

COUNCIL ASSESSMENT REPORT

Panel Reference	2018HCC041
DA Number	DA2018/01197
LGA	Newcastle
Proposed Development	Demolition of buildings, erection of 14-storey mixed use development including residential units, retail and commercial
Street Address	10 Dangar Street Wickham
Applicant/Owner	Shoreclan Pty Ltd
Date of DA lodgement	25 October 2018
Number of submissions	One
Recommendation	Deferred Commencement Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	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 \$52.8m.
List of All Relevant Section 4.15 (1)(a) 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 (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 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Newcastle Local Environmental Plan 2012 <p>Development Control Plan</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Appendix A - Documents submitted with the application</p> <p>Appendix B – Recommended conditions of consent</p> <p>Appendix C - External referral responses</p>

	Appendix D - Clause 4.6 Variation Request Appendix E - Montages
Report prepared by	Newcastle City Council
Report date	24 April 2019

Summary of s4.15 matters**Yes / No**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction**Yes / No /****Not****Applicable**

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

Clause 4.6 Exceptions to development standards**Yes / No /****Not****Applicable**

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?

Special Infrastructure Contributions**Yes / No /****Not****Applicable**

Does the DA require Special Infrastructure Contributions conditions?

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

Conditions**Yes / No**

Have draft conditions been provided to the applicant for comment?

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 (DA2018/01197) has been lodged with Council seeking consent for:

- Demolition of all structures on the site.
- A shop top housing development comprising of 97 residential units, ground floor retail spaces (1098m²), three levels of commercial units (4386m²), four levels of parking for 198 cars and associated site works.

The proposal was placed on public exhibition for a period of 30 days from 1 November 2018 to 4 December 2018, 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.

The key issues raised in the assessment relate to:

- Height, urban design and visual impacts
- Traffic impacts and site constraints
- Potential impacts on the Wickham Interchange

The application was referred to WaterNSW (integrated development approval body), to the rail authorities (Transport for NSW and Sydney Trains) and to Roads & Maritime Services (RMS), in accordance with the provisions of the EP&A Act and State Environmental Planning Policy (Infrastructure) 2007.

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 Hunter and Central Coast Joint Regional Planning Panel (JRPP) is the determining authority for applications with a capital investment value (CIV) over \$30 million. The proposed development has a CIV of \$52.8m.

The application is recommended for approval via deferred commencement, subject to the conditions contained in **Appendix B**, and inclusive of the Clause 4.6 request to vary the height of buildings development standard.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for the demolition of buildings and erection of 14-storey mixed use development including 97 residential units, ground floor retail spaces (1098m²), three levels of commercial units (4386m²), four levels of parking for 198 cars, and associated site works at 10 Dangar Street Wickham. Pursuant to Schedule 4A of the EP&A Act, the application is referred to the JRPP as the development has a CIV of more than \$30 million. The application submitted to Council nominates the CIV of the project as \$52.8M.

2. BACKGROUND

Council's Urban Design Consultative Group (UDCG) reviewed the initial concept design options on 18 July 2018 at the pre-lodgement stage. The preferred option was developed and was reviewed again by the UDCG on 18 September 2018 and 11 December 2018, following lodgement of the development application. The UDCG raised a number of issues regarding the design of the building and the application was subsequently amended to address those concerns. The applicant has provided a written response to the outstanding issues, which is discussed in this report.

3. SITE DESCRIPTION

The Wickham area continues to evolve from a once semi-industrial area at the outer fringe of the Newcastle City Centre, into a mixed use urban neighbourhood. Wickham is subject to a master plan, that was adopted by Council in November 2017, and recent changes to public transport have seen the development of the Wickham Interchange, which caters for heavy rail and light rail transport.

The subject site is located at 10 Dangar Street Wickham, and is defined as Lot 1 in Deposited Plan 1197377. The site is irregular in shape, with a total area of 2904m². The site has a 55m frontage to Hannell Street, a 60m frontage to Dangar Street and a 52m frontage to Charles Street (refer to **Figure 1** below).

The site currently contains a commercial motor vehicle sales use, with a single storey showroom and outdoor vehicle display. Access is provided via Charles Street.

The majority of the site is covered by either built form or hardstand. No trees or vegetation currently exist on the site. Photographs 1 to 5 show the site and the surrounding area.

The site to the north-east (38 Hannell Street Wickham) is currently under construction for a large shop top housing project comprising of 149 residential units, retail and associated car parking. The project was approved by the JRPP in October 2018.



Figure 1: Aerial view of the site



Photograph 1: View of the site from Hannell Street



Photograph 2: Wickham Transport Interchange, with the site in the background



Photograph 3: View to the north of the site, with the recently constructed shop top housing project at 12 Bishopsgate in the background



Photograph 4: View to the east of the site, looking across Hannell Street



Photograph 5: View from the site, across Charles Street

4. PROPOSAL

The plans have been amended by the applicant, responding to comments from City of Newcastle staff and external authorities. The amended proposal consists of:

- Two levels of basement parking with 122 car parking spaces and services; and
- Four-storey podium with ground floor retail, nine car parking spaces, loading bays, garbage room and retail amenities; three storeys of commercial floor spaces above the ground floor, with 67 car spaces across the three levels; and
- Nine-storey residential apartment tower comprising of 97 apartments with communal space above podium level and at the rooftop; and
- Associated landscaping, services and site infrastructure.

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

5. PLANNING ASSESSMENT

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

5.1.1 Section 4.5 – Joint Regional Planning Panels

Section 4.5 of the EP&A Act and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 requires the JRPP to determine applications for general development over \$30 million.

The capital investment value of the application is \$52.8m. In accordance with Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011, the application involves regionally significant development.

5.1.2 Section 4.46 – Integrated Development

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act, as approval is required from WaterNSW.

The proposed development requires approval under the *Water Management Act 2000*, with regard to aquifer interference (dewatering). Accordingly, WaterNSW issued their general terms of approval on 26 March 2019, which are included in **Appendix D**.

5.1.3 Section 4.15(1) 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:

5.1.3.1 *The 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 4.5 of the EP&A Act requires the JRPP to be the determining authority for development included in Schedule 7 of the SEPP, which includes general development over \$30 million in value.

The CIV of the application is \$52.8m, so the JRPP is the relevant determining authority.

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.

Traffic

The application was referred to RMS as it is located in close proximity to a classified road (ie Hannell Street).

The application was referred to RMS on 29 October 2018 and a written response was received on 17 November 2018. RMS were initially seeking a 5m wide footpath along Hannell Street. The applicant consulted RMS and it was resolved that the varied width for a pedestrian pathway of 3.5 to 5.3 metres is acceptable along Hannell Street.

Other traffic related issues are discussed in further detail under Section 5.1.3.7 (the likely impacts of the development) of this report.

Noise impacts

The potential for impacts from rail noise and road noise has been assessed by Council's Environment Protection Officer in accordance with Clauses 87 and 102 of the ISEPP. The assessment also included noise impacts from port related activities that occur in proximity to the site. The following comments have been made by Council's Environment Protection Officer:

'A Noise Assessment Report, prepared by Acoustic Logic has been submitted to support the proposed development.

The assessment report provides a description of the proposed development. The report then goes on to offer the assessment of, in turn: the impact of external noise sources (principally road and rail noise) on the future occupants of the proposed building, the impact of rail induced vibration on the proposed building and, the impact of noise emissions from the proposed development on neighbouring premises. For each of these, appropriate assessment criteria are described then the existing or predicted noise or vibration levels are used to determine compliance.

The assessment determines that external noise levels can be reduced to compliance with the indoor target criteria provided a range of building treatments are incorporated into the construction. A schedule of glazing requirements is provided in the report appendix.

Measurement of rail vibration levels determined that the existing levels comply with the "Development Near Rail Corridors and Busy Roads - Interim Guideline" and therefore no adverse impacts are expected and no specific ameliorative treatments are required.

The potential noise emissions from the site will be associated with mechanical plant. Assessment criteria have been determined, taking account of the existing background noise levels in the area. The assessment is complicated however, as the final plant selections and layout have not yet been determined. The consultant does conclude though that the plant can be satisfactorily attenuated to achieve the target criteria "through appropriate plant selection and location and, if necessary, standard acoustic treatments such as noise screens, enclosures and in-duct treatments (silencers/lined ducting)" (Acoustic Logic, 2018, Section 6.3). It is recommended that a review of the plant be undertaken to determine the acoustic treatments required'.

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.

Development adjacent to rail corridor

The proposed development is located within 25m of the heavy rail/light rail corridor and includes excavation deeper than 2m, triggering a referral to the rail authority in accordance with Clauses 85 and 86 (concurrence requirement) of the ISEPP.

The ISEPP defines Transport for NSW (TfNSW) as being the rail authority, however, Sydney Trains has delegation from TfNSW to act as the rail authority for the heavy rail corridor. TfNSW retains authority for the light rail corridor.

When the application was lodged, Council had received advice from Sydney Trains, indicating that their delegation to act as the rail authority for the heavy rail corridor had been compromised by an amendment to the ISEPP that had occurred on 1 July 2018. The application was referred to TfNSW under clauses 85 and 86 of the ISEPP, on the basis that they were, at that time, the rail authority for both the heavy rail and light rail corridor. A further referral was subsequently sent to Sydney Trains when it became apparent that their delegation to act as the rail authority for the heavy rail corridor had been reinstated.

Concurrence has been obtained from both TfNSW and Sydney Trains, subject to consent being granted on a deferred commencement basis, as discussed below.

TfNSW concurrence

The concurrence letter of 27 February 2019, from TfNSW, states that "TfNSW provides concurrence in conjunction with Sydney Trains".

TfNSW raised concern about the close separation distance between the Newcastle Interchange and the proposed development, stating that the development should make provision for easy and ongoing access by rail vehicles, plant and equipment to support maintenance and emergency activities. The applicant should demonstrate

that the proposed development can be maintained without encroaching onto TfNSW and Railcorp property and easements.

TfNSW Concurrence was granted subject to the imposition of deferred commencement conditions and operational conditions, as outlined in attachments to their concurrence letter (refer to **Appendix C**).

The deferred commencement conditions relate to the provision of additional information to TfNSW for review and approval, as follows:

- Final geo-technical and structural report/drawings
- Details of the vibration and movement monitoring system that will be in place before excavation commences
- Final construction methodology with construction details pertaining to structural support during excavation or ground penetration
- Final cross-sectional drawings showing ground surface, rail tracks and interchange facilities, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor
- Detailed survey plan

TfNSW have provided additional operational conditions to ensure the protection of the rail corridor during both construction and operation phases of the proposed development. These conditions include, but are not limited to, the preparation and incorporation of the acoustic assessment and electrolysis assessment; design, installation and use of lighting; currency of public liability insurance; preparation of an Interference Agreement with TfNSW; preparation of a consultation regime for site works; liaison with TfNSW; and general conditions regarding the protection and relocation of TfNSW services/infrastructure and the cost of works and signage.

Sydney Trains concurrence

The concurrence letter of 26 February 2019, from Sydney Trains, states that:

“Council is advised that Sydney Trains, via instruments of Delegation, has been delegated to act as the rail authority for the Central Coast and Newcastle line heavy rail corridor and to process the concurrence for this development application.”

Sydney Trains’ concurrence was granted subject to the imposition of deferred commencement conditions and operational conditions, as outlined in attachments to their concurrence letter (refer to **Appendix C**).

The deferred commencement conditions relate to the provision of additional information to Sydney Trains for review and approval:

- Geo-technical and structural report/drawings
- Construction methodology with construction details pertaining to structural support during excavation
- Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor
- Detailed survey plan

- If required by Sydney Trains, finite element analysis which assesses the different stages of loading-unloading of the site and its effects on the rock mass surrounding the rail corridor

A large number of operational conditions have also been sought by Sydney Trains.

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

SEPP BASIX 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 SEPP BASIX apply to the 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)

SEPP 55 requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. 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:

“A Remediation Action Plan (RAP) has been prepared and submitted to support the proposed development. The two contamination issues affecting the site consist of hydrocarbon impacts in the vicinity of a former underground storage tanks in the northwest of the site and elevated PAH and some asbestos materials in fill across the site. Following an assessment of the remedial options, it was determined to adopt an approach utilising the following methods.

Former UST area:

- *Decommissioning and removal of any remnant fuel infrastructure*
- *Excavation, remediation and/or off/site disposal of identified localised hydrocarbon-impacted soils, and*
- *Treatment of remnant groundwater contamination*

General site filling:

- *Off-site disposal of impacted fill*

A detailed sequence of the remediation methodology is provided within section 8 of the RAP. This includes validation of all affected areas to confirm that the remediation has been completed to a suitable standard.”

Based on the preliminary contamination report, Council's Regulatory Services Unit is satisfied that the contamination issues identified can be addressed by conditions, 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
(SEPP 65)

SEPP 65 applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel, the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG).

The application was accompanied by a Design Verification Statement, prepared by a registered architect, certifying that the proposed development complies with the design principals as set out in SEPP 65.

Excerpts and commentary of the main points made by Council's UDCG are provided below (the complete UDCG comments are attached at **Appendix C**):

Design Quality Test

The proposal has been considered on three occasions by the UDCG, who supported the proposal after some changes were made to the design.

1. Context and Neighborhood Character

It was noted by UDCG that:

"The site, located immediately north of the new Newcastle Transport Interchange, is a near rectangular lot with street frontages to Hannell, Charles and Dangar Streets. Currently occupied by a single storey car dealership and vehicle yard, the site is in a context of rapid change with new multi storey apartment buildings planned to the north and west, the new rail interchange under construction to the south and open space with small heritage listed buildings to the east beyond which are the Honeysuckle Development precinct and waterfront.

The panel supported the application combining retail, commercial, and residential development as a suitable addition to the evolving context. The proposed building is markedly different to other buildings in the vicinity with its sweeping curved forms and will make an attractive addition to the streetscape.

The interface between the proposed building and the Interchange remains an area requiring further attention. The Panel considered that this (southern elevation) must be improved, possibly by creating a neutral backdrop of prefinished panels or using a form-liner with precast panels to provide texture. Alternatively, it was suggested that the southern facade could be expressed similarly to the other elevations, and with their neutral colour scheme this could still act as an appropriate backdrop to the station buildings."

Comments

The applicant has provided the following response:

“The solid frame to the podium (L1-3) is revised from rendered masonry with white paint finish to off form precast concrete panels with a montage of vertical form liner grooves and metal screens to provide a more considered and appropriate background to the interchange building.”

The design is now considered to be suitable for its location and surrounding context.

For the reasons outlined by the UDCG above, the proposed development is considered acceptable in relation to the context.

2. Built Form and Scale

It was noted by UDCG that:

“The submission considered a number of options combining a four level podium with two basement levels of parking and nine levels of residential apartments in varied configurations of single, paired and L plan tower forms. The option favoured by the applicant provided an L shaped tower form orientated with the legs of the L plan fronting Dangar and Hannell Streets and the hollow inner enclosure of the L plan located to the south west side of the site. The Panel questioned the selection of this option noting that a reorientation of the L Plan with the hollow opening located to the northeast corner of the site provided greater benefit to functional aspects of the apartments and better addressed the evolving urban setting about the transport interchange. The design development of the recommended option (Option 1) has led to a significant improvement to the site planning.

Council advised that the RMS require a 5 metre setback to Hannell Street for a pedestrian pathway. The Panel suggests that the proposed varied setback on the eastern façade which produces an attractive outcome at street level could be set back to achieve this. The interface between the proposed building at Ground Level and the Transport Interchange achieves a positive outcome.”

Comments

RMS revised their requirement to allow a reduced setback of a 3.5m footpath width along Hannell Street.

For the reasons outlined by the UDCG above, the proposed development is considered acceptable in relation to built form and scale.

3. Density

It was noted by UDCG that:

“The height and FSR are acceptable as there are no adverse impacts on neighbours by the minor encroachment in height.”

Comments

As noted above, the UDCG considered the proposed density to be satisfactory. The proposed development is considered to be consistent with the density provisions nominated for the Wickham area under Newcastle Local Environmental Plan 2012.

4. Sustainability

It was noted by UDCG that:

“...Option 1 with potential for greater solar access and cross ventilation appears the most suited to a high level of sustainability. Passive performance of the building has been improved thanks to the revised site planning.”

Comments

The Panel recommended increasing the extent of the solar panels on the roof to gain maximum solar advantage for the building. The amended design increased the area available for solar panels. In addition, the application has been supported by a detailed stormwater management plan which includes water re-use and other energy saving measures within the development. The proposed amended design is considered acceptable in relation to resource efficiency.

5. Landscape

It was noted by UDCG that:

“The revised podium level gives good opportunity for extensive areas of high quality landscaping, as well as for private open space areas and communal passive recreation areas.”

The group also raised concerns about the *“planter beds to the private units which are too thin which would mean they would dry out quickly. An automatic irrigation system is required to ensure success along with widening the planter beds where possible.”*

Comments

The proposed podium level provides for residential amenity and social interaction. The landscape plan incorporates tree planting in the public domain, along Hannell, Dangar and Charles Street and on the podium level, that would assist in reducing the perceived bulk of the development and would provide for increased screening for adjoining properties. The building will be provided with an automatic irrigation system as specified on the amended landscape plan.

The proposal includes a public domain plan which provides for additional street tree planting and footpath upgrades. The proposal also includes additional planting and good public access at ground level.

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.

6. Amenity

It was noted by UDCG that:

“The amenity in the units is very good. The lift lobbies at each level above ground floor are generous in area, but require further design development...”

Comments

The window to the lift lobby facing west has been increased in size and seating and additional planting has been added. The amended design has adequately addressed the issues raised by the UDCG and improved the amenity for future residents. The proposed development is considered to be acceptable in regard to amenity issues.

7. Safety

It was noted by UDCG that:

“Care needs to be taken with the depth of balconies to ensure safety of residents cleaning windows.”

Comments

Noted.

8. Housing Diversity and Social Interaction

It was noted by UDCG that:

“The proposed apartment mix is 20 one bedroom apartments, 70 two bed, and 10 three bed. There is also 3,500m² of commercial space proposed, and 1200m² of retail space at ground level. The mix is considered to offer a very good variety. The provision of commercial space in this location is strongly supported.”

Comments

The plans were amended after receiving additional comments back from the UDCG. The amended plans reduced the number of units to 97 and increased the area for commercial retail space.

The proposed development provides for a good mixture of residential accommodation and commercial retail space which supports social mix and housing affordability.

9. Aesthetics

It was noted by UDCG that:

“Aesthetically the building has been well refined...Care needs to be taken with detailing to ensure the seductive appeal of the curves does not give way to post approval financial rationalisation. Some warmth in the colour and finishes, rather than the “Natural White” colour proposed is strongly recommended.”

Comments

The applicant has submitted an amended material board which has selected a lighter tone to reflect the comments and concerns raised by the UDCG.

Amendments required to Achieve Design Quality:

The general design direction is strongly supported by the UDCG subject to development in response to the following comments:

- Further development of the southern facade facing the Transport Interchange is needed to ensure it makes a positive contribution to the civic space, rather than reading as a ‘side wall’
- Improvement of the lift lobbies
- External colour and finishes to have some warmth

The applicant has submitted an amended material plan which has selected a lighter tone to reflect the comments and concerns raised by the UDCG.

The amended proposal is satisfactory with regard to the built form, including street presentation, building envelope and presentation of the side wall facing the Transport Interchange. It is considered that the overall design, including colours and materials, is consistent with those within Wickham area.

In summary, the amended design is considered to be acceptable in relation to the design quality principles of SEPP 65.

Summary Recommendation of UDCG:

“The design is supported and recommended for approval subject to the issues raised above being resolved to the satisfaction of Council”

Concluding Officer Comments:

The amended proposal is satisfactory with regard to the built form, including street presentation and building envelope. It is considered that the overall design, including colours and materials, is consistent with the desired and future character of the Wickham precinct.

In summary, the amended design is considered to be acceptable in relation to the 10 design quality principles of SEPP 65.

Apartment Design Guide (ADG)

In addition to consideration of the 10 design quality principles, SEPP 65 also requires Council to have regard to the ADG, published by NSW Planning and Environment.

The relevant quantitative guidelines under the ADG are discussed in the following table:

Apartment Design Guide															
Objective	Design Criteria	Proposal	Compliance												
Building separation	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>Level 4 to Level 7: 24m</p> <p>Level 8 to Level 13: 24m</p>	Building separation objectives achieved with reasonable levels of external and internal visual privacy.
Building height	Habitable rooms and balconies	Non-habitable rooms													
up to 12m (4 storeys)	6m	3m													
up to 25m (5-8 storeys)	9m	4.5m													
over 25m (9+ storeys)	12m	6m													
Communal open space	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</p>	Communal area of 727m ² is located on the north east corner of the residential podium (level 4) and includes BBQ/seating, paved areas, seating areas, and landscaping.	Communal area achieves the minimum required area; achieves the minimum 2 hours direct sunlight and provides open space to allow for a range of social activities.												

Solar access	<ol style="list-style-type: none"> 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas. 2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter. 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	68 of 97 apartments receive a minimum 2 hours direct sunlight to living rooms and private open space between 9am and 3pm. 7 of 97 apartments receive no direct sunlight between 9am and 3pm.	<p>70% of apartments are receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>7% of apartments receive no direct sunlight.</p> <p>The majority of units in the proposed development have good solar access and would achieve a reasonable level of solar access. The applicant has provided a breakdown of individual units and demonstrated that at least 70% of units will receive more than 2 hours of winter solar access on 21 June.</p>
Natural ventilation	At least 60% of apartments are naturally cross ventilated and overall depth of apartment does not exceed 18m.	All habitable rooms are naturally ventilated; 58 of the 97 of apartments are cross-ventilated.	Apartments are naturally ventilated with 60% of apartments cross-ventilated.
Ceiling heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	2.7m habitable, 2.4m non-habitable ceiling heights.	Ceiling heights are consistent with the criteria, with services proposed for non-habitable spaces.

	<table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> <p>These minimums do not preclude higher ceilings if desired.</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use		
Minimum ceiling height for apartment and mixed use buildings															
Habitable rooms	2.7m														
Non-habitable	2.4m														
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area														
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope														
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use														
Apartment size & layout	<p>1. Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum Internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>2. Every habitable room must have</p>	Apartment type	Minimum Internal area	Studio	35m²	1 bedroom	50m²	2 bedroom	70m²	3 bedroom	90m²	All apartments are above the minimum internal areas; and have minimum glass area of 10% of the floor area.	Apartments meet the minimum internal area and external window criteria providing a high standard of amenity and environmental performance. The layouts meet the criteria for room size, dimension and depth.		
Apartment type	Minimum Internal area														
Studio	35m²														
1 bedroom	50m²														
2 bedroom	70m²														
3 bedroom	90m²														

	a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.																	
Primary balconies	<p>1. All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Minimum balcony depth of 2m provided; areas are a minimum of 8m ² for 1 bedroom, 10m ² for 2 bedrooms and 12m ² for 3 bedrooms.	The proposed balconies comply with the minimum depth and areas and are appropriately located. Their design contributes to the overall architecture and detail of the building with appropriate levels of safety incorporated.
Dwelling type	Minimum area	Minimum depth																
Studio apartments	4m ²	-																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																
Common circulation	1. The maximum number of apartments off a circulation core	Maximum number of apartments off a circulation core is 7; 10 apartments share 2 lifts.	The common circulation areas are sufficient in size and location to promote safety and social															

	<p>on a single level is eight.</p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>		interaction.												
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio apartments	4m³	1 bedroom apartments	6m³	2 bedroom apartments	8m³	3+ bedroom apartments	10m³	All apartments have the required storage.	Storage meets the minimum criteria and is conveniently located and accessible.		
Dwelling type	Storage size volume														
Studio apartments	4m³														
1 bedroom apartments	6m³														
2 bedroom apartments	8m³														
3+ bedroom apartments	10m³														
Deep soil zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² - 1,500m²</td><td>3m</td></tr><tr><td>greater than 1,500m²</td><td>6m</td></tr><tr><td>greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m²	-	7%	650m² - 1,500m²	3m	greater than 1,500m²	6m	greater than 1,500m² with significant existing tree cover	6m	Landscaping is provided on the Level 4 podium. The proposal also includes public domain work and street tree planting.	<p>Deep soil is not achieved however objective <i>3E-1: Design guidance</i> notes that achieving deep soil zones may not be possible on some sites such as in local centres.</p> <p>The podium level provides for residential amenity and social interaction. The landscape plan incorporates tree planting that would assist in reducing the perceived bulk of the development</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)													
less than 650m²	-	7%													
650m² - 1,500m²	3m														
greater than 1,500m²	6m														
greater than 1,500m² with significant existing tree cover	6m														

			<p>and 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>
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State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
(Vegetation SEPP)

The Vegetation SEPP is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017.

The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those that were contained in Clause 5.9 of Newcastle Local Environmental Plan 2012 (Clause 5.9 now repealed) and provides that Council's Development Control Plan (DCP) can make declarations with regard to certain matters, and further that Council may issue a permit for tree removal.

The proposal has been assessed in accordance with Council's DCP, as detailed in this report, and is considered to be satisfactory, as no vegetation is proposed to be removed from the site.

State Environmental Planning Policy (Coastal Management) 2018
(Coastal Management SEPP)

The Coastal Management SEPP was made on 23 March 2018 and supersedes previous policies, including SEPP 71, SEPP 14 and the coastal zone clause in the Newcastle Local Environmental Plan 2012.

The aim of this policy is promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*.

The Coastal Management SEPP requires that development consent must not be granted to development on land with the coastal zone unless the consent authority is satisfied that the proposed development is not likely to '*cause increased risk of coastal hazards on the land or other land*'. The proposed development is not likely to increase the risk of coastal hazards on the land or the surrounding land.

The proposed development has suitably addressed the relevant matters of consideration and development controls for development within the coastal zone as required under the Coastal Management SEPP.

Newcastle Local Environmental Plan 2012
(NLEP 2012)

The relevant provisions of NLEP 2012 are discussed below:

The site is zoned B3 Commercial Core under NLEP 2012. The proposed uses include retail premises, commercial premises and shop top housing, which are 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 Newcastle Transport Interchange) and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter Region.

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 of 46.7m (including the lift overrun). The height of the proposed development exceeds the NLEP 2012 development standard by 1.7m or 3.7%.

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 proposed development is a full commercial building. The proposed development has a FSR of 4.27:1 and therefore complies with this standard.

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:

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

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 46.7m. The proposal therefore exceeds the standard by 1.7m or 3.7%. As mentioned in our written Clause 4.6 request, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the numerical standard.

A variation is sought to the development standards and controls established by the City of Newcastle Local Environmental Plan 2012, being Clause 4.3 Height of Buildings.

The proposed development achieves the objectives of Clause 4.3 as detailed below:

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

The proposed built form will reflect the emerging contemporary character of the locality and positively upgrade the existing streetscape. It is noted that Wickham is undergoing rapid development with building density increasing as new developments proceed. There is a high demand for apartment type living in the area which stems from the prime location that is attractive to potential residents at different stages in life. The proposed height enables the efficient and effective use of the site and the proposal has achieved high quality design and amenity. The proposed height exceedance is contained to the rooftop and lift overrun and is unlikely to result in any detrimental impact to the streetscape and adjoining land uses.

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

The bulk and scale of the development has been softened with the use of varying materials, stepped facades and varying rooflines to create interest. Landscaping is also proposed to complement the development and soften the bulk of the building. Details of the facade and articulation are provided in the Architectural Plans submitted with the DA.

Given the high-quality design outcome proposed and the lack of any unreasonable impacts as a result of the variation sought; the variation is considered to be well justified in this instance.

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

As demonstrated by the shadow diagrams, solar access to surrounding development and the public domain is not unreasonably impacted by the proposed development. The shadow diagrams demonstrate that the adjoining properties will still achieve, or be capable of achieving adequate sunlight.

Overall, it is submitted that the development is considered reasonable on the basis that:

- The proposed built form will reflect the emerging contemporary character of the locality and positively upgrade the existing streetscape;*
- 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 impacts;*
- The greatest extent of the height exceedance is the lift overrun however given the setback it is not expected to be visible from the public domain, therefore will not contribute to 'bulky development' or an unacceptable building scale;*
- The excess height resulting from non-compliance will not result in any undue impacts on adjoining properties particularly with respect to overshadowing, loss of privacy and loss of views;*
- The application satisfies other numerical standards of the LEP 2012, SEPP 65 Design Quality of Residential Apartment Development and Council's DCP ensuring a high-quality development"*

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);
- b) The proposed development is 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;
- 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;

- d) The issue of the proposed height variation was also examined and discussed at length by the UDCG. The UDCG 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 on 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 that the proposed height is 46.7m 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 5.10 Heritage Conservation

The subject site is not listed for its cultural heritage significance in NLEP 2012. However, the site is located in close proximity to one locally listed heritage item. The heritage item is located to the west of the site, on Charles Street, being separated from the site by the road.

The nearby heritage item is located at 15 Charles Street Wickham, being a single storey residence (Local Heritage Item I681). The proposed development is similar in scale to the mixed use development that is located to the north of the heritage item. There will be impacts on the heritage item, however, the proposal is consistent with the planning controls and vision for the Wickham area, which encourages higher density and built forms in the precinct.

The proposed 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. The applicant has submitted a revised palette of materials, colours and textures to better reflect the tones of the area. The proposed development is considered to be a modern design that is appropriate for the site.

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or Newcastle Local Environmental Plan 2012 as an '*Archaeological Site*'.

Clause 6.1 Acid Sulfate Soils (ASS)

A site specific acid sulfate soils management plan (ASSMP) has been prepared for the development. Given that the site has been subjected to several metres of filling, 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 of consent.

Clause 6.2 Earthworks

The earthworks proposed in association with the proposal have been considered in accordance with this clause. In this regard the application is considered to be acceptable.

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 Newcastle City Centre, which includes promoting the economic revitalisation of the Newcastle 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 a minimum of 20m. The proposed development is consistent with this standard, having a frontage of 55m 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 the UDCG on three occasions as part of the assessment of the application. The UDCG provided initial feedback to ensure the overall design achieved design excellence.

The plans were subsequently amended in line with the recommendations from the UDCG. It is considered that the amended plans have adequately addressed the recommendations of the UDCG and satisfy the design excellence criteria. The design is considered to be of a high standard, providing for good mix of residential

accommodation and retail/commercial use, which will help to further activate this part of Wickham.

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 clause, with the inclusion of retail spaces at ground level along Hannell Street and Dangar Street, comprised of two large separate tenancies.

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' as shown on the Floor Space Ratio Map. 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 commercial/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.

5.1.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition

Draft Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55). The draft SEPP, which was exhibited from 25 January to 13 April 2018, has not yet been made. The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including: outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Site contamination and remediation pertaining to the development has been considered under SEPP 55.

5.1.3.3 Any development control plan (and section 94 plan)

The relevant provisions of 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 that is 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 retail 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 Development Engineer has provided the following comments in terms of flood management:

"The applicant has obtained a flood information certificate FL2018/00245. The flood certificate data is the most current and has been used to set the building floor levels and car parking basement access to the recommended flood planning level FPL.

The site is affected by Ocean flooding during PMF and 1% AEP. 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.

The site is affected by flash flooding during PMF and 1% AEP. The 1% AEP event level is approx. 2.18m AHD and PMF level is 3.01m AHD. The risk to life is noted as L4 and therefore a flood refuge is required to be provided at 3.01m 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 recommended flood planning level (FPL) is therefore 2.68m AHD.

The ground floor parking levels and the basement carpark entry and service areas have been designed at the FPL of 2.68m AHD. The retail area along Dangar St has been set at the FPL and the retail along Hannell St is set above the FPL. The proposed electrical substation is also designed to FPL.

Access points to the basement from within the building and outside the building such as fire stairs have been designed to recommended flood planning levels. Any other openings on the façade which may open into the basement will need to be protected to PMF levels.

The site has been identified as a flood storage area in PMF event and a small section at the south western corner (Charles St corner at the entry of the train Station) is noted to be a flood storage at 1% AEP. This proposed building has been set back along all the frontages which accommodates for the additional flood storage area, compared to the existing building which had zero setback along Charles St frontage. The additional setback along the road frontages will provide for additional storage within the road reserve and setback area when compared to the existing situation. If flood levels exceed the FPL, then additional storage area within the basement is activated, however, the probability of this event happening is low.

A flood management plan will need to be prepared for the development, which should address the provision of a refuge area. This will be conditioned."

The proposal generally complies with Council's Flood Management section of the DCP and appropriate 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. The proposal provides for separate entry lobbies for the residential units and the commercial offices. 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 (one-bedroom, two-bedroom and three-bedroom units) which supports social mix and housing affordability. The proposed development is also providing large areas of commercial floorplate (Levels 1 to 3) along with areas available on the ground floor for retail activities.

The development is also likely to have a positive social impact through providing additional housing choice within close proximity to services and will activate Dangar Street and Hannell Street through the addition of retail spaces on the ground floor.

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 recommended, to require that 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 under the State Environmental Planning Policy No 55 - Remediation of Land section of this report.

5.04 Aboriginal Heritage

A search of the Aboriginal Heritage Information Management System (AHIMS) - NSW Office of Environment and Heritage, was carried out and no Aboriginal sites or places were identified.

The submitted Statement of Environmental Effects also states that a search of the Aboriginal Heritage Information Management System did not reveal the presence of artefacts or potential archaeological deposits on the site.

However, an Aboriginal Archaeological Survey Report, prepared in connection with the proposed Newcastle Bus Interchange and submitted with a development application for the 'Store' site at 854 Hunter Street Newcastle West (DA2018/00879), indicates that the archaeological excavation for the adjacent Newcastle Transport Interchange demonstrated high densities of culturally significant artefacts at substantial depth (in excess of 1.5m) and that the 'Store' site was identified as an area of potential archaeological deposit, as an extension of the deposit that was identified on the adjacent Newcastle Bus Interchange site. The Aboriginal Archaeological Survey Report submitted with the referenced development application for the 'Store' site states:

"The demolition of the Store buildings and construction of the interchange would result in subsurface impacts and therefore buried Aboriginal archaeological deposits are likely to be affected."

Given the immediate proximity of the subject site to the Newcastle Transport Interchange, similar to the anticipated situation on the 'Store' site, it is considered that the proposed development is likely to affect Aboriginal archaeological deposits.

A condition of consent is recommended to require the preparation of an Aboriginal Archaeological Report prior to commencement of works and to require implementation of the recommendations of that report, including the potential need to obtain an Aboriginal Heritage Impact Permit under the *National Parks and Wildlife Act 1974* prior to any impact occurring.

5.05 and 5.07 Heritage Items and Heritage Conservation Areas

As previously stated under Clause 5.10 of NLEP 2012, the site is not heritage listed for its cultural heritage significance and it is not an identified archaeological site.

6.03 Wickham

The site is located within the mapped area of *Section 6.03 Wickham* of the DCP and is within the *Rail Edge Key Precinct*. The Rail Edge precinct is envisaged to support high density residential development and ground level commercial uses, with neighbourhood level retail and services activating street corners.

Section	Criteria	Comment
6.03.02 Building Envelopes	<p>A. Setbacks to streets</p> <ul style="list-style-type: none"> - Minimum 3m to Hannell Street - 3m acquisition to Station Street for street/footpath works 10m acquisition to Charles Street (south-west corner) for open space/public domain improvements - Minimum 6m street setback above 12m building height (Rail Edge Precinct) 	<ul style="list-style-type: none"> - The proposed building setback at street level to Hannell Street is a minimum of 3m and the proposed setback to Dangar Street and Charles Street is 2.5m. The proposed street level setbacks are considered to be satisfactory. - '<i>Potential land acquisitions</i>' were identified in the Wickham Master Plan, published in November 2017, and were further referenced in the DCP from 16 November 2018 (ie after the application was lodged on 25 October 2018), with no mechanism for such acquisitions having progressed for inclusion in NLEP 2012 at this stage. It is considered that there is insufficient certainty about land acquisitions affecting the site to justify seeking amendment to the proposal, to accommodate potential acquisitions, at this stage. <p>The design includes a number of urban activation spaces within the proposed development and there is sufficient space around the edges of the development to provide a suitable transition from the Newcastle Interchange into the development, which allows for pedestrian flow and connectivity within the Wickham area.</p> <ul style="list-style-type: none"> - The minimum street setback above 12m building height is a minimum of 6m to Charles and Hannell Streets; 5m to Dangar Street; and 4m to the Station Street southern boundary. <p>The proposed setbacks to the street are consistent with this clause and are considered acceptable.</p> <p>The proposal includes a street wall height of 16m which is generally</p>

		consistent with the DCP. The four-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> .
	B. Setbacks to neighbouring sites	<p>The proposed setback above the street wall varies from 2m to 6m on the Hannell Street, Dangar Street and Charles Street frontages. The proposed residential tower encroaches on the side setback to the southern boundary (Newcastle Interchange). The encroachment is not expected to have any privacy impact or unacceptable overshadowing impact.</p> <p>The proposed building is of a form, scale and massing that is generally compatible with the anticipated future character of the area.</p>
6.03.03 Urban Design	A. Interface to the street	The proposed street facades incorporate the solutions of this section and are considered to be acceptable.
	B. Urban activation spaces	The proposal provides good urban activation to the street with a mixture of active street frontages at ground level through the inclusion of retail uses. In addition, the residential units are mostly orientated toward the surrounding streets.
	C. Vehicle access to land	The proposed vehicle and service entries are accessed via Charles Street, being consistent with this section and considered to be acceptable.
6.03.04 Car Parking	A. Car parking demand management	The number of car parking spaces is consistent with the DCP.
	B. Design of parking structures	Car parking is provided on four levels, including two basement levels and two levels above ground and is accessed via Charles Street. The proposed car parking is integrated into the building,

		including provision for the minimum ceiling height, and is considered to be acceptable.
6.03.05 Constraints on Development	A. Flooding	The ground floor parking level and the basement carpark entry and service areas have been designed to achieve the required Flood Planning Level (refer to <i>4.01 Flood Management</i>) and are considered to be acceptable.
	B. Mine Subsidence	The site is not within a proclaimed Mine Subsidence District and is considered acceptable.

7.02 Landscape, Open Space and Visual Amenity

As indicated previously, the proposed landscaping is located on the podium level (level 4) 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 commercial/shop top housing development in an urban area. The podium level includes a large landscaped area which provides good communal facilities. It is considered that the landscaping that is proposed on the site will provide a high level of amenity for future occupants.

A condition is included in the recommended schedule of conditions to ensure that the soil depth/width is consistent with the requirements contained in the Apartment Design Guide.

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:

Use	DCP Rate	Car Parking requirement	Compliance
Retail Ground Floor	Car: 1 space per 60m² (CBD Rate)	Car: 18	Yes
	Bicycle: 1 space per 200m²	Bicycle: 5	Yes
	Motorbike: 1 space per 20 cars	Motorbike: 1	Yes
Office (Levels 1 – 3)	Car: 1 space per 60m² (CBD Rate)	Car: 73	Yes
	Bicycle: 1 space per 200m²	Bicycle: 22	Yes
	Motorbike: 1 space per 20 cars	Motorbike: 4	Yes
Residential	Car: (CBD Rates) 1 bedroom = 0.6 x 19 2 bedroom = 0.9 x 68	Car: 86	Yes

	3 bedroom = 1.4 x 10		
	Bicycle: 1 space per dwelling	Bicycle: 97	Yes
	Motorbike: 1 space per 20 cars	Motorbike: 5	Yes
Visitor Parking for Residential	Car: 1 space for first 3 dwelling and 1 space for every 5 thereafter	Car: 20	Yes
	Bicycle: 1 space per 10 dwellings	Bicycle: 10	Yes
Loading	As per proposed Use	Light Vehicle: 2	Yes
		Small Rigid Vehicle: 1	Yes
Total Off-Street parking	Car:	198	Yes
	Bicycle:	134	Yes
	Motorbike:	10	Yes

Table No 1 – Compliance Table for Car Parking requirements

“The proposed development has provided off-street car parking, bicycle parking and motorbike parking to City’s DCP parking requirements. The revised architectural plans have clearly indicated the proposed parking spaces allocations. Bicycle parking spaces are generally secured and has been designed taking into consideration the different users of the site.

The three proposed loading bays can service the needs for the retail, officers, garbage collection and for maintenance vehicles. The two proposed disabled parking spaces comply with the relevant standard.

The response provided by the traffic consultant has justified on the management of the visitor parking and operation of the roller gates.

Driveway & Access

The proposal seeks to provide one new driveway access from Charles St frontage of the property. It is noted that Charles St will be made One-Way as part of the Wickham Masterplan and therefore the driveway access will be left in/left out in the near future.

The internal driveway ramp grades have generally been to be designed to minimum AS2890.1 - Off-Street Car Parking. The design of the internal car parking and loading areas are generally compliant with AS2890.1 and the submitted manoeuvring plans have demonstrated that vehicles will be able to enter and exit from the site. The internal areas have been line marked to indicate the traffic flows.

The response provided by the traffic consultant has justified on the adequacy for sightlines and have allowed for provision of a vehicle to be stacked park in front of the roller door. The documents have demonstrated that the operation of the roller door will not delay the traffic movement on the local roads and

adequate sight lines is available for drivers. Additional signs and a convex mirror will be provided for pedestrian safety adjoining the driveway.

Construction Traffic

The proposal is directly fronting Hannell St and has currently no formal access from the street frontage. Entry to the development will therefore be restricted via Bishopsgate St to the site. The applicants could see approval for loading zones during construction, which will require a separate application to be lodged with City's Transport & Traffic Section.

The development will be required to address how the construction traffic management will be managed including staff parking and trades parking management.”

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), with suitable energy efficiency provisions having been included in the proposed development.

7.06 Stormwater

Council's Senior Development Engineer has provided the following comments in terms of stormwater management:

“The submitted stormwater plan has been reviewed. The stormwater plan has indicated a stormwater reuse tank within the site with 72m³ volume which is for reuse and retention. The reuse will be generally for the retail level on the Ground Floor, commercial levels 1-3 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.

Stormwater quality and quantity assessment has been undertaken by ACOR Consultants in order to determine the to ensure that the rainwater reuse could be treated and no impact would be done to downstream drainage system. The following features are noted in the design

- *Rainwater Tanks (72 kilo litres) have been provided for reuse.*
- *Stormwater treatment provided via Water Treatment Chamber in the On Site retention tank. The chamber has been installed with SPEL filter cartridges, which will provide the stormwater treatment for the site.*
- *Discharge is proposed to be connected to the new drainage system on Charles Street.*

The submitted stormwater management plan has indicated that the development achieves the targets set by City's Stormwater DCP."

The proposed development is considered to be satisfactory in respect of stormwater management.

7.08 Waste Management

A waste collection area has been provided within the ground floor of the building and a loading bay is also provided for Small Rigid Vehicles, which could be used by smaller vehicles for garbage services.

Servicing requirements for the site would mostly be carried out by vans or small commercial vehicles. These vehicles will be able to access the site via the driveway from Charles 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 one submission was received. The issues raised have been addressed within the report and in Section 5.1.3.9.

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 with the 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 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 Master Plan foreshadows '*potential land acquisitions*', including a 3m acquisition to Station Street for street/footpath works and a 10m acquisition to Charles Street (south-west corner) for open space/public domain improvements. These '*potential land acquisitions*' were further referenced in the DCP from 16 November 2018 (ie

after the application was lodged on 25 October 2018), with no mechanism for such acquisitions having progressed for inclusion in NLEP 2012 at this stage. It is considered that there is insufficient certainty about land acquisitions affecting the site to justify seeking amendment to the proposal, to accommodate potential acquisitions.

However, it is recommended that the south-west corner of the building be curved to match the other curved forms of the development. This will assist in allowing additional width and improved sightlines to the Station and Charles Street junction; promoting further pedestrian activation of the area; and providing consistency with other curved forms of the development. A condition will be included in the consent requiring amended plans to be submitted prior to the release of the construction certificate. The amended design and the recommended condition will ensure that all the curved forms are maintained in the built form.

The design includes a number of urban activation spaces within the proposed development and there is sufficient space around the edges of the development to provide a suitable transition from the Newcastle Interchange into the development, which allows for pedestrian flow and connectivity within the Wickham area. 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.

City of Newcastle Section 94A Development Contributions Plan 2009

The application attracts a Section 7.12 Contribution pursuant to section 4.17 of the EP&A Act and the City of Newcastle Section 94A Development Contributions Plan 2009. A contribution of 3% of the cost of development would be payable to Council as determined in accordance with clause 25J of the EP&A Regulation.

5.1.3.4 Planning agreements

No planning agreements are relevant to the proposal.

5.1.3.5 The regulations (and other plans and policies)

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

5.1.3.6 Coastal Management Plan

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

5.1.3.7 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:

Groundwater Management

The proposed development is highly likely affect the groundwater table as there are two levels of basement. General terms of approval have been issued by WaterNSW with respect to aquifer interference, as per the *Water Management Act 2000*.

The discharge of the groundwater is highly likely be via Council's stormwater drainage system. If this is the case, the developer will need to attain a separate approval from Council for the proposed discharge of any groundwater. An Environmental Engineer or consultant will need to determine the method to treat the groundwater prior to discharge to Council drainage system. In this regard, the applicants will need to provide Council with evidence that WaterNSW have approved the groundwater licence.

Conditions are recommended to ensure that the process for groundwater discharge and approval from WaterNSW is attained.

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

The traffic report has considered the issues surrounding traffic generation.

Charles Street is proposed to be changed into a one-way street and there is also a proposal via Transport for NSW and RMS to construct a slip lane from Hannell Street into Bishopsgate Street. This will likely change the entry at Hannell Street Bishopsgate Street to be a one-way entry only. This proposal is being resolved as part of the development at 38 Hannell Street.

The submitted traffic report has identified the morning peak traffic generation of 52 vtph inbound trips and 57 vtph outbound trips and 42 vtph inbound and 52 vtph outbound during the evenings. The development is in close proximity to the Transport Interchange, which has also bus services available in close proximity. Furthermore, the development is within walking and riding distances to the waterfront and the future Newcastle City Commercial hub in Newcastle West.

It is considered that the traffic generation from the development will not significantly impact on the current road network.

Pedestrian Management

It is expected that there will be a high volume of pedestrian movement in the vicinity of the development due to additional retail, commercial and residential uses and due to the development being adjacent to a major public transport hub. The proposed development has been designed to allow for additional width along the frontages for pedestrian movement. It is considered that these areas will be available for public access at all times.

It is recommended that a right of carriageway/footway be created over the publicly accessible area to ensure that the areas are kept clear. This includes the corner of Dangar Street and Charles Street, where the property boundary is very close to the existing kerb.

The proposed driveway is close to the Transport Interchange entry at the corner of Charles Street and Station Street. Pedestrian safety and movement will therefore need to be appropriately managed. It is also important to provide for a safe crossing point. With approximately 50 plus vehicles exiting at am/pm peak from the driveway, pedestrian movement in the vicinity needs to be considered.

Consultation has occurred with City of Newcastle's Traffic and Transport team and it is recommended that a raised pedestrian crossing be constructed at the corner of Station Street and Charles Street to ensure pedestrian safety can be managed (refer to Figure 2 below). This will provide for a safe pedestrian crossing point to connect the north and south sides of Station Street, to mitigate the risks associated with the proposed driveway being close to the intersection of Charles Street and Station Street.

It is therefore recommended that the proposed raised pedestrian crossing be constructed as part of the development. This can be conditioned as part of the Section 138 *Roads Act 1993* application works.

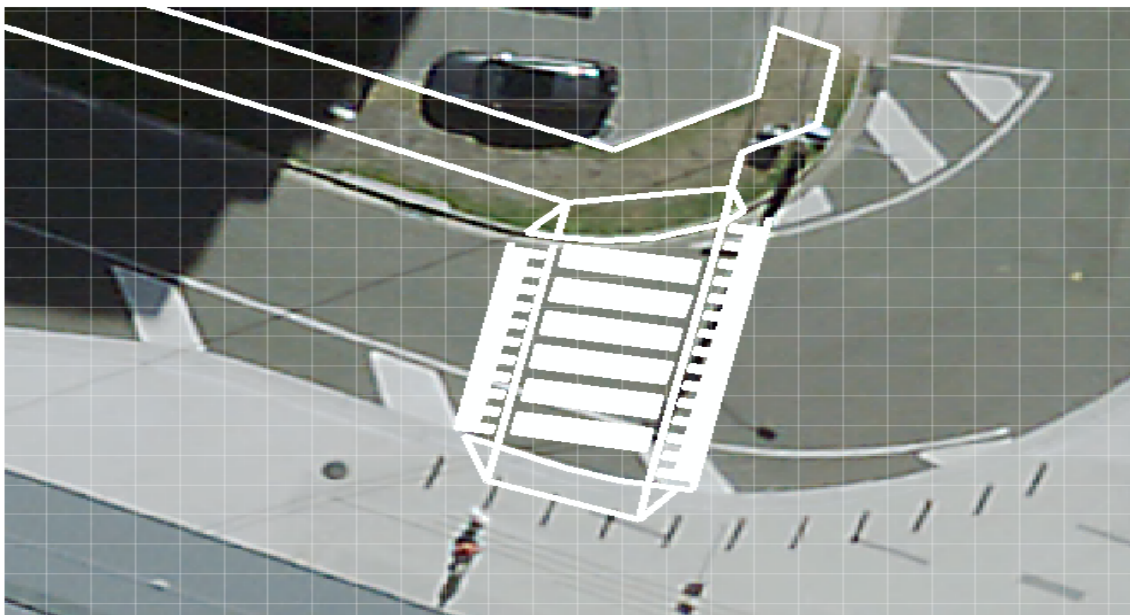


Figure 2: Proposed raised pedestrian crossing on Station Street

5.1.3.8 *The suitability of the site for the development*

The site is suitable for the proposed development as it is located within Wickham and is in close proximity to the Newcastle Transport Interchange. The site has been identified for development of this scale and is not affected by significant environmental constraints.

5.1.3.9 Any submissions made in accordance with this act or the regulations

The application was notified in accordance to the EP&A Regulation and one submission was received. The issues raised in the submission are summarised and responded to in the following table:

Issue	Assessment Comment
Property Values	The concern regarding a possible reduction in property values is considered to not be a valid planning issue. The proposal will not adversely impact on the amenity of the adjoining premises and is not likely to detract from current market values. Indeed, the proposed development may well lead to an increase in the value of nearby properties as it may serve to confirm redevelopment potential.
Overshadowing	The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable, particularly as the most affected location is the adjacent Transport Interchange.
There are three large apartment buildings already approved for Wickham area already. It is requested that the application be put on hold until the current approvals are built and established.	The site is located within a B3 Commercial Core zone under the provisions of Newcastle Local Environmental Plan 2012. The proposed intensity of development is permissible within this zone and a full assessment of the characteristics of the development has been undertaken and found to be consistent with the provisions of the relevant planning provisions.
There are a significant number of one way and narrow streets surrounding the area of the proposed structure.	Traffic considerations have been addressed in this report.
The proposal is not consistent with the Wickham Masterplan.	As discussed in the assessment report, it is considered that the proposal is acceptable having regard to the Wickham Masterplan.

5.1.3.10 The public interest

The site is located in a key position and development of the site would be a significant improvement to the existing streetscape.

The proposed development is in the public interest as it will allow for the orderly and economic development of the site and will allow for the creation of residential accommodation in a range of apartment sizes. The development will also create employment in an accessible location that is well serviced by public transport.

6. CONCLUSION

The proposal is considered to be acceptable against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

7. RECOMMENDATION

- A. That the Hunter and Central Coast JRPP notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and 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 determine to grant consent to DA2018/01197 (2018HCC041) for demolition of buildings, erection of a 14-storey mixed use development including residential units, retail and commercial premises at 10 Dangar Street Wickham, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions in **Appendix B**.