

20 September 2018

The General Manager
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NEWCASTLE NSW 2300



Clause 4.6 Variation to Development Standard Statement

RE: Development Application for 12-storey Commercial Development at 6 Stewart Avenue, Newcastle West NSW 2302

1 Introduction

The development to which this submission relates is for the construction of a 12-storey commercial development located at 854 Hunter Street in Newcastle West NSW 2302.

Specifically, the Development Application (DA) seeks approval for works involving the construction of a freestanding building with:

- One level of basement carparking to accommodate 40 car spaces;
- Ground floor retail/commercial tenancies with a GFA of approximately 312m²;
- Ground floor office lobby and services to support the commercial tower;
- 12 storeys of commercial office space with a GFA of approximately 15,890m²;
- Vehicular and service access from Beresford Lane; and
- Ancillary works as detailed on the proposed Architectural Drawings at Appendix A.

The development controls sought to be varied are contained in Clause 7.4 of the *Newcastle Local Environmental Plan 2012* (NLEP 2012) which relate to building separation for development within the Newcastle City Centre.

An assessment of the variation is provided in the following pages in accordance the requirements of Clause 4.6 of the NLEP 2012. This variation has been prepared generally in accordance with the NSW Department of Planning and Infrastructure's publication "Varying Development Standards: A Guide" (August 2011), which identifies matters to be addressed in an application to vary a development standard.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying the development standards to achieve better outcomes for, and from, development.

The proposed variation is considered reasonable for the following reasons:

- The proposed development meets the underlying intent of the controls and is a compatible form of development that does not result in unreasonable environmental amenity;
- The proposed development will further reinforce the long-term viability of the West End of Newcastle providing high quality commercial floor space close to public transport;
- The site is physically separated from nearby Heritage Items and will not adversely impact on their heritage values;

- The proposed development has been architecturally designed to minimise the overall bulk of the building, resulting in a built form that does not present an unacceptable visual affect;
- The proposed building separation distance resulting from non-compliance does not result in any significant impacts on adjoining properties, particularly with respect to overshadowing, loss of privacy and loss of views; and
- The application satisfies other LEP numerical standards which results in high quality development.

2 Site Details

2.1 Site Location and Context

The site currently supports existing buildings and improvements, most notably including the heritage-listed former Co-Operative Store and a multi-level carpark; which have been approved by TfNSW to be demolished under the Part 5 Approval. The site is immediately adjacent to the Newcastle Transport Interchange (NTI).

The existing character of the immediate locality is mixed and includes predominantly commercial buildings in the vicinity of the site. It is noted that the site is within Newcastle City Council's West End Precinct which is to be developed as a future CBD in close proximity to the NTI and will feature predominantly commercial and mixed-use development taking advantage of the location.

The immediate north of the site supports the rail corridor, on which the NTI has been constructed. This Transport Interchange is the termination point for heavy rail and the starting point for light rail into the City Centre.

To the west of the site exist generally older style two-storey commercial buildings.

Hunter Street forms the southern boundary of the site, near the main intersection of Hunter Street and Stewart Ave. Land to the south of Hunter Street is zoned for a far greater density of commercial or mixed-use development than currently exists. The heritage-listed Cambridge Hotel; and Quest Apartments within the heritage-listed former brewery site, are each located opposite the site in Hunter Street.

Figure 1 – Aerial View of the site (Source: SIX Maps)



3 Exception to Development Standards

The Department of Planning and Environment's publication "*Varying Development Standards: A Guide*" (August 2011), states that:

The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:

- *Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP); and*
- *State Environment Planning Policy No 1 – Development Standards (SEPP1).*

In this instance, SEPP 1 does not apply as the NLEP 2012 is a Standard Instrument LEP. It is noted that the Guidelines do not identify any other mechanisms (such as a Planning Proposal) to vary a development standard.

3.1 Clause 4.6

Clause 4.6 of the NLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better planning outcomes.

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The proposal seeks to vary the building separation standard applicable to the site and does not introduce new controls across an area. The Clause 4.6 guidelines also express when this clause is not to be used, namely:

"...in Rural or Environmental zones to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in the following SI zones: Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living."

Neither the site nor the proposal is included within these criteria and therefore, the use of Clause 4.6 is an appropriate mechanism to seek to vary the building separation standards in this instance.

3.2 Legal Context to Varying Development Standards

This submission has been prepared having regard to the latest authority on Clause 4.6, contained in the following NSW Land and Environment Court (Court) judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five No 1)
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (Four2Five No 2)

- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (Four2Five No 3)
- Moskovich v Waverley Council [2016] NSWLEC 1015
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In the decision of *Moskovich v Waverley Council* [2016] NSWLEC 1015 it was deemed consistent with the decision in Four2Five and the Court agreed that the public interest test (incl 4.6(4)(a)(ii)) is different to the "unreasonable or unnecessary in the circumstances of the case" test (incl 4.6(3)(a)). The Court said that *"the latter, being more onerous, would require additional considerations such as the matters outlined by Preston CJ in Wehbe at [70-76]"*.

Randwick City Council v Micaul Holding Pty Ltd [2016] NSWLEC 7 documents a decision of the Chief Judge of the Court in an appeal against a decision of Commissioner Morris to uphold a request under clause 4.6 of the Randwick LEP 2012 to vary development standards relating to the height and FSR of a building.

The Chief Judge observed at paragraph 39 of his judgement that clause 4.6(4) of the Standard Instrument does not require the consent authority to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed those matters. This lessens the force of the Court's earlier judgement in Four2Five that a variation request must demonstrate consistency with the objectives of the standard in addition to consistency with the objectives of the standard and zone.

The objection principles identified in the decision of Justice Lloyd in *Winten v North Sydney Council* are outlined below:

- (1) *Is the planning control in question a development standard;*
- (2) *What is the underlying object or purpose of the standard;*
- (3) *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979;*
- (4) *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;*
- (5) *Is a development which complies with the development standard unreasonable or unnecessary; and*
- (6) *Is the objection well founded.*

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston outlined the rationale for development standards, and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his judgement Preston CJ noted:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Wehbe V Pittwater [2007] NSW LEC 827 also established the 'five-part test' to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- (1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives;*
- (2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;*
- (3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*

- (4) Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- (5) Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

Of particular relevance in this instance is Part 1, that "*the proposal, despite numerical non-compliance, [would] be consistent with the relevant environment or planning objectives*".

4 Development Standard to be Varied

This section pertains to the "*Application form to vary a development standard*" by the Department of Planning and Environment.

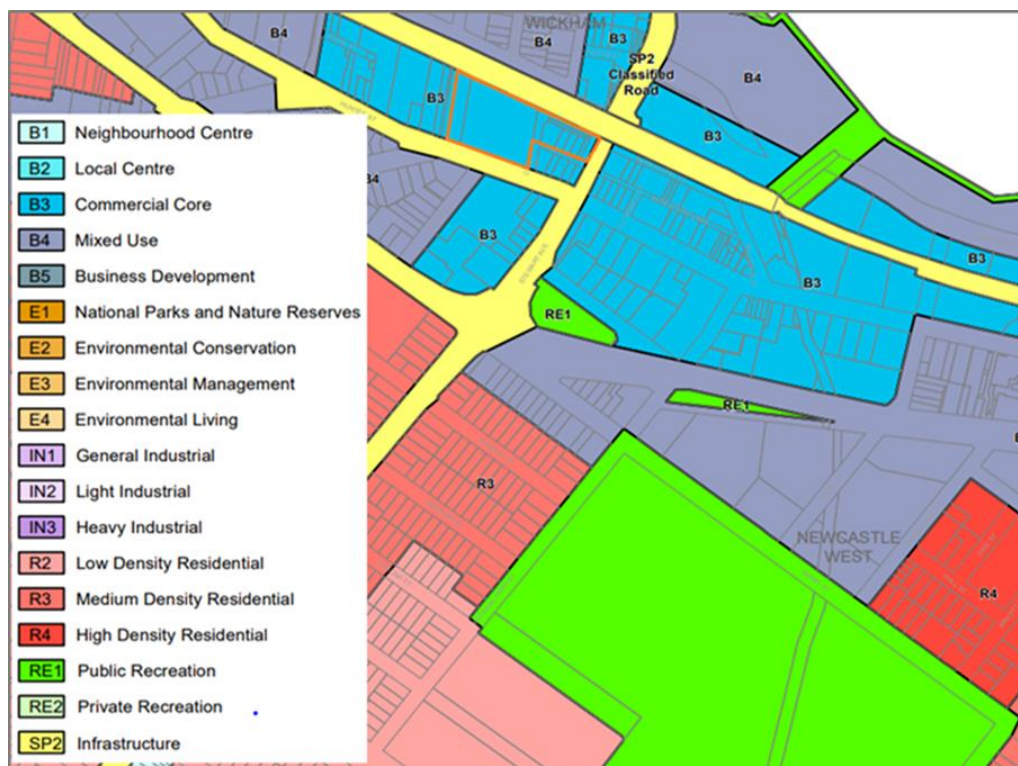
What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012.

What is the zoning of the land?

NLEP 2012 indicates that the site is within the B3 Commercial Core Zone, as illustrated in Figure 2.

Figure 2 – Land Zoning Map Extract (Map LZN_004G)



What are the objectives of the zone?

- 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.*

Comment: The commercial building will contribute to the redevelopment of the site to form a highly desirable mixed-use precinct in the West End of Newcastle, consistent with the zone objectives. The commercial building will provide quality commercial floor space for public and private tenant; supporting Newcastle City Centre as the regional business, retail and culture centre of the Hunter region.

The development will result in a wide range of employment generating uses; including construction jobs and jobs during the operational phase for both skilled and unskilled workers. The overall development will result a truly mixed-use precinct to live, work and play in close proximity to the many attractive features associated with Newcastle City Centre.

What are the development standards being varied?

The building separation standard contained in Clause 7.4 of the NLEP 2012.

Are the standards to be varied a development standard?

Yes, the standards are each considered to be a development standard in accordance with the definition contained in Section 4(1) of the *Environmental Planning and Assessment Act 1979*, and not a prohibition. Clause 7.4 is also not listed under Clause 4.6(8) as a development standard that is not able to be varied.

What are the objectives of the development standard?

The objectives of Part 7 Additional Local Provisions - Newcastle City Centre of the LEP are as follows:

- (a) to promote the economic revitalisation of Newcastle City Centre,*
- (b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population,*
- (d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,*
- (e) to facilitate the development of building design excellence appropriate to a regional city,*
- (f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,*
- (g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,*
- (h) to help create a mixed use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.*

What is the numeric value of the development standard in the environmental planning instrument?

Clause 7.4 requires buildings within the Newcastle City Centre to be separated by a distance of not less than 24 metres once the building is above 45 metres in height. Clause 7.4 is extracted below:

7.4 Building separation

- (1) A building on land to which this Part applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.
- (2) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.

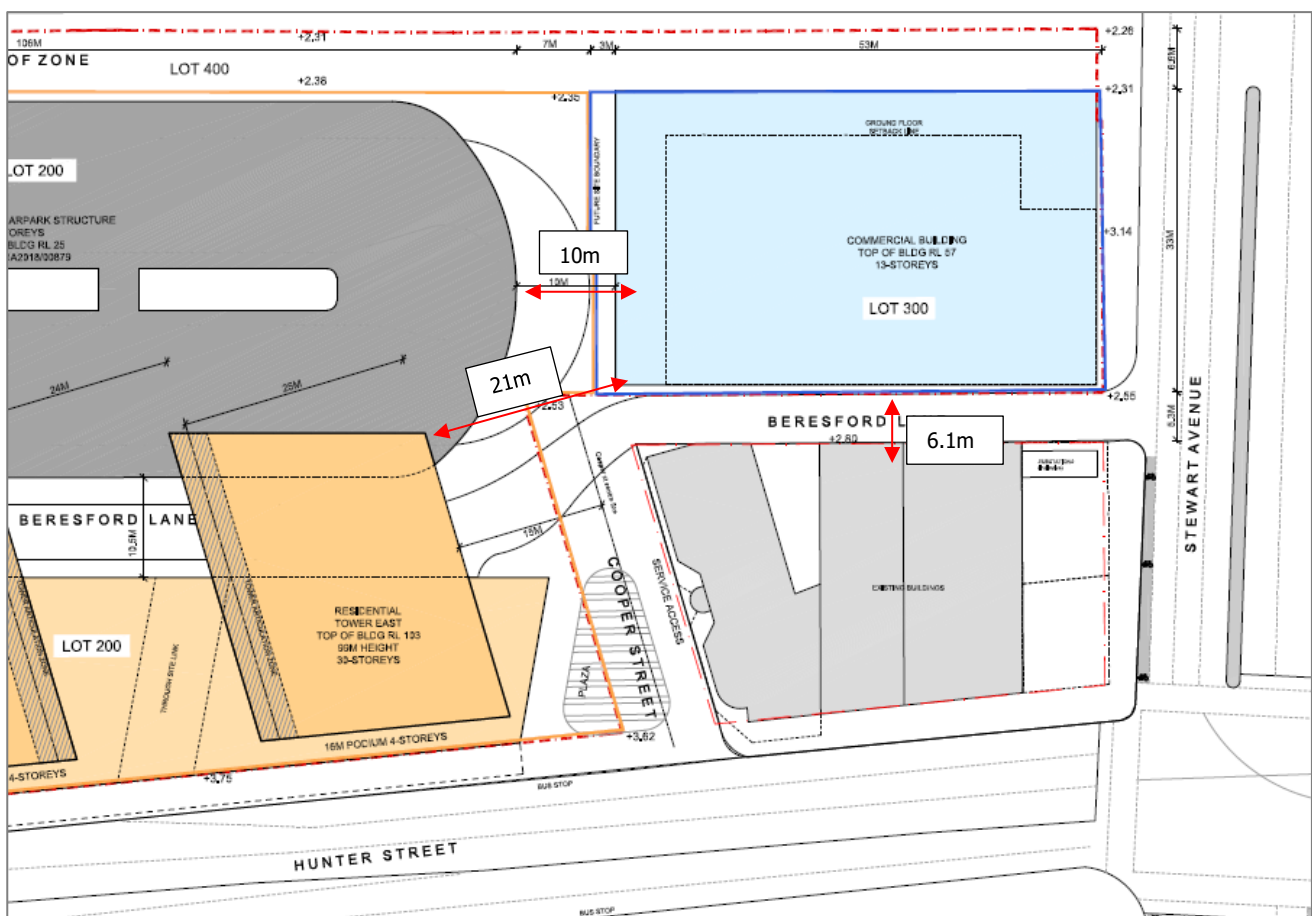
What is the proposed numeric value of the development standard in your development application?

Clause 7.4 requires that a new building is not within 24m of another building at a height of 45m above ground level. The adjoining buildings to the south of the site consists of two-to-three storey commercial buildings and as such do not themselves reach the 45m limit specified in the clause. A 6.1m separation distance from the proposed commercial building to the boundary of southern site is provided. To achieve the building separation distance a 9m setback is required at 45m for both sites.

At 46.8m the proposal provides a 21m building separation distance to the future residential tower (forming part of the Concept Plan for the site) to the south-west of the commercial building.

In addition, the proposed commercial building will be setback approximately 10m from the proposed multi-storey carpark on-site (which is the subject of a development application which is currently under assessment by Newcastle City Council). Figure 3 illustrates this separation distances.

Figure 3 – Building Separation Distances (Source: Bates Smart)



The numeric differences are presented in the following table:

Clause	Control	Proposed	Variation
Clause 7.4 – Building Separation	24m to the future residential towers (overall)	21m	12.5%
	24m to the southern site (overall)	6.1m	75%
	24m to the future multi-storey carpark	10m	58%

5 Justification for the Contravention

This section addresses Section (3), (4) and (5) of Clause 4.6 and seeks to justify the contravention from development standard clause 7.4.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

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

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

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

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

5.1 Compliance is Unreasonable or Unnecessary

As mentioned above, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the standard.

The proposed development achieves the objectives of the local provisions for the Newcastle City Centre, as outlined in Clause 7.1 as demonstrated in the following pages:

(a) to promote the economic revitalisation of Newcastle City Centre,

Response: The commercial building represents the staged development of 'The Store' site, the overall Concept Plan will inject approximately \$200 million within the Newcastle City Centre. The redevelopment of the site will transform the West End of Newcastle providing high-quality commercial floor space for over 600 people. The commercial building will attract public and private sector users into the revitalised Newcastle City Centre.

Newcastle City Centre is described as the City Heart in the Greater Newcastle Metropolitan Plan (the Metro Plan), it is noted that the City Heart provided 24,200 jobs in 2016. The Metro Plan targets 31,950 jobs in the City Heart by 2036, this represents a 32% increase. The proposed development will contribute to the economic revitalisation of the City Centre as well as assisting achieve the desired employment target for 2036.

(b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,

The proposed development will strengthen Newcastle City Centre's regional position, specifically by providing high-quality commercial floor space adjacent to the Newcastle Interchange which will enable workers to easily travel to the City Centre from the broader Hunter and Central Coast regions.

The additional office floor space will encourage employment and economic growth consistent with *Outcome 4 Improve connections to jobs, services and recreation* of the Metro Plan. The proposal will continue to support Newcastle remaining a great place to live and work with fast, efficient and reliable transport options. The overall Concept Plan represents an integrated land use and transport planning approach; integrating Newcastle Interchange with walking, cycling and bus routes.

The commercial building also provides opportunities for small business and start-ups to be located adjacent to a major public transport interchange.

(c) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population,

The proposed development will improve the vitality, identity and diversity of Newcastle City Centre by revitalising 'The Store' site which had fallen into disrepair and disuse. The proposal has been architecturally designed by Bates Smart, and responds to the existing heritage context and future vision for the West End.

The Store site is the gateway into Newcastle for people traveling to the City Centre via heavy rail; the redevelopment will transform the site into a Key Site for Newcastle.

(d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,

The site previously supported derelict buildings and a carpark, all of which are being demolished to make way for the NBI and provide a canvas for the Concept Plan. Surrounding development on private lands includes old style commercial buildings.

The proposal represents a compatible mixed-use development for the site and is consistent with the desired future vision for this area of the West End Precinct to emerge as a revitalised commercial precinct. By providing a mix of retail and office premises, located alongside the NTI, the proposal will enhance the economic success of the Newcastle City Centre.

(e) to facilitate the development of building design excellence appropriate to a regional city,

Prior to lodgement of the development application for this commercial building, advice was sought from the Government Architects Office (GAO) in relation to achieving design excellence without the need for a design competition to be held, particularly given that the winning design for the site submitted by Bates Smart Architects for Doma Group has already undergone a design competition-like process through the Hunter Development Corporation's (HDC) competitive tender process. In February 2018 the GAO advised that a waiver had been granted and that there was no need for a design competition to be held for this redevelopment project.

A process for design integrity was requested to be established by the GAO, involving continual review through design development by a Design Review Panel (DRP). The three elected members of this DRP are:

- Dr. Phillip Pollard – Newcastle UDCG
- Lee Hillam – NSW Government Architect
- Adam Haddow – SJB Architects

As stated above, the proposed design for the site was the winning entrant in a formal design competition held by HDC. Since its selection, the design has been developed with input from the DRP. Appropriate input from suitably qualified personnel on the DRP ensures the massing and built form is appropriate for the site's locality and has due regard to relevant State and local planning legislation and controls.

(f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,

The proposal remains consistent with these objectives through incorporation of suitable water management practices, minimising erosion and sedimentation associated with the site works; maintaining water quality; maintaining view corridors to the foreshore; and contributing to pedestrian connectivity and amenity in and around the NTI and NBI, which are within walking distance of the harbour foreshore.

(g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,

The site is not identified as being located within an environmental sensitive area. The site is located within a heritage conservation area and previously contained a heritage item of local significance, being the Former Newcastle Co-operative Store. A Heritage Impact Assessment has been prepared by qualified heritage consultant and is provided at Appendix H. The report assesses the impact of the proposed works and finds the proposal is acceptable.

The proposed development responds to the heritage significance of surrounding items, incorporating similar materials and colours into the commercial building.

(h) to help create a mixed-use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike

The commercial building will form the second stage of the Concept Plan. The end vision is to create a mixed-use hub that is a catalyst for new urban development in and around the City Centre and Wickham.

The proposed commercial building has been carefully designed to consider Crime-prevention through environmental design principles, these principles have been comprehensively addressed in Appendix K.

5.2 Sufficient Environmental Planning Grounds to Justify Contravention

This submission demonstrates that the resultant environmental impacts of the proposal are considered to be satisfactory. If made to strictly comply with Clause 7.4 there would be no additional benefit to the streetscape or public domain in the local area. Justification has been split into the residential tower and carpark and the southern development separation in the following pages.

Eastern Residential Tower and Carpark Separation:

The relationship between the commercial building, eastern residential tower and carpark has been carefully considered as part of the overall Concept Plan for 'The Store'. The positioning and bulk and scale has undergone significant modelling to ensure the proposal delivers acceptable outcomes. In particular the following elements have been considered and informed the building separation:

- Extend the existing city grid into the site;
- Fine grain network of streets and blocks that connect to existing streets;

- Continuity of public domain;
- Pedestrian gathering nodes; and
- Orientation of buildings to facilitate daylight access to the public domain.

It is important to note, that an intensive design excellence process has ensued to arrive at the form and massing for the site; which has been tested and optimised to create a superior outcome for the public domain and for its appropriateness in context. The LEP envelope was tested and manipulated to arrive at the proposed massing.

It is anticipated that both residential towers can achieve ADG compliance, providing excellent amenity to all the apartments even with the reduced building separation distances.

It is acknowledged that the intent of the building separation development standard is to ensure adequate distance is provided between developments to improve amenity, increase solar access, reduce noise issues and limit overlooking, between residential and non-residential uses and with boundaries to neighbours. It is considered that the full 24m building separation distance is not required for a commercial building and carpark, as the interrelationship between the two buildings is not anticipated to have any ongoing amenity issues as neither contain residential or habitable spaces.

The granting of development consent will enable a high quality, architecturally designed commercial building to be constructed with an active ground floor presence for the benefit of the community. The objectives of the Newcastle City Centre will clearly be met by the proposed development. In light of this, there is considered to be sufficient environmental planning grounds to justify varying this development standard in this instance.

Southern Separation:

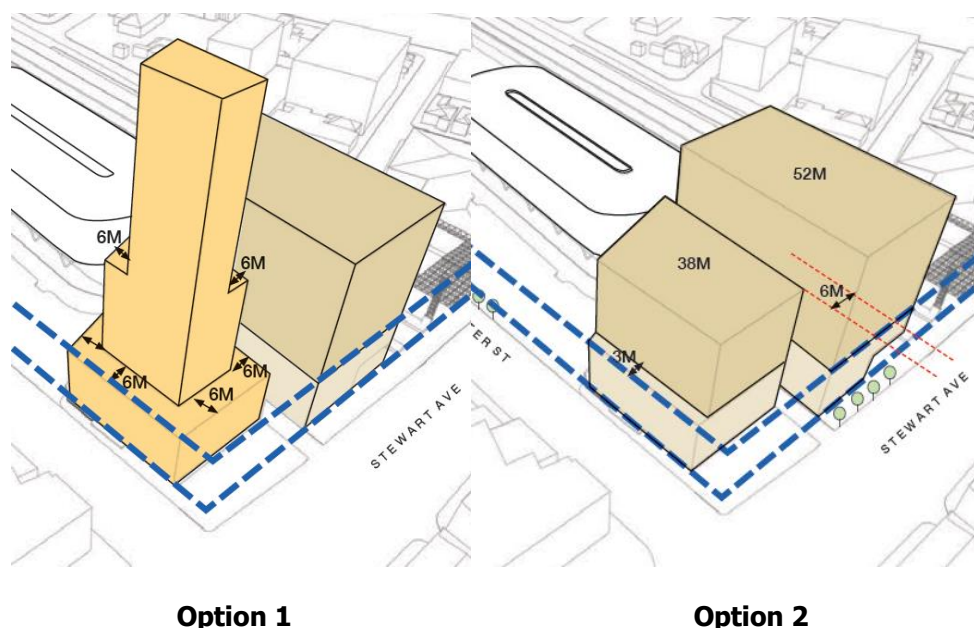
Bates Smart have completed a comprehensive assessment of the potential bulk and scale massing for the adjacent sites to the south of the commercial building. The Urban Design Strategy (Appendix A) undertaken by Bates Smart recognises the importance of the future development potential of adjacent sites.

The following analysis of setbacks and development potential has been undertaken of the adjacent site, immediately to the south of the proposed commercial building. Two options were considered, namely:

Option 1: a ADG compliant residential building envelope; and

Option 2: a podium with large floor plate which disregards the setbacks for a residential development.

Figure 4 – Southern Site Modelling (Source: Bates Smart)



Option 1 illustrates when applying complaint setbacks to the adjacent site of 1,098m², over a maximum permissible height of 90m and a maximum FSR of 8:1, the buildings footprint becomes non-viable as a commercial or residential scheme with 170m² and 370m² floorplates.

Option 2 demonstrates that by reducing the height of the building envelope and distributing floor space to lower floors, the development breaches the DCP setback constraints, but allows the building to accommodate minimum floor plate sizes of 1,480m². However, the site is not capable of reaching 45m as the site achieves a FSR of 8:1 at 38m.

Whilst the proposed development does not meet the building separation requirements specified in Clause 7.4 of NLEP 2012, the proposal has considered the future development potential of adjoining sites and contributes positively to the locality incorporating through-site links which enable view sharing, pedestrian connectivity and built form relief. The reduced building separation distance will be visibly difficult to detect to the eastern residential tower; and as demonstrated in the Architect's drawings (refer to Appendix A). These drawings illustrate that the proposed development does not cause an unreasonable amount of shadowing or amenity impacts.

5.3 Public interest

As demonstrated in this assessment, the proposed development will be in the public interest as it is consistent with the objectives of the Newcastle City Centre and the objectives of the B3 Commercial Core Zone in NLEP 2012.

The intent of the Commercial Core zone is to provide a wide range of retail, business, office, entertainment, community, and other suitable and compatible land uses within a mixed-use development. The proposal is a mixed-use development which incorporates retail and office components. These uses are compatible with the objectives of the zone and will complement surrounding land uses and strengthen the Newcastle City Centre, particularly in the vicinity of the active West End and Honeysuckle Foreshore Precincts.

The proposed development will provide a number of significant public benefits including contributing to the mix of land uses in the locality, creating employment opportunities during construction and operational stages as well as providing office and retail space close to public transport. The proposed development represents a high quality urban design, which seeks to continue to redevelop and enhance the West End Precinct of Newcastle City Centre. The building separation non-compliance does not outweigh the merits of the proposal and its contribution to the social fabric and built form of West End.

6 Conclusion

This Clause 4.6 Variation to Development Standard submission has been prepared in response to numerical non-compliance with the development standard for Clause 7.4 – Building Separation in NLEP 2012. The extent of non-compliance is considered acceptable in the context of the site given the type, location and scale of the development proposed.

As demonstrated within this submission, the overall massing, scale, bulk and height of the proposed development is consistent with the desired future character envisioned by Council for the West End Precinct.

The variations allow for the orderly and economic use of the land in an appropriate manner, whilst allowing for a better outcome based on planning merits and public benefit. Further, the proposal will not result in any unreasonable impact on amenity or any significant adverse environmental impacts as a result of the variations, which have been arrived at after a design excellence process that involved testing and amending the design to achieve the most appropriate massing of development for the site.

Council can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is therefore requested that Council grant development consent for the proposed development.

Yours sincerely,



Naomi Weber
Town Planner
KDC Pty Ltd