	<p><u>Applicant's response:</u></p> <p>Initiatives beyond the requirements are certainly proposed within the development. Rainwater collection and recycling for the landscaped areas will be included along with energy storage facilities (Batteries/Telsa) to enable the development to future proof against energy prices and consumption.</p> <p><u>Council officer comments:</u></p> <p>This response is considered to be acceptable.</p>
<p>Principle 5: Landscape</p> <p>The landscape design for the podium remains slightly diagrammatic and formal, with the planting seemingly constrained into small artificial zones. The applicants are encouraged to consider an approach that reverses the dominance of paths and paving over landscaped areas, so that the podium design reads more as a landscaped space, which has had some paths and spaces inserted into it.</p> <p>Planting of large trees, paving and street furniture along all three street frontages is particularly important, and should be developed in consultation with Council.</p>	<p><u>Applicant's response:</u></p> <p>The podium landscape areas have been revised with comments made by the Panel. The dominance of the pathways has been reduced and landscaped areas significantly increased.</p> <p>The applicant has noted a willingness to work with Council to achieve the outcomes within the public domain in accordance the objectives the Wickham Master Plan (refer to comments under public domain).</p> <p><u>Council comments:</u></p> <p>It is considered that the revised scheme for the podium level has satisfactorily addressed the concerns raised by UDCG. The proposed podium level provides for residential amenity and social interaction whilst maintaining adequate separation distances to the recently completed complex at 12 Bishopsgate Street, Wickham.</p> <p>The amended landscape plan incorporates tree planting that would assist in reducing the perceived bulk of the development and</p>

	would provide for increased screening for adjoining properties. On balance, it is considered that the proposed landscaping for the site is of a good quality design and would complement the aesthetic quality and amenity for the development and surrounds.
<p>Principle 6: Amenity The following issues should be addressed:</p> <p>(a) The separation distance between the west facade of the northern tower, and the adjacent apartment building is below that recommended by the ADG. Furthermore, balconies and windows in the north tower directly face this other building. The distance between balcony edges/habitable spaces in the northern tower and the site boundary to the west should be 12m, but it is proposed at between 8.4 and 9 metres which isn't acceptable. If the western facade of the north tower had a much more solid treatment, with no balconies and windows angled (or screened) so that they only look north and west (not directly west) or south and west, this would be acceptable. This would not only solve a major amenity problem (exacerbating a shortfall in minimum setbacks), but it will most likely improve the environmental performance of the building.</p> <p>(b) The towers have extensive glass balustrades in front of similarly extensive glass walls. The projecting corner balconies particularly at higher levels would be extremely exposed to winds and often unusable. The ADG strongly recommends that a more balanced approach to balustrades (half solid, half glass) be adopted, along with the provision of moveable screens to balconies. Furthermore, such screens are most likely needed to hide air-</p>	<p><u>Applicant's response:</u> The western facade of both the North and South towers has been revised to align with the comment made by the Panel. Balconies have been removed and the proportion of solid wall versus glazing has been significantly increased. Slot windows increase privacy and improve the environmental performance of the building with a reduction of the heating/cooling loads on the western wall.</p> <p>Balustrades have been revised to provide a significant increase in solid protective and private balcony spaces. The northern balustrades are both solid and curved to mirror the roof forms of the adjacent school to bring a harmony to their relationship.</p> <p>Glazing to the northern commercial suites are well protected by deep overhangs. To the East they are also well protected by the overhanging building.</p> <p><u>Council officer comments:</u> Adequate separation has been provided between the subject building and those upon adjacent sites.</p> <p>It is noted that the applicant has made some changes to incorporate more solid forms to the balconies. However, a condition is recommended to require that additional solid balustrades and movable privacy screens be included in the design to ensure further wind protection and screening for personal items on these balconies. This should involve at minimum balconies that are half solid and half glass along with the provision of moveable screens to balconies. It is considered that</p>

<p>conditioning compressor units and drying areas, along with supporting the psychological needs of users at the upper levels.</p> <p>(c) The ground floor commercial tenancy has extensive glass walls which may require shading (in the form of street awnings or louvres) to reduce the associated heat load.</p>	<p>this is required for levels seven and above.</p>
<p>Principle 7: Safety</p> <p>Satisfactory</p>	<p><u>Council officer comments:</u></p> <p>The application proposes an adequate response to safety and security issues associated with the development.</p>
<p>Principle 8: Housing Diversity and Social Interaction</p> <p>The unit mix has been improved in this variation of the DA and is now appropriate.</p> <p>Communal roof-top terrace is now included for the north block, but not the southern, which also should have communal space. It is highly desirable to also include a small enclosed space with kitchenette facilities serving each space.</p>	<p><u>Applicant's response:</u></p> <p>An additional communal rooftop terrace has now been included on the southern tower. A small portion on both towers is enclosed with kitchenette facilities.</p> <p><u>Council officer comments:</u></p> <p>The amended design has addressed this suggestion, with the provision of a communal area on the roof level for the south and north towers.</p>
<p>Principle 9: Aesthetics</p> <p>The aesthetic expression of the proposal has continued to evolve but there remain two considerations that require further development.</p> <p>(a) The expression of the podium on the north elevation, where it abuts the adjacent building, remains uncomfortable, and requires some minor modelling or variation in the facade materials to accommodate the change in levels.</p> <p>(b) The northern facade is directly opposite the heritage-listed school and it is unclear how the two buildings are related in terms of scale, materiality, texture and colour. It may be that the proposed podium form has a reasonable relationship to the heritage building but this has not been</p>	<p><u>Applicant's response:</u></p> <p>This area on the level 2 carpark has been modified to align with the Parapet RL of the adjoining neighbouring development and continues for the full length of their boundary.</p> <p>The balustrading of the northern tower mirror the roof forms at 45 degrees with a curved top at varying heights. The materials juxtapose that of the school, however the colour is sympathetic to the darker brick tones.</p> <p><u>Council officer comments:</u></p> <p>The relationship to the school requires more refinement and a condition of consent is recommended, requiring that additional modelling, textures, material, colours and planting details be provided to Council to demonstrate that the development is sympathetic to the scale and texture of the heritage listed school.</p>

demonstrated. This was also raised previously and it is still unresolved.	
<p>Amendments Required to Achieve Design Quality</p> <p>The following issues remain to resolved:</p> <ul style="list-style-type: none"> (a) Western facade design (balconies and windows) of the northern tower to accommodate a reduced set-back to the boundary. (b) Reduce, modify or screen the extent of glass balustrades in the design. (c) Use formal modelling, materials, colours, textures or planting to respond to the scale and texture of the heritage listed school. (d) Communal facilities 	<p><u>Council officer comments:</u></p> <p>The amended development is considered acceptable in relation to comments from Council's Urban Design Consultative Group in relation to built form. The development establishes a scale and form appropriate for its location within the commercial core precinct. The proposal provides good presentation to the street.</p> <p>The proposal provides for appropriate building depth and bulk, and also affords for a reasonable level of landscaping whilst maintaining privacy to adjoining properties.</p> <p>Conditions have been recommended to amend the balustrade design and for the use of materials to be more responsive to the school, as discussed above, which should ensure greater compliance with the UDCG's comments.</p>

Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks and guidelines for the design and assessment of a residential apartment development. The following section contains an assessment of the development against key controls of the ADG.

2A Primary Controls:

The proposed amended development is considered acceptable in relation to the above guidelines on building form. The development establishes a scale and form appropriate for its location within the commercial core zoning. The proposal provides good presentation to the street with a three storey podium. The proposal provides for appropriate building depth and bulk, and also affords a reasonable level of landscaping.

2B Building Envelopes:

The proposed amended development is considered acceptable in relation to building envelopes.

2C Building Height:

The proposed development exceeds the height limit. This issue is discussed under Newcastle Local Environmental Plan 2012 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 45 metre height of buildings development standard is considered acceptable and no objections were raised by Council's UDCG on the basis that the height exceedance only be for a communal area that is setback from the edge of the tower form (refer to **Appendix D**).

2D Floor Space Ratio:

The proposed development complies with the Floor Space Ratio development standard specified by Newcastle Local Environmental Plan 2012, being 4.24:1 compared to the control of 5:1. The proposed density is considered acceptable.

2E Building Depth:

The depth of the building envelope provides a variety of articulating elements to ensure that the massing and bulk of the building is reduced and responsive to the context of the site. The depth of apartments is considered acceptable under the ADG and was supported by the UDCG.

2F Building Separation:

Building separation is 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 regard to the nature of the development, its character and location within the Wickham area.

The existing building located on the western side of the development (ie 12 Bishopsgate Street) is a recently constructed eight-storey mixed use 'shop top housing' development comprising of 33 residential units, including a roof top terrace.

The ADG recommends a separation distance of six metres up to 12 metres in height, nine metres up to 25 metres in height and 12 metres for buildings above 25m. The proposal does not satisfy this distance recommendation for levels four to 14 (inclusive). The separation distances of the proposed development to this neighbouring property at these levels are 6m to the balconies and 8.4m to the building. However, it is noted that level 8 of the adjoining building at 12 Bishopgate St does not comply with the separation distances specified by ADG. The ADG includes provisions for new development adjoining non-complying residential apartments. This enables new development to share the setback requirement with neighbour sites, rather than forcing new development be fully burdened with the additional setback.

This issue was discussed at the Urban Design Consultative Group who indicated that:

'The separation distance between the west facade of the northern tower, and the adjacent apartment building is below that recommended by the ADG. Furthermore, balconies and windows in the north tower directly face this other building. The distance between balcony edges/habitable spaces in the northern tower and the site boundary to the west should be 12m, but it is proposed at between 8.4 and 9 metres which isn't acceptable. If the western facade of the north tower had a much more solid treatment, with no balconies and windows angled (or screened) so that they only look north and west (not directly west) or south and west, this would be acceptable. This would not only solve a major amenity problem (exacerbating a shortfall in minimum setbacks), but it will most likely improve the environmental performance of the building'.

The applicant has amended the plans for the northern tower to address the above concerns. The amended design includes the following features:

- Solid balustrades on Level 4-8.
- Glass sliding door removed on levels 4-10 and replaced with two narrower vertical windows.
- The balconies on Levels 11-14 have been removed.
- The balconies on Levels 4-10 are 1.2m wide, being generally not wide enough for significant furniture. The overhang they create helps shadow the Western elevation and increase the thermal performance of the building.

While still not fully in line with ADG recommendations, the amended design is considered to provide for appropriate building separation between the proposed development and the building at 12 Bishopsgate Street. In addition, it is recommended (as discussed in the table above) that the treatment of the balustrades be further refined to address the concerns of the Group and that the requirement for more solid balustrades apply to both towers, not just the northern tower.

The issue of privacy is discussed in further detail under Section 3F Visual Privacy.

2G Street Setbacks:

Most of the buildings in the vicinity have been built to the boundary along the street frontage. The proposal is consistent with these adjoining building alignments and will reinforce the street edge, while balconies play a significant role in articulating the building facades to soften the appearance to the streetscape, provide interest and accentuate important design elements.

2H Side and Rear Setbacks:

The side and rear setbacks as proposed are considered appropriate and reasonable having regard to the existing streetscape and the adjoining built environment.

Part 3 Siting and Development:

The proposed development is considered to respond appropriately to the existing streetscape and is compatible with the future desired character of the area.

3C Public Domain interface:

The proposal includes public domain works that encompass replacement street tree planting, footpath upgrades and infrastructure works. Conditions are recommended to ensure that the public domain works are implemented as part of the site development works.

3D Communal and Public open space:

The following communal facilities are provided for the development:

- The podium level contains a large area for communal open space. The area is landscaped and contains a pergola and seating with a view across to the harbour. The podium also contains a small gym and BBQ areas to provide social interaction for the future residents.
- The building provides two roof terraces, one on the south building and one in the north tower, with a small kitchenette facility.

The proposal complies with the 25% communal landscaping requirement, having a landscaped area on level 3, which is approximately 30% of the area of the development site.

3E Deep Soil Zones:

The proposed landscaping is located on the podium level and accordingly is not considered to be 'deep soil' landscaping. However, the proposal is acceptable noting the constraints of the site and the style of the development, ie shop top housing development in an urban area. The landscaping area has been amended during the process of the development and now provides a more pleasant area with sufficient landscaping. In addition, conditions have been recommended for works to occur in the public domain, including the provision of street trees.

3F Visual Privacy:

The issue of visual privacy was raised as a significant concern during the public notification period and discussed during the meetings of Council's Urban Design Consultative Group meeting. Amendments were made to the original design to minimise privacy impacts to the west (that are related to the variation in building setback) as discussed above. These include the provision of solid balustrades to Level 4-8, removal of glass sliding doors on levels 4-10 and the deletion of larger balconies on Levels 11-14. As previously discussed, it is recommended that the treatment of the balustrades be further refined for more solid balustrades for both towers, which will assist with visual privacy.

The solid balustrades on level 4 to 8 will not entirely inhibit all noise or visual impacts, but will provide a reasonable and appropriate level of mitigation having regard to the nature and location of the adjacent site.

3G Pedestrian Access and Entries:

A readily identifiable and accessible entry is provided to the building from the street frontage, enabling clear orientation and accessibility by visitors and future occupants.

3H Vehicle Access:

The vehicular entry point provides adequate separation from the pedestrian entry. The width of the driveway crossing is considered adequate to cater for vehicle movement.

3J Bicycle and Car Parking:

The traffic response compiled by Council's Senior Traffic Engineer advises that compliance is achieved with the necessary Newcastle Development Control Plan 2012 requirements regarding car parking rates.

4A Solar and Daylight Access:

The ADG indicates that it is desirable for 70% of units to receive a minimum of three hours of sunlight in mid-winter. In dense urban areas, two hours may be acceptable.

Most units in the proposed development will achieve a reasonable level of solar access. The applicant has provided a breakdown of individual units and demonstrated that at least 70% of units (ie 77%) will receive more than two hours of winter solar access on 21 June. This equates to 114 units that comply and 35 units that do not comply (based on 149 units in total).

4B Natural Ventilation:

The ADG indicates that it is desirable that 60% of residential units are naturally cross ventilated and 25% of kitchens should have access to natural ventilation. The ADG

indicates that corner apartments and double aspect apartments achieve the best cross ventilation.

67% of the proposed development's units have good cross-ventilation (100 out of 149 units). Of the apartments that have a single aspect, the relatively shallow apartment depth should achieve acceptable natural ventilation.

4C Ceiling Height:

All rooms within the residential component of the development are designed with a floor to floor height of 3 metres which complies with the minimum ceiling height of 2.7m.

4D Apartment Size and Layout

The ADG outlines desirable unit depths to promote improved solar access and cross ventilation. In this regard the ADG nominates a maximum depth of 8m for single aspect apartments and 15m for cross-over apartments. All proposed apartments comply with these depths.

4E Private Open Space and Balconies:

The ADG indicates that balconies should have a minimum depth of 2m. The balconies of all units are at least 2m deep in part.

4F Common Circulation and Spaces:

The proposed configuration of apartments is such that the maximum number of apartments accessible from any single corridor is less than eight, with a maximum of six on some levels.

4H Acoustic Privacy:

The proposed development is considered acceptable in relation to the guidelines of the ADG and has minimised potential noise transfer between dwellings through the siting of the development. Further comment on acoustics is provided below.

4J Noise and Pollution:

The proposed development is considered acceptable in relation to the guidelines of the ADG. A noise impact assessment for the proposed development was carried out by a qualified acoustic engineer. The report has demonstrated that the site is suitable for the intended purpose, providing the recommendations of the report are implemented to address external noise, including road noise, light rail and port activities. An appropriate condition of consent is recommended to ensure compliance with the recommendations of the acoustic report.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.3 Land Use Table - Zoning

The site is zoned B3 Commercial Core under NLEP 2012. The proposed use is defined as shop top housing, which is permissible with consent in the B3 Commercial Core zone.

The proposed development is also consistent with the zone objectives, which are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*

- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for commercial floor space within a mixed use development.*
- *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- *To provide for the retention and creation of view corridors.*

The development meets the objectives of the zone as it will encourage employment opportunities in an accessible location, will maximise public transport patronage (due to the close proximity to the Wickham Transport Interchange and Newcastle Light Rail) and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter region. The development is also proposing a tower form development to retain some view corridors to the west from the adjacent buildings. However, it is acknowledged that some views will be lost given the orientation of the site and the issue of view loss is discussed later in the report.

Clause 2.6 Subdivision - Consent Requirements

The land may be subdivided with development consent. The proposal does not include subdivision.

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 45m. The proposed development has a maximum height 46.6m. The height of the proposed development exceeds the NLEP 2012 development standard by 1.6m or 3.5%.

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussions under Clause 4.6 - Exceptions to Development Standards below.

Clause 4.4 Floor Space Ratio (FSR)

The maximum FSR for the site is 6:1. However, clause 7.10 applies to the site, where the FSR is reduced to 5:1 unless the site is a full commercial building. The proposed development has a FSR of 4.24:1 and therefore complies with the relevant development standard of 5:1.

Clause 4.6 Exceptions to Development Standards

The proposal includes a building that exceeds the maximum building height under Clause 4.3 of NLEP 2012.

The objectives of clause 4.3 of NLEP 2012 are:

- to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- to allow reasonable daylight access to all developments and the public domain.*

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that Council vary the development standard and demonstrating that:
 - a) *compliance with the development standard is unnecessary in the circumstances of the case, and*
 - b) *here are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's request to vary the Development Standard includes the following justification:

'The current proposal seeks a building height of 46.6m. The proposal therefore exceeds the standard by 1.6m.

It is our submission that the breach to the building height control, will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development or the character of the area. As such a degree of flexibility is considered reasonable in this instance and anticipate under the LEP where justification is made.

The objectives supporting the maximum building height control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

With respect to the building height objective, we need to acknowledge that the subject site is located within part of the Wickham area which is a renewal and active development precinct. Development within the immediately vicinity of the subject site, have a height commensurate with the height proposed. With the development complying with the FSR provisions within the LEP, a better understanding of scale, use intensity and dominance is achieved with the built form and appropriate for the area.

In view of the sites prominent central location of the site, the position, its relationship to the block and immediate locality. Supplementary considerations are the availability of local infrastructure and current public transport services and future light rail all play a part in the consideration. The proposed building height would reinforce the position of the subject site creating a development that reinforces the urban design considerations of the area. It is therefore considered the proposal is in keeping with the locational attributes, consistent and in keeping with the surrounding established character of the area.

In response to objective (1)(b), the proposed development is of a high quality urban form and responds to the constraints of the site.

The proposed development provides for two free standing buildings to reflect the size and nature of the site. The proposal provides for consistent setbacks to the side and front boundaries enabling a clearly definable, modern form that acts as an exemplar exhibition of built form to the area.

As demonstrated in the perspectives provided, the development promotes an attractive and active street frontage. Large commercial spaces and glazed shopfronts addressing both the Hannell Street and Bishopsgate Street frontages. The residential lobbies are clearly defined and the form is reinforced through a strong vertical elements.

The upper residential levels, include additional setbacks and will be broken up by glass balustrading and balconies and cladding features providing for visual interest and creating a visual balance to the development.

In response to the abovementioned supplementary considerations, the proposal will result in some additional overshadowing to the adjoining buildings, though it is considered that this is a consequence of both the orientation of the site and not the higher built form.

The subject site currently has access to electricity, reticulated water and sewer, stormwater and telecommunications. Service connection and any capacity augmentation will be determined through application to the relevant service providers (Hunter Water, Ausgrid, Jemena, Telstra, NBN etc).

The subject site is within 50 metres of several major bus stop routes bus stops (see map below). Public transport is provided by government and private bus companies. Newcastle Buses provides several routes to various local centres, town centres, to the north, south and west.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard. As demonstrated, the objectives of these standards have been achieved.'

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) The proposed development will be in the public interest as 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
- c) The proposed height and scale of the development is in character with the desired character of the area. The proposed building height exceedance is considered to have only minor impacts on neighbouring properties in terms of privacy, overshadowing and view loss. Overall, the proposed exception to the height of buildings development standard of NLEP 2012 is considered a minor variation in the context of the site and its locality and strict compliance would be unreasonable; and
- d) The issue of the proposed height variation was also examined and discussed at length by the Urban Design Consultative Group. The Group

raised no objections and considered it a minor variation with suitable setbacks from all boundaries; and

- e) The Secretary's concurrence to the exception to the height of buildings development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning & Environment Circular PS 18-003 of 21 February 2018.

In addition the Wickham Master Plan states that additional development may be achieved for development proposals (including the subject site) that enable adequate solar access and view sharing, meet relevant design codes and provide a quantifiable community benefit to Wickham, in exchange for additional building height. The Master Plan states that this area has the potential to accommodate even greater building height up to 60m (19/20 storeys) which provides a transition from the adjoining height limit of 90m (30 storeys) allowed along Hunter Street in Newcastle West and an FSR of 6:1. Given the proposed height is 46.6m and the Master Plan may allow up to 60m (when the relevant planning instruments are amended), the minor variation to the height is supported.

Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact 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 disposal.

Clause 5.10 Heritage Conservation

The subject site is not listed for its cultural heritage significance in NLEP 2012. However, the site is located within close proximity to one listed heritage item. The heritage item is located to the north of the site, on the opposite side of Bishopsgate Street, at 54 Hannell Street Wickham and is known as the Wickham Public School.

In respect of the proposed development, the proposed new building is of a form, scale and massing that is generally compatible with the anticipated future character of the area. It is considered that the proposed development will not significantly diminish the heritage significance of the heritage item, subject to further resolution of the proposed palette of materials, colours and textures to reflect the tones of the area.

Clause 6.1 Acid Sulfate Soils (ASS)

A site specific acid sulfate soils management plan (ASSMP) has been prepared for the development. Given the site has been subjected to several meters of filling and extensive deep excavations are not proposed, it is considered that disturbance of potential ASS during remediation works is likely to be minor and/or localised and can be reasonably managed in accordance with the ASSMP. Compliance with the Acid Sulfate Soil Management Plan is included as a recommended condition.

Clause 6.2 Earthworks

The design of the development has allowed for minimal retaining walls on the boundaries of the site. Minor excavation works are proposed as part of the

development and suitable conditions of consent have been proposed to minimise the impacts of these works.

Part 7 Newcastle City Centre

The site is located within the Newcastle City Centre. 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 proposal is considered to be consistent with the objectives of Part 7 of NLEP 2012.

Clause 7.3 Minimum Building Street Frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The proposed development is consistent with this standard, having a frontage of 61m to Hannell Street.

Clause 7.4 Building Separation

This clause requires that a building must be erected so that the distance *"to any other building is not less than 24 metres at 45 metres or higher above ground"*. The proposal complies with this requirement.

Clause 7.5 Design Excellence

The development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality.

An Architectural Design Statement has been submitted with the application that addresses the design principles that have been used to formulate the proposal.

The proposal does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

The application was referred to Council's Urban Design Consultative Group on two occasions as part of the assessment of the application. The Group provided initial feedback to ensure the overall design achieved design excellence.

The plans were subsequently amended in line with the recommendations from Council's Urban Design Consultative Group. It is considered that the amended plans have adequately addressed the recommendations of Council's Urban Design Consultative Group and satisfy the design excellence criteria.

Clause 7.6 Active Street Frontages in Zone B3 Commercial Core

NLEP 2012 requires an active street frontage for land that is zoned B3 Commercial Core. The plans have addressed the above clause with the inclusion of the commercial/retail space at ground level along Hannell Street and Bishopsgate Street, through the provision of three separate tenancies.

Clause 7.7 Residential Flat Building in Zone B3 Commercial Core

This clause requires that development consent must not be granted to a residential flat building on land in the B3 Commercial Core zone unless it is a component of a mixed use development involving a permitted non-residential use. The proposed development provides for a mix of retail/commercial and residential use and therefore meets the requirement of this clause.

Clause 7.9 Height of Buildings

The subject site is not identified as being within 'Area A' or 'Area B' on the Height of Buildings Map. Accordingly, the provisions of this clause do not apply to the proposal.

The maximum building height of the proposal is addressed under Clauses 4.3 and 4.6 of NLEP 2012 in this report.

Clause 7.10 Floor Space Ratio for certain development in Area A

The subject site is located within Area A in the Newcastle City Centre. The clause indicates that the maximum floor space ratio for a building other than a commercial building on land with a site area of 1,500m² or more is restricted to a maximum of 5:1. The proposed development is a mixed use residential development (shop top housing) which limits the site to a FSR of 5:1. The proposed FSR is 4.27:1 and therefore complies with the above clause.

Clause 7.10A Floor space ratio for certain other development

The proposed development has a site area of greater than 1,500m². Accordingly, the provisions of this clause do not apply to the proposal.

4.1.2.2 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.

4.1.2.3 Any development control plan

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

Section 3.03 Residential Development

The objective of this section of the DCP is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The proposed development is considered acceptable in relation to the abovementioned DCP section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location within the Wickham precinct. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours. The proposal is considered acceptable under the above control.

3.10 Commercial Uses

The DCP encourages commercial development that attracts pedestrian traffic and activates street frontages. The inclusion of commercial uses on the ground level of the development will provide an active street frontage to Hannell Street and Dangar Street and will encourage pedestrian movement around and through the building.

4.01 Flood Management

Council's Senior Stormwater Engineer has provided the following comments in terms of flood management:

'The site is affected by local flooding (flash flooding) and by ocean flooding. The applicants did not attain any flood certificates and have not provided any flooding report for the site. Council flood data has been reviewed and the following information has been attained:-

Ocean Flooding

The site is affected by Ocean flooding during PMF and 1% AEP event mainly along Dangar St frontage and Bishopsgate St frontages of the site. The 1% AEP event level is approx. 2.20m AHD and PMF level is 3.40m AHD. The risk to life is noted as L1.

Flash Flooding

The site is affected by flash flooding during PMF and 1% AEP event mainly along Dangar St frontage and Bishopsgate St frontages of the site. The 1% AEP event level is approx. 2.05m AHD and PMF level is 3.00m AHD. The risk to life is noted as L4 and therefore a flood refuge is required to be provided at 3.00m AHD.

Flood Planning

The flood planning levels for the proposed development is generally based on the highest flood level, in this case flash flooding. The flood planning level is therefore 2.55m AHD.

The ground floor parking levels, the carpark entry and service areas have been designed at 2.55m AHD. The commercial area has been set at 3.00m AHD on the ground floor which will therefore act as the flood refuge.

The proposal generally complies with Council's Flood Management section of the DCP and conditions are recommended in this regard.

4.04 Safety and Security

The proposed development provides for passive surveillance of the street and communal areas. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety. As such, the proposed development is considered acceptable in relation to safety and security.

4.05 Social Impact

The proposed development provides for a mix of residential accommodation (two-bedroom and three-bedroom units) which supports social mix and housing affordability.

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.

5.02 Land Contamination

The applicant submitted a Site Investigation Report and Remediation Action Plan. This was reviewed by Council's Regulatory Services Unit and is discussed in under the State Environmental Planning Policy No 55 - Remediation of Land section of this report.

5.05 Heritage Items

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

6.01 Newcastle City Centre - West End Locality Provisions

Criteria	Comment
A1 - Street Wall Heights - requirement of 16m	The proposal includes a street wall height of 11.6m. The three-storey podium level was supported by Council's Urban Design Consultative Group, who indicated that <i>'the location, scale and massing of the towers and podium are acceptable'</i> . The lower podium height reduces the overall bulk and scale of the building and minimises the potential impact on adjoining properties. The lower street wall height is consistent with the street wall height of the adjacent building at 12 Bishopgate Street.
A2 - Building Setbacks - requirement of 6m above the street wall and 12m above 45m.	<p>The proposed setback above the street wall varies from 4m to 5m on the Bishopgate St frontage. The adjacent building at 12 Bishopgate St has a zero setback. The setback on Hannell St ranges from 0.5m to 5m and the setback on Dangar St is 2m.</p> <p>These setbacks are considered acceptable under this clause.</p> <p>The setback at 45m is under the 12m requirement for the Bishopgate St and Dangar St frontage. This is considered to be acceptable given the variation faces the street and does not cause additional overshadowing or privacy impacts.</p>
A3 - Building Separation	The issue of building separation has been discussed under Clause 7.4 Building Separation of NLEP 2012. The separation is considered acceptable under the above provisions.
A4 - Building Depth and Bulk	The proposal includes the use of natural ventilation and good separation to reduce the reliance on artificial sources, which complies

	with the requirements.
A5 - Building Exteriors	The proposed development responds well to the existing streetscape and is considered to be acceptable.
A6 - Heritage Buildings	It is considered the the proposed development will not have an adverse impact on heritage items and integrates the new building into the existing area.
A7 - Awnings	The proposal includes a full awning along Hannell Street and will provide adequate shelter for pedestrians.
A8- Design of Parking Structures	Car parking is provided on four levels and is accessed via Bishopsgate Street. The location of the car park is consistent with the requirements of this section.
B1 - Access Network	The proposed development will not impact on the city access network.
B2 - Views and Vistas	The issue of view loss is discussed in more detail in Section 5.1.3.7 of this report.
B3 - Active Street Frontage	This clause seeks to promote active street frontages in the B3 Commercial Core Zone. The plans have addressed the above clause with the inclusion of the commercial space at ground level on Hannell Street and Dangar Street.
B4 - Addressing the street	The proposal provides good presentation to the street with a mixture of active street frontages at ground level through the inclusion of commercial areas. In addition, both towers are orientated toward the surrounding streets.
B5 - Public Art	<p>The DCP requires that developments over 45m in height are to allocate 1% of the capital cost of the development towards public art for development.</p> <p>The development is over the 45m height limit at 46.6m and a condition of consent is recommended in this regard.</p>
B6- Sun Access to Public Spaces	The overshadowing diagrams indicate that the proposed development would have minimal impacts on public spaces.

7.02 Landscape, Open Space and Visual Amenity

As indicated above the, proposed landscaping is located on the podium level and accordingly is not considered to be 'deep soil' landscaping. However, the proposal is acceptable noting the constraints of the site, the zoning of the land and the style of the development, ie shop top housing development in an urban area. The landscaping that is proposed on the site will provide an acceptable level of amenity for future occupants.

A copy of the Landscape Concept Plan has been included in **APPENDIX A**.

7.03 Traffic, Parking and Access

Council's Senior Development Officer (Engineering) has considered the proposal to be acceptable and provided the following comments:

'The development has proposed to provide a total of 165 off-street parking spaces (out of which 12 spaces will be accessible spaces, 19 visitor spaces, 8 commercial spaces), 9 motorbike spaces, 149 bicycle spaces (secured Class 1 and 2).

Off-street car parking within the development, as identified on the architectural plans, is as follows:

*Ground Level - 37 Car spaces - includes:- 4 disabled spaces, 19 visitor spaces, 8 commercial spaces
- 3 Motorbike spaces and 10 Bicycle spaces*

*Mezzanine Level - 38 Car spaces - includes:- 4 disabled spaces
- 2 Motorbike spaces and 45 Bicycle spaces*

*Level 1 - 44 Car spaces - includes:- 4 disabled spaces and 5 Stacked Spaces
- 2 Motorbike spaces and 47 Bicycle spaces*

*Level 2 - 46 Car spaces - includes:- 5 Stacked Spaces
- 2 Motorbike spaces and 47 Bicycle spaces*

Car parking demand breakdown has been provided by LM Architects as tabled below:

Description	Parking Rate as per NCC DCP	Parking Required as per DCP
1 Bedroom - Total 47	0.6	28.2
2 Bedroom - Total 92	0.9	82.2
3 Bedroom - Total 10	1.4	14
Commercial - Total 480m2	1 space per 50m2	9.6
Visitor Parking	1 for first 3 and 1 per 5 after	29.2
Total Required Parking Spaces		165

The 12 disabled parking spaces are generally accessible to the Commercial Units, Residential Units and for visitors as well and therefore can be stated as being inclusive design and counted as visitor parking. The allocation for commercial parking appears adequate to service the proposal. Bicycle parking has been provided for each residential and commercial unit and visitor bicycle parking is noted to be located at the southern entry of building.

The development complies with Council's DCP Parking requirements as shown above.

Vehicular access, driveway design and crossing location.

The driveway is proposed to be from the north western end of the Bishopsgate St frontage and is located within the two way carriageway on Bishopsgate St. The proposed driveway is located away from the intersection of Bishopsgate St and

Hannell St. The driveway design is generally done at grade and the security gate is set back to allow for at least a car to be stacked away from the footpath.

The driveway has been designed to allow for sightlines for exiting vehicles and the fencing along the north western property will need to be setback at least 2.5m to allow for sightlines and pedestrian safety.

The proposed driveway location and design is generally acceptable and conditions are recommended to ensure that fencing design considers sightlines for exiting vehicles.

In summary, the access and parking areas are well integrated into the development and streetscape and are considered acceptable in relation to the DCP guidelines.

7.05 Energy Efficiency

This has been addressed under the SEPP (BASIX) and suitable energy efficiency requirements have been included in the development.

7.06 Stormwater

Council's Senior Stormwater Engineer has provided the following comments in terms of water management:

'The submitted stormwater plan has been reviewed. The stormwater plan has indicated a stormwater reuse tank within the site with 60m³ volume which is for reuse and detention. The reuse will be generally for the commercial levels on the Ground Floor and mezzanine Level and the podium level landscape and ground level landscaped areas.

It is noted that the proposed building is generally roofed and can be considered as 100% impervious. In this regard there is minimum area which requires stormwater treatment, which is generally at the north western corner at the driveway entry. Based on the above, the proposed Stormwater reuse proposal is acceptable.

Drainage Connection

Stormwater design allows the discharge from the OSD to be connected to the existing kerb inlet pit on Hannell St near the intersection with Bishopsgate St. Council asset data indicates that the kerb inlet pit and the drainage system on Hannell St is owned by RMS. RMS approval will therefore be required for the proposed connection. A condition is recommended.

Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan will need to be provided with the CC submission.

Conclusion

The principles of WSUD and the requirements of the DCP have been applied to the development. The submitted stormwater plans and supporting documents have demonstrated that the development will not impact of the downstream stormwater system and can be maintained in the long term'.

Conditions are recommended to ensure that the submitted Concept Drainage Plan is implemented as part of the site development works.

7.08 Waste Management

A Waste Management Plan has been provided with the application. The proposal provides for individual bulk storage bins. The submitted traffic report states that waste will be collected via kerbside pickup on Bishopsgate Street, utilising a wheel out / wheel back style service. The on-site manager is to wheel the bins out to the kerb for collection and wheel bins back to a dedicated storage within the site when empty. Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without affecting traffic, as this section of Bishopsgate Street will be made one-way with a kerb extension to restrict left out on Hannell Street.

There will be minimal servicing required for the site, which would mostly be completed by vans or small commercial vehicles. These vehicles will be able to access the site via the driveway from Bishopsgate Street and use the available commercial spaces and visitor spaces for servicing the site.

Based on the submitted information, the proposal is considered to be acceptable.

8.00 Public Participation

The application was notified for a period of 14 days and three submissions were received. The issues raised have been addressed within the report or discussed below.

Newcastle Section 94A Development Contribution Plan

The application attracts Section 94A Contributions pursuant to the Newcastle Section 94A Development Contributions Plan. A contribution of 3% of the cost of development would be payable to Council as determined in accordance with clause 25J of the *Environmental Planning and Assessment Regulation 2000*.

Public Domain Work

The proposed development generates the requirement for works in the public domain. The works will be required for Hannell Street, Bishopsgate Street and Dangar Street frontages, to provide improved amenity for the new building and the locality.

A proposed slip lane and associated civil and construction works will be constructed by RMS/TfNSW. The redundant driveway layback will need to be removed and a kerb will be required to be installed to match the existing streetscape. A number of conditions have been recommended in this regard.

4.1.2.4 Planning agreements

No planning agreements are relevant to the proposal.

4.1.2.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and *Regulation 2000*. In addition, compliance with

AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

Wickham Master Plan

The Wickham Master Plan was adopted by Council on 28 November 2017 and outlines the vision of how the area is to evolve over a 25 year period from a semi-industrial suburb into a mixed use urban area, reinforcing the Newcastle City Centre core within adjoining Newcastle West. The Master Plan has divided the area into six interconnecting precincts, with the site being located in the Rail Edge precinct.

The Master Plan identifies land that is likely to redevelop and has identified the subject site as having redevelopment potential. It states that additional development potential may be achieved for development proposals that enable adequate solar access and view sharing, meet relevant design codes, and provide a quantifiable community benefit to Wickham in exchange for additional building height. The Master Plan also states that this area has the potential to accommodate even greater building height up to the 60m (19/20 storeys) which provides a transition from the adjoining height limit of 90m (30 storeys) allowed along Hunter Street in Newcastle West and an FSR of 6:1. It is noted that the current building height under NLEP 2012 is 45m and the FSR is 6:1 (albeit clause 7.10 reduces this to 5:1 for the current proposal).

The Master Plan also identifies strategies and actions required to implement the desired vision for Wickham. This includes improving accessibility and connectivity, creating safe, attractive public places and ensuring the built environment is functional and resilient. The various maps and images contained in the Master Plan show the site as having:

- (a) a new two-way street facing Bishopgate Street;
- (b) timed parking along the Bishopgate and Dangar St frontage and no parking along the Hannell St frontage;
- (c) a property access restriction along the Hannell St frontage;
- (d) a street tree line along the Bishopgate Street frontage (the trees appear to be located in the part of the road reserve that is subject to closure) and
- (e) a zero setback to Bishopgate Street and Dangar Street and a 2m setback to Hannell Street.

The above issues have been considered in the assessment of the proposal. The acquisition of a portion of the site in Hannell Street by the RMS has dictated the need for a slip lane and a change to one-way traffic along Bishopgate Street for this portion of the street, hence this aspect of the Master Plan cannot be achieved.

The closure of the portion of the Bishopsgate Street road reserve will also affect the location of the street trees. It is noted that the Master Plan provisions for building height and floor space ratio extend over the part of the Bishopsgate Street road reserve that is affected by closure.

However, conditions have been recommended for public domain works (including street trees) and the proposed setbacks are consistent with the Master Plan. In summary, the objectives of the Master Plan have generally been met with the proposal in that the development is proposing urban renewal for a site that has been identified as having development potential due to its strategic location and access to services.

4.1.2.6 Coastal Management Plan

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

4.1.2.7 *The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and DCP considerations. In addition, the following impacts are considered relevant:

Bulk and Scale

The siting, scale, height and appearance of the proposed development is generally suitable for the site as discussed under SEPP 65 considerations and is consistent with the desired future character of the area.

Traffic Generation and Transport

The submitted traffic report has identified a peak traffic generation of 54 vtpd for morning and 39 vtpd during the evenings. The commercial units are expected to generate relatively low traffic movements. The development is in very close proximity to the Wickham Transport Interchange, which has good access to train and bus services. Furthermore, the development is within walking and riding distances to the waterfront and the future Newcastle City Commercial hub in Newcastle West.

The traffic modelling done by Council as part of the Wickham Master Plan provided recommendations to improve traffic movement within the Wickham area. Council's Traffic Section and Infrastructure Section have already begun design of the recommended works to ease the traffic impact from the Interchange and surrounding developments. Throsby Street intersection at Hannell Street is already under construction by Transport for NSW for the upgrade of the traffic signals and additional lanes to allow for traffic flows. Furthermore, Council has been advised by RMS, on 20 June 2018, that a new slip lane will be required on Hannell Street entering into Bishopsgate Street. The slip lane into Bishopsgate Street will ensure that proposed traffic changes to the intersection of Hannell Street and Honeysuckle Drive, as part of the overall Newcastle Interchange works by Transport for NSW, achieve a good outcome in allowing for traffic movement between Stewart Avenue and Honeysuckle Drive. Bishopsgate Street, at the intersection of Hannell Street, will be made as a one-way street, with entry from Hannell Street only. Exit from Hannell Street to Bishopsgate Street will be restricted.

The proposed slip lane will require the development to dedicate land as Road Reserve (marked-up in Green Line on the sketch below). This is to ensure that at least a 3.5m wide footpath access is available along the Hannell Street frontage to compliment the intersection upgrade.

Sketch of Hannell Street/Bishopsgate Street/Honeysuckle Drive Intersection



The above diagram demonstrates the slip lane into Bishopsgate Street resulting in the section of Bishopsgate Street, between Charles Street and Hannell Street to be made one-way with entry only from Hannell Street. A kerb extension is also proposed at the intersection of Hannell Street/Bishopsgate Street to restrict this one-way movement.

The principal impacts of the proposed slip lane in relation to the proposed development are therefore summarised as:

- Land dedication as Road Reserve.
- Part of the development (balconies) will encroach over the future road reserve.
- Streetscape changes to the Hannell Street frontage with design of footpath and street tree planting.

Council has written to the RMS to ascertain the developer responsibility with regard to the construction of the slip lane and to understand if the required additional works directly impacted by the road widening will be undertaken by RMS. RMS has confirmed that the balconies can encroach over the road reserve and have confirmed that RMS/TfNSW will undertake the civil works along Hannell Street and Bishopsgate Street Intersection. Furthermore, RMS has agreed that the footpath along Hannell Street, Bishopsgate Street and Danger Street frontages will be constructed by RMS/TfNSW in exchange for the land dedication required for the construction of the slip lane. Relevant conditions have been included in the consent to address this issue.

Overshadowing

The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable. The internal units have been assessed for solar access under the provisions of SEPP 65 and 77% of units achieve the minimum requirements.

Privacy

Provisions for privacy under the Apartment Design Guidelines are satisfied in relation to surrounding development and therefore privacy is considered acceptable.

View Loss

It is acknowledged that some views will be impacted by the redevelopment of the site. The proposal is considered to impact upon views from neighbouring properties of the recently completed apartment complex at 12 Bishopsgate Street. The building has orientated most of its views east across the development site towards the harbour.

Below is an analysis of the impact of view sharing by the proposed development on the affected properties. This analysis was completed using the methodology outlined under the planning principle for assessing view impacts - arising from *Tenacity Consulting vs Warringah 2004*. The planning principle outlines four areas in consideration of view sharing.

1. Views to be affected

The planning principle notes the following regarding types of views:

- a) Water views are valued more highly than land views.
- b) Iconic views are more highly valued than views without icons.
- c) Whole views are more highly valued than partial views.

2. What part of the property are views obtained

The planning principle notes that views from front and rear boundaries, from a standing position are more realistic to protect than those from side boundaries or a sitting position.

3. Extent of impact

The planning principle states that views should be considered for the whole of the property noting that views from living areas/kitchens are more significant than those from bedrooms or service areas.

4. The reasonableness of the proposal that is causing the impact

The planning principle states that where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

Comments

In terms of view loss, the proposed development will have some impact on the site to the west. There are water and iconic views, with the view to Nobby's headland being available from several units. However, the views are relying upon overlooking the subject site and the balconies have not been positioned to consider the redevelopment of the subject site. The proposed development is 1.6m over the height limit, which is considered to not significantly exceed the height controls given this additional height is located in the middle of the tower form, with appropriate setbacks.

The development has been configured in the two tower form model to allow for a viewing corridor between the towers. This will assist with minimising the view loss from some of the adjoining units.

A number of apartments in the adjacent development have two balconies, one facing east which is the main outdoor space and a second balcony facing south. It is anticipated that the southern balconies would be relatively unaffected by the development as some views may still be possible between the towers.

Overall, the loss of views is therefore considered acceptable using the methodology outlined under the planning principle for assessing view impacts.

It should also be noted that the proposed development is compliant with the FSR controls. The land is also zoned B3 commercial core, which is seeking to increase the density of development in close proximity to services.

4.1.2.8 *The suitability of the site for the development*

The site is suitable for the proposed development as it is located in the city area of Newcastle which is well serviced by shops, transport and recreational facilities. A higher density residential use of the site is appropriate as it would assist with the revitalisation of the precinct and allow people to live within walking distance of local employment.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

4.1.2.9 *Any submissions made in accordance with the Act or the Regulations*

The application was notified in accordance to the Regulations and three submissions were received. The issues raised in the submissions are summarised and responded to in the below table.

Issue	Assessment Comment
Any requirements for a design competition under the LEP given the proposed height	As detailed in the assessment report, a design competition is not required.
ADG compliance as appropriate for a building of this scale, in particular building separation	ADG compliance is addressed in this report.
Bulk and scale not consistent with then intended local character of Wickham and imposing scale of the northern tower	Bulk and scale considerations have been addressed in this report.
Overshadowing	The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable.
Wind impacts	It is considered that the proposal will not unduly impact on winds.
Visual impacts on surrounding properties	View impacts have been addressed in this report.
Loss of on street parking and street trees	A requirement for a public domain plan is a recommended condition of consent.
Separation distances between the proposed built form and impacts of	As discussed in this report, the proposal is considered to be acceptable having regard

privacy, noise, waste removal etc with the neighbouring habitable spaces and boundary	to the impacts on adjoining land.
Relationship of the driveway crossover to 12 Bishopsgate Street and any other traffic matters relating to the generated vehicle movements in the street	Traffic considerations have been addressed in this report.
Condition that a dilapidation report be undertaken prior to construction commencing	A condition of consent is recommended in this regard.
Condition that no over sailing of any construction materials with tower cranes be allowed if that may pose a safety risk to residents	Standard construction conditions are recommended.
Sale of road reserve and notation of this parcel in the Wickham Masterplan for community needs	As discussed in the assessment report, it is considered that the proposal is acceptable having regard to the Wickham Masterplan. A relevant officer of Newcastle City Council has provided owner's consent to the lodgement of the application.

4.1.2.10 The public interest

The development is in the public interest and will allow for the orderly and economic development of the site. It will allow for the construction of commercial/retail spaces and residential apartments in an area that is well serviced by public transport and community facilities and will assist with the revitalisation of Wickham.

5. CONCLUSION

Subject to a number of relevant conditions as recommended in the attached draft conditions schedule, the proposal is considered to be acceptable against the relevant heads of considerations under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

6. 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 the JRPP considers the objection to be justified in the circumstances and consistent with the aims and objectives of the relevant NLEP 2012 clauses; and
- B. That the Hunter and Central Coast JRPP, as the consent authority, determine to grant consent to DA2017/01399 (2017HCC050) for the demolition of the existing buildings and erection of a 14-storey shop top housing development, consisting of 149 residential units, three commercial units, four levels for parking and associated site works at No.38 Hannell Street, No.2-4 Bishopsgate Street and No.13 Dangar Street, Wickham, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions in **Appendix B**.