

27 January 2022

Clause 4.6 Variation Request

RE: Residential Accommodation, 172 Dwellings Comprising Three Residential Flat Buildings (161 Dwellings) and Multi Dwelling Housing (11 Dwellings), associated Car Parking (242 Spaces), Earthworks, Landscaping, Demolition / Site Works and Strata Subdivision (172 lots) at 11-17 Mosbri Crescent, The Hill

1 INTRODUCTION

The development to which this written request relates is for the construction of residential accommodation at 11-17 Mosbri Crescent, The Hill NSW 2300.

Specifically, the Development Application seeks development consent for:

- + Staged demolition of all existing structures;
- + Earthworks, including mine grouting works;
- + Construction of residential accommodation comprising 172 dwellings, being:
 - + Eleven (11) two storey townhouse style dwellings fronting Mosbri Crescent, located above a basement car park containing 32 visitor spaces and 13 resident spaces;
 - + Three (3) residential flat buildings (Building A, B, and C) containing 161 dwellings, ranging from one to three bedrooms; being
 - o Building A including a nine (9) storey east wing and six (6) storey west wing;
 - o Building B comprising seven (7) storeys and a roof top communal open space, with (9) town house style dwellings facing the internal courtyard;
 - o Building C comprising five (5) storeys;
 - o Lobby building A/B and B/C with communal roof top over;
- + Interconnected car parking for Building A, B & C located on the ground floor and first level, containing 3 visitor space and 194 resident spaces;
- + Pedestrian path, providing connection from Mosbri Crescent to Kitchener Parade;
- + Associated landscaping, communal open space, services and site infrastructure; and
- + Strata subdivision (172 lots).

The development standard sought to be varied is contained in Clause 4.3 of the Newcastle Local Environmental Plan 2012 (NLEP 2012), which relates to building height.

An assessment of this variation, and justification for contravention of the building height development standard, is provided in the following pages in accordance the requirements of Clause 4.6 of NLEP 2012.

For the reasons provided within this written request, compliance with the development standard is considered to be unreasonable or unnecessary in the circumstances of the case; it is considered that there are sufficient environmental planning ground to justify the contravention; and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the building height development standard.

In particular,

- + The proposed development satisfies the objectives of the R3 Medium Density Zone and the objectives of Clause 4.3 Height of Buildings;
- + The proposed height exceedances are situated in a location which will not result in any significant detrimental impact to any sensitive land uses and therefore the impact will be negligible;
- + Strict compliance with the building height development standard would not achieve a better planning or urban design outcome. The proposed development complies with the floor space ratio (FSR) development standard, indicating that the proposal is not an overdevelopment of the site. The proposed areas of height exceedance do not result in any significant adverse amenity impacts on neighbouring properties; and
- + Compliance with the standard is therefore unreasonable or unnecessary.

2 SITE DETAILS

2.1 SITE LOCATION AND CONTEXT

The site is identified as 11-17 Mosbri Crescent, The Hill, situated within the Local Government Area (LGA) of Newcastle. The site is legally described as Lot 1 in DP204077 and is an irregular shaped lot with an area of approximately 1.22 hectares. The topography of the site drops sharply from the east and north into a relatively flat basin fronting Mosbri Crescent. The site has frontage to Mosbri Crescent and Kitchener Parade. Arcadia Park and Wolfe Street also exist to the east of the site.

The site currently accommodates the NBN television studio with staff car parking. All existing site improvements will be demolished as part of the proposed development.

The location of the site is presented in Figure 1.

Figure 1 – Locality Plan



3 EXCEPTION TO DEVELOPMENT STANDARD

3.1 CLAUSE 4.6

Clause 4.6 of the NLEP 2012 has the following stated objectives:

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

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

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

Clause 4.6(2) also relevantly provides that:

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

The proposal seeks to vary the building height standard applicable to the site. Clause 4.6(6) and (8) specify the development standards that are excluded from the operation of clause 4.6, namely:

- + a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

- + a development standard for complying development
- + a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated
- + clause 5.4
- + clause 8.1 or 8.2

The development application does not seek to vary any of the development standards excluded from the operation of clause 4.6 of the NLEP 2012. Accordingly, pursuant to clause 4.6 it is open to the Applicant to make a written request seeking to justify the contravention of the building height development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

4 DEVELOPMENT STANDARD TO BE VARIED

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

Newcastle Local Environmental Plan 2012.

What is the zoning of the land?

NLEP 2012 indicates that the site is within the R3 Medium Density Residential zone, as illustrated in Figure 2.

Figure 2 – Land Zoning Map Extract (Map LZN_004G)



What are the objectives of the zone?

- + *To provide for the housing needs of the community within a medium density residential environment.*
- + *To provide a variety of housing types within a medium density residential environment.*
- + *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- + *To allow some diversity of activities and densities if:*
 - (i) the scale and height of proposed buildings is compatible with the character of the locality, and*
 - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.*
- + *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
 - (i) has regard to the desired future character of residential streets, and*
 - (ii) does not significantly detract from the amenity of any existing nearby development.*

What is the development standard being varied?

The building height development standard contained in Clause 4.3 of the NLEP 2012.

Is the standard to be varied a development standard?

Yes, the standard is considered to be a development standard in accordance with the definition contained in Section 1.4 of the Environmental Planning and Assessment Act 1979 and not a prohibition.

What are the objectives of the development standard?

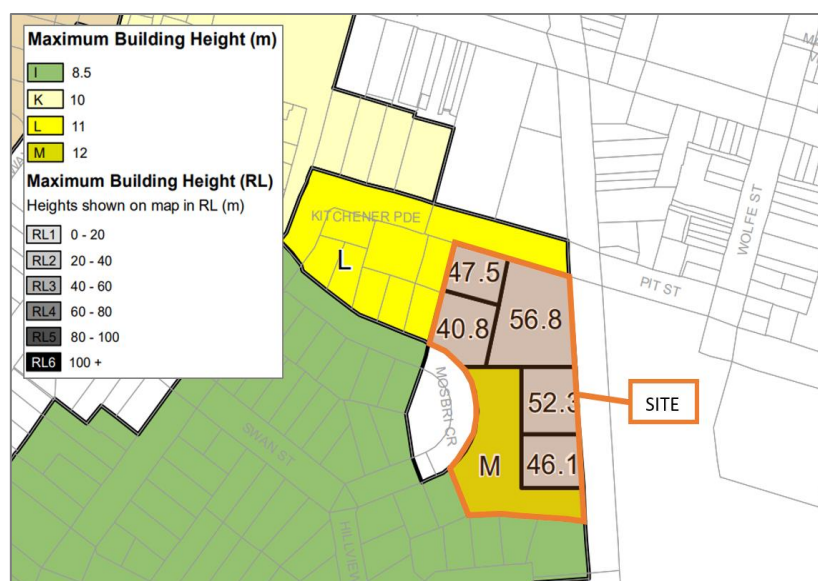
The objectives of Clause 4.3 – Height of Buildings are as follows:

- (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.*

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

The site has a variable maximum height control, as demonstrated on the Height of Buildings Map illustrated in Figure 3.

Figure 3 - Height of Building Map Extract (Map 004G)



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

The numerical value of the proposed height variations are detailed in Table 1.

Table 1 – Numerical Details Relating to Compliance

Height control per precinct of site	Maximum Proposed Height	Variation
12 metres	The townhouse component of the development complies with the 12 metre height limit. Parts of Building C are located in this height precinct, and due to the highly variable nature of the existing ground level, there are some localised areas that are greater than 12 metres in height when measured from the natural ground level.	Nil. 0.73m
RL40.8	An element of the townhouse component of the development is proposed in this area at RL 35.05	Nil
RL47.5	The main roof line level of Building A (west) is RL47.4, with a perimeter drainage hob at RL47.5 and plant screen/lift overruns to a maximum of RL49.0.	Nil to main roof line and perimeter drainage hob 1.5m to plant/lift overrun
RL56.8	Building A (east) main roof line to RL56.8, with lift overrun to a maximum of RL58.3 and plant screen to RL58.4. A perimeter drainage hob is proposed at RL56.90 Building B fully compliant, with lift overrun at RL55.28	Building A <ul style="list-style-type: none"> Nil to main roof line 0.1m to perimeter drainage hob 1.6m to plant screen 1.5m to lift overrun Building B <ul style="list-style-type: none"> Nil

RL52.3	The main roof line of Building B is proposed at RL50.70, with pool deck at RL52.05. Pergola at RL52.9, lift overrun to RL55.28 and stair roof line at RL53.80.	Nil to main roof line and pool deck 0.6m to pergola 1.5m to stair roof line 2.98m to lift overrun
RL46.1	Main roof line to RL44.5 of Building C, with lift overrun to RL46 and plant screen to RL46.1.	Nil

Note:

Newcastle LEP 2012 defines building height as the following:

building height (or **height of building**) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

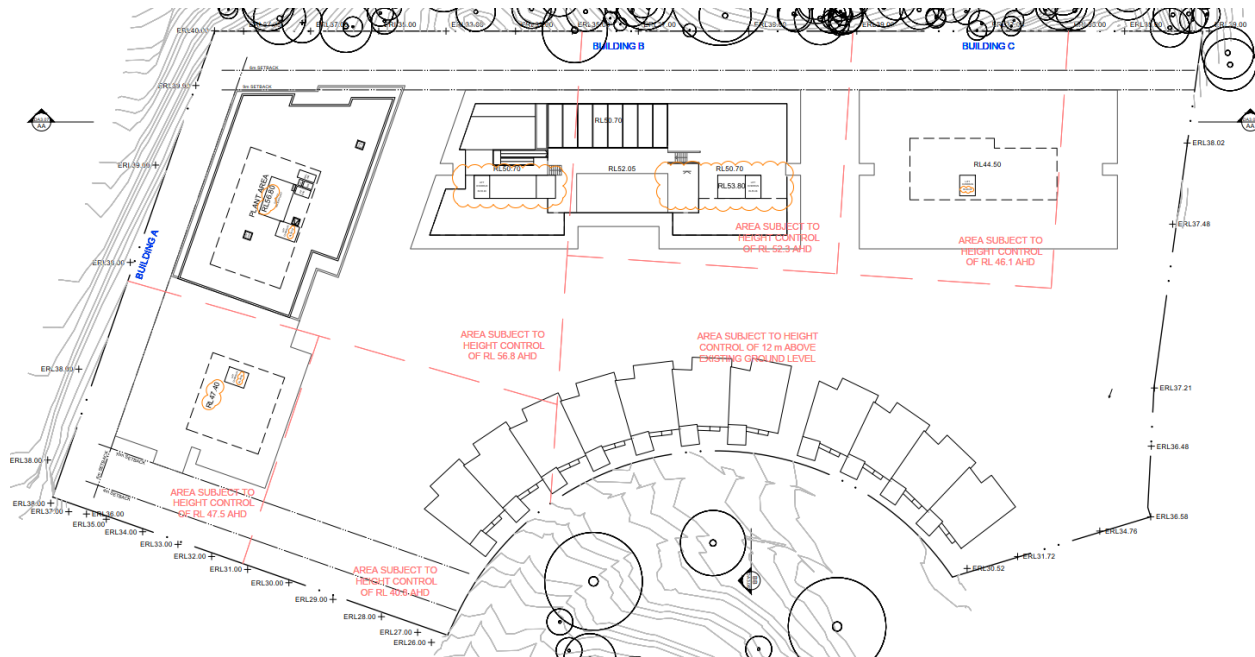
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Having regard to numerical compliance regarding height, as demonstrated in Table 1, the greatest extent of the non-compliance relates to the lift overruns, which comprise a very small proportion of the site, as demonstrated by Figure 4. The location and extent of the lift overruns can be supported having regard to visual bulk and scale, overshadowing or view loss. This is consistent with the approach taken in the Planning Proposal documents, which facilitated the current height controls, which confirmed that the 'Top roof RL does not assume inclusion of lift overrun'.

For the majority of the site, the main roof line of buildings complies with the height requirement. Variation to height is proposed as follows:

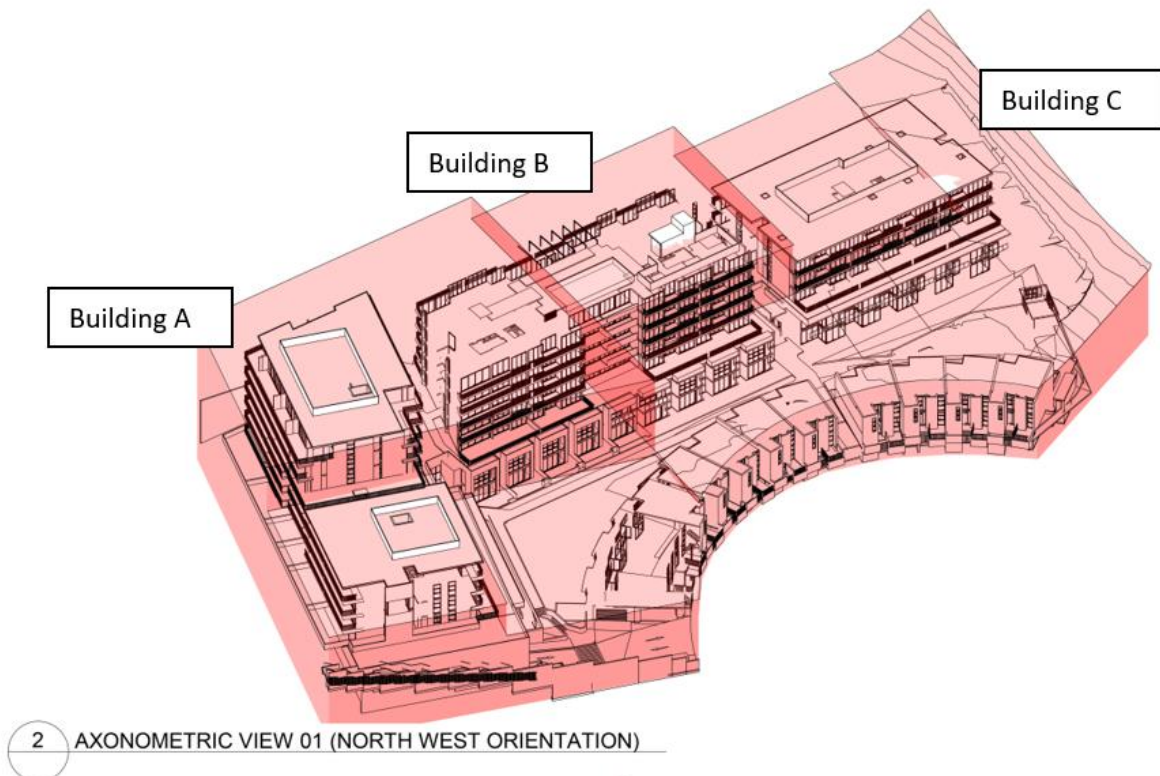
- + Parts of Building C are located in the 12 metre height precinct, and due to the highly variable nature of the existing ground level, there is height encroachments (maximum 0.73m). This variation has no effect in terms of bulk and scale and relates only to the technical measurement of height being impacted on by highly variable existing site levels. Bulk and scale have been reduced to the southern boundary, with the majority of Building C below the height limit as it presents to the boundary. It is further noted that the site is significantly lower than the adjoining land.
- + In the RL56.8 height precinct, the main roof line of Building A (east) is compliant, however a 0.1m drainage hob exceeds the height control.
- + A partial height exceedance from the pergola of the pool terrace on Building B, above the main roof line of this building (0.6m exceedance). The main roof line and pool deck of Building B is compliant with the height control, and the pergola is an open structure that does not significantly add to the bulk and scale of the proposal.

Figure 4 – Roof Plan (refer to Appendix A Architectural Plans for higher resolution)



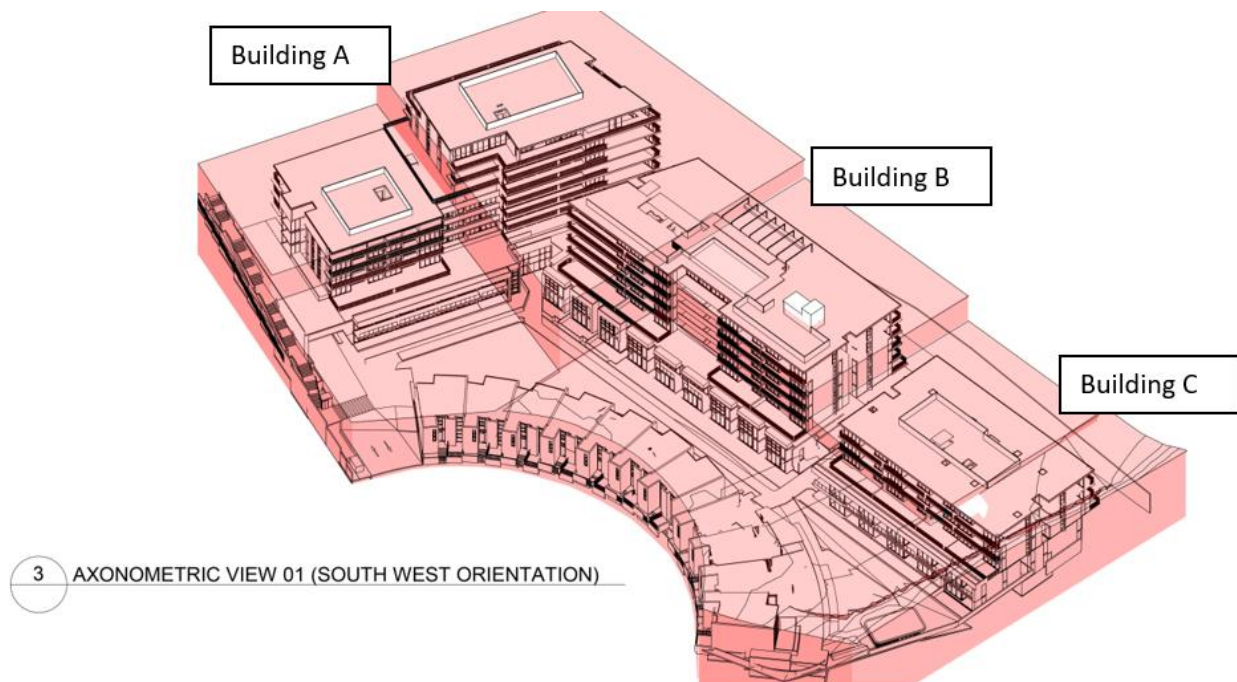
The extent of the building height exceedance is demonstrated in Figures 5 and 6.

Figure 5 – Extent of Building Height exceedance (North west orientation)



2 AXONOMETRIC VIEW 01 (NORTH WEST ORIENTATION)

Figure 6 – Extent of Building Height Exceedance (South west orientation)



5 JUSTIFICATION FOR THE CONTRAVENTION

This section addresses Clause 4.6 (3), (4) and (5) and seeks to justify the contravention of the building height development standard in Clauses 4.3 of the NLEP 2012.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

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

5.1 COMPLIANCE IS UNREASONABLE OR UNNECESSARY (CLAUSE 4.6 (3)(A))

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

In that decision, Preston CJ identified that one way to establish that compliance with the development standard is unreasonable or unnecessary is on the basis that the objectives of the standard are achieved notwithstanding noncompliance with the standard.

The objectives of the building height development standard in Clause 4.3 of the NLEP 2012 are:

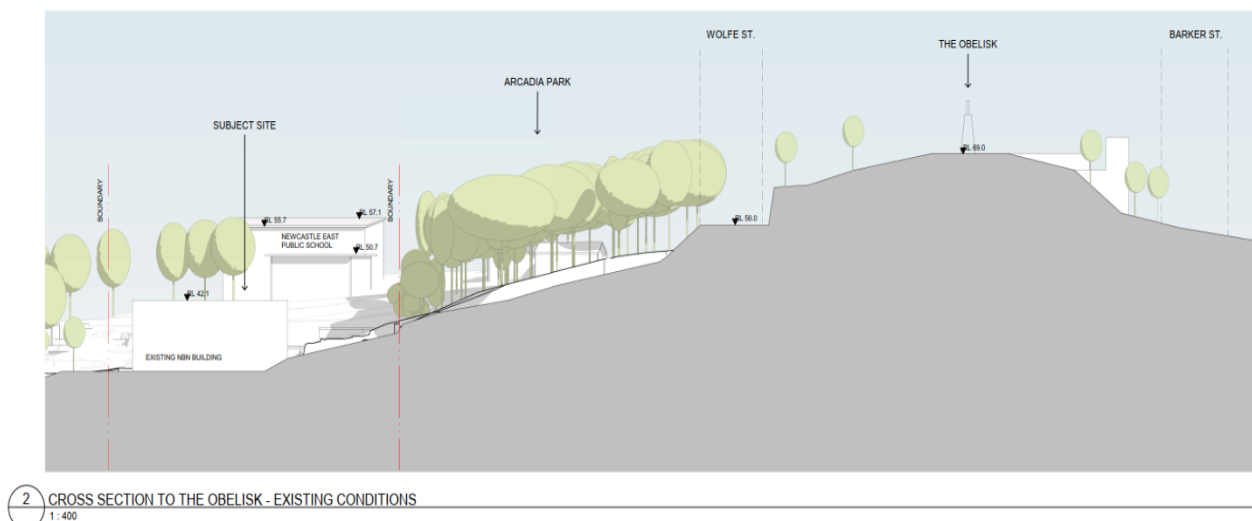
- + *To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy; and*
- + *To allow reasonable daylight access to all developments and the public domain.*

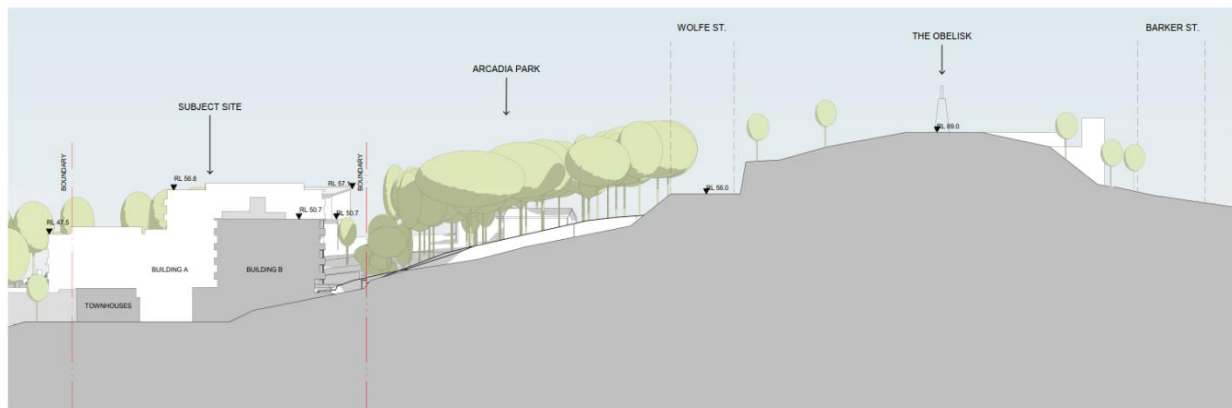
Desired Built form under the established centres hierarchy:

In relation to the first of these objectives the established centres hierarchy does not relate to this site except to the extent to which the height controls for this site relate to the controls for the established centres nearby which include Newcastle city, the regional centre. The objective has already been fulfilled by the making of the LEP and the setting of a height standard that ensures that the development does not compete with the regional centre and respects the topography of The Hill. Given that the development will sit primarily below the vegetative screen of Arcadia Park, it will not compete with the height of the regional centre.

Although not directly relevant to the objective, the view impacts of the proposal have been considered, including from the Obelisk. The proposed levels of the buildings have had regard to the RL for the base of the Obelisk which is RL69, and Wolfe Street above the site generally at RL56. No part of the scheme is proposed higher than this Wolfe Street level with the exception of Building A (roofline RL56.8 and one small lift overrun/plant area at RL58.3/RL58.4). These areas remain significantly lower than the base of the Obelisk. Along with the vegetation screening provided by Arcadia Park, this will ensure that there are no significant view impacts from the Obelisk. Figure 7 provides a cross section through the site showing topography relative to Wolfe Street and the Obelisk.

Figure 7 – Cross section to The Obelisk – Existing vs Proposed





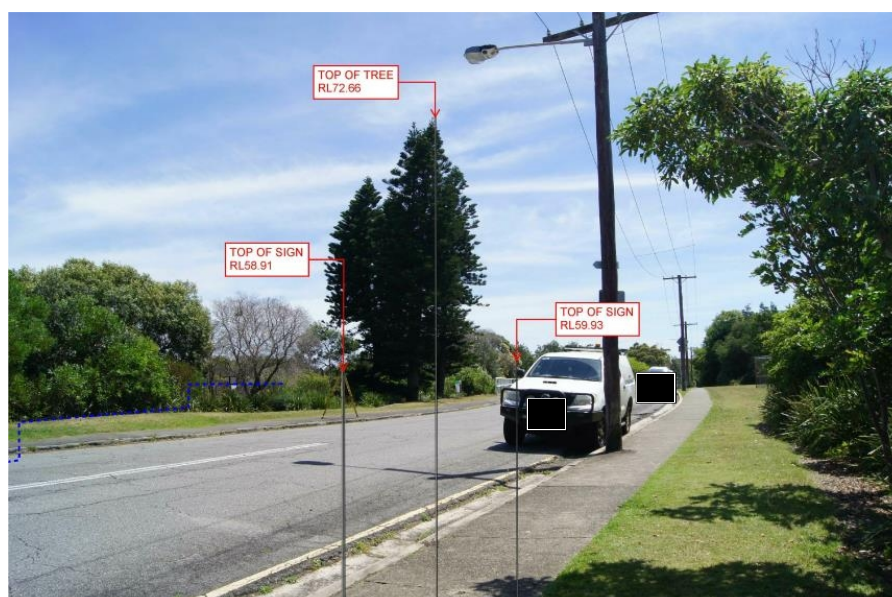
1 CROSS SECTION TO THE OBELISK - PROPOSED DEVELOPMENT
1:400

A Visual Impact Assessment (VIA) having regard to plans prepared by Marchese Partners, has been prepared in accordance with the Court Photo Montage Policy and based on the survey levels. The blue line demonstrated in the images is the LEP height control. The relationship of the site and proposed development when viewed by Wolfe Street is illustrated in the extracts from the VIA shown at Figure 8 and 9.

Figure 8 - Extract from Marchese VIA – Corner of Wolfe Street and Reserve Road (eastern side)



Figure 9 - Extract from Marchese VIA – Wolfe Street mid point (eastern side)



As demonstrated in the views shown at Figure 8 and 9, the proposal is almost entirely obscured by the existing tree line and would therefore not result in any significant visual impacts.

In relation to the Obelisk, an extract from the VIA is shown at Figure 10.

Figure 10 - Extract from Marchese VIA – Obelisk View



As demonstrated in the image shown at Figure 10, the extent of the building that is proposed above the height control has minimal impact to the overall visual catchment from the Obelisk.

The proposed development is broken up into five (5) massing elements including two rows of townhouses and three residential flat buildings. Extensive landscape areas are proposed between the buildings. The current design responds to the Planning Proposal intent of incorporating design strategies that mitigate the development's visual impact. Strategic placement of buildings is proposed, having regard to the site's topography, the inclusion of some increased landscaped setbacks, orientation of buildings to address the short frontages to the street and stepping height to the corner of the site where least visible from surrounding streets and spaces.

The proposed development responds to the height precincts specified in the LEP, ensuring that the height of the proposal is varied through the site, transitioning to Mosbri Crescent.

The proposed development makes a positive contribution towards the desired built form as follows:

- + During the detailed design stage, it was considered more appropriate to locate a rooftop communal area on Building B rather than on Building A adjacent to Kitchener Parade. This location has enabled the rooftop area to be substantially setback from residential buildings on adjoining land, to mitigate visual and acoustic privacy impacts including to Newcastle East Public School (NEPS).
- + In part, the height exceedance is attributed to the provision of a rooftop communal area, which ensures that the future occupants are afforded high quality facilities and amenity without impacting in an unreasonable manner on the amenity of surrounding development. The DCP identifies a number of small rooftop communal open spaces, however the approach in the subject application has been to focus on creating one communal space that provides exceptional amenity for residents. The proposed roof top area is located to minimise impacts on neighbouring properties, and is fully integrated with the rooftop features, rather than being two passive spaces that were less attractive to future residents and would have additional impacts such as potential overlooking and acoustic impacts to NEPS, 41 Kitchener Parade and 9 Mosbri Crescent. The design also facilitates disability access to the rooftop area via a lift access, which is considered to result in a justifiable height exceedance.
- + The approach has enabled increased landscaping design elements on the ground. The proposed rooftop area has also been located to address the recommendations of John Carr Heritage Design, which recommended removing non essential roof top structures and gardens/recreational areas from Building A (both east and west blocks).
- + The area fronting Mosbri Crescent and the southern boundary has a maximum height of 12m (measured above ground level), which the Planning Proposal noted could accommodate up to four-storeys. The current scheme proposes townhouse style development in this area, to provide a more human scaled built form to this frontage. The townhouse concept to Mosbri Crescent proposes a two storey terraced presentation, rather than a four storey residential flat building, which is a more sensitive built form to this street frontage. The proposal provides a more intimate streetscape presentation, which given the road alignment, is a superior outcome for the site.
- + The indicative building layout in the DCP identified a large terrace style building to the southern boundary, which adjoins residential properties that front Hillview Crescent. This outcome would have resulted in a longer building form facing these residents, together with windows and private open space areas facing the common boundary.

The proposal has achieved solar access and private open space areas that do not face the adjoining dwellings on Hillview Crescent.

- + The DCP layout also permitted longer built forms along the boundaries of 41 Kitchener Parade, 9 Mosbri Crescent and the Hillview Crescent properties. The design of Building A allows the majority of the built form of the proposed development to be located away from residential properties. It is considered to be a superior outcome, due to the separation of the road to NEPS and the existing building form of the existing structures within the NEPS. The proposal has facilitated an increased setback to the adjoining properties at 41 Kitchener Parade and 9 Mosbri Crescent than was envisaged in the DCP.
- + The proposed development has enabled one driveway access point, which will have traffic benefits to Mosbri Crescent. Further, this has reduced the amount of internal circulation required, facilitating a more generous landscaping outcome.

It is noted that the proposed development is compliant with the FSR, and that should the bulk and scale be 'flattened' across the site, this would impact on the design of the human scaled element of the proposal framing Mosbri Crescent, as well as resulting in less landscaping.

The proposed development consists of a high quality, architecturally designed building that makes a positive contribution to the locality. Whilst limited elements do not strictly adhere to the building height standards established in NLEP 2012 for the site, the design response is suitable for the site and achieves a landmark development at a unique location.

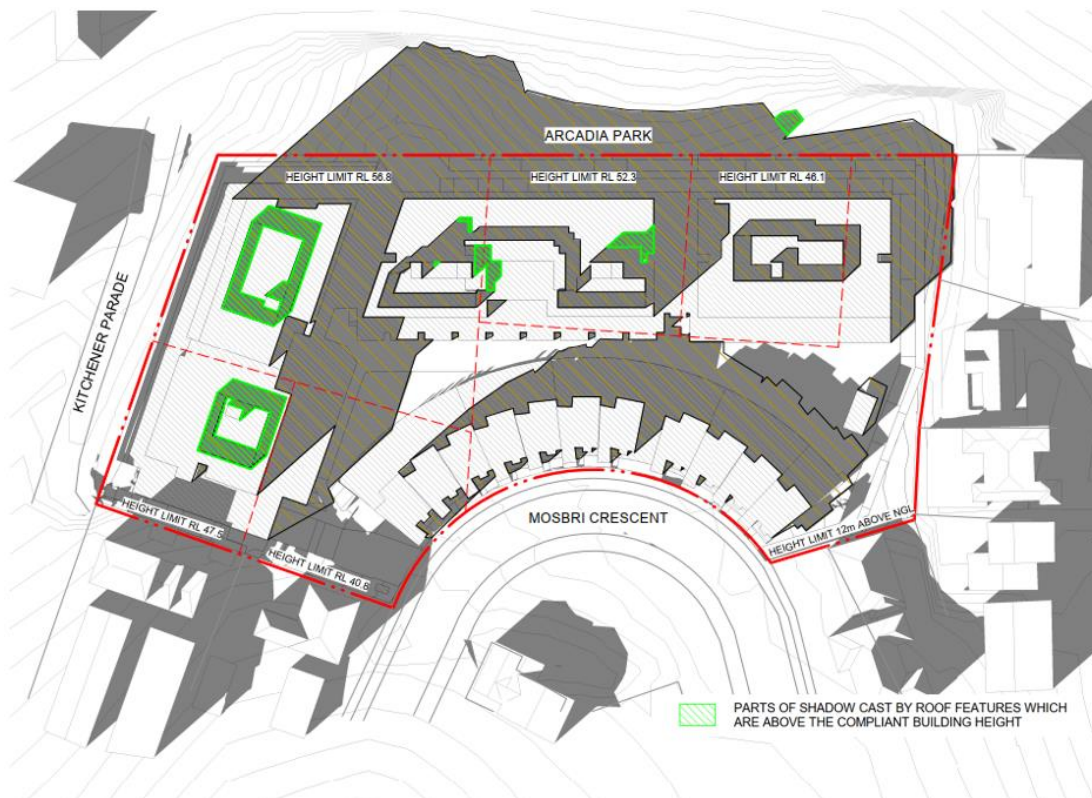
Allowing reasonable daylight access:

The objective does not specify whether it relates to the site or adjoining sites, but because it speaks of 'all development' it is assumed that it means both.

Detailed consideration of the proposed development's acceptability in relation to overshadowing impacts is documented in the original application. Further analysis has been undertaken with regard to the extent of additional overshadowing created from the proposed variation to height. Figures 11-13 illustrate excerpts of this analysis, with the green highlighting depicting shadowing associated with any areas of height non-compliance.

Figure 11 - Shadow Plan – 9am 21st June



Figure 12 - Shadow Plan – 12pm 21st JuneFigure 13 - Shadow Plan – 3pm 21st June

Reasonable daylight access will be provided to all surrounding developments, the public domain and Arcadia Park. The proposed development will not unreasonably overshadow private property nor cause unreasonable shadowing of the public domain.

To the extent to which the second LEP objective relates to this proposed development, the additional height is achieving the objective. It should be acknowledged the height variation is not seeking additional development yield, given the proposed development is below the permitted FSR for the site, but is rather aiming to maximise amenity. The design varies from the concept envisaged as part of the Planning Proposal to enable a feasible and achievable development. The proposed design results in improved amenity to future residents and an improved street appearance, without any significant impacts to surrounding properties and the locality.

Overshadowing impacts to Arcadia Park from the proposed development do not occur until 2pm on the 21 June, and overshadowing impacts to Mosbri Crescent Park do not occur after 10am on the 21 June. Accordingly, the overall impact of the proposed development to the adjoining parks is minimal, and the extent of additional overshadowing created from the variation to height creates a negligible, imperceptible increase in overshadowing.

The proposed development can be supported having regard to allowing reasonable daylight access to all adjoining developments and the public domain. In this regard, the proposed development is consistent with the objectives of the height standard.

The proposed development achieves the objectives of Clause 4.3 and therefore strict compliance with the height standard would be unreasonable and unnecessary.

5.2 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENTION (CLAUSE 4.6 (3)(B))

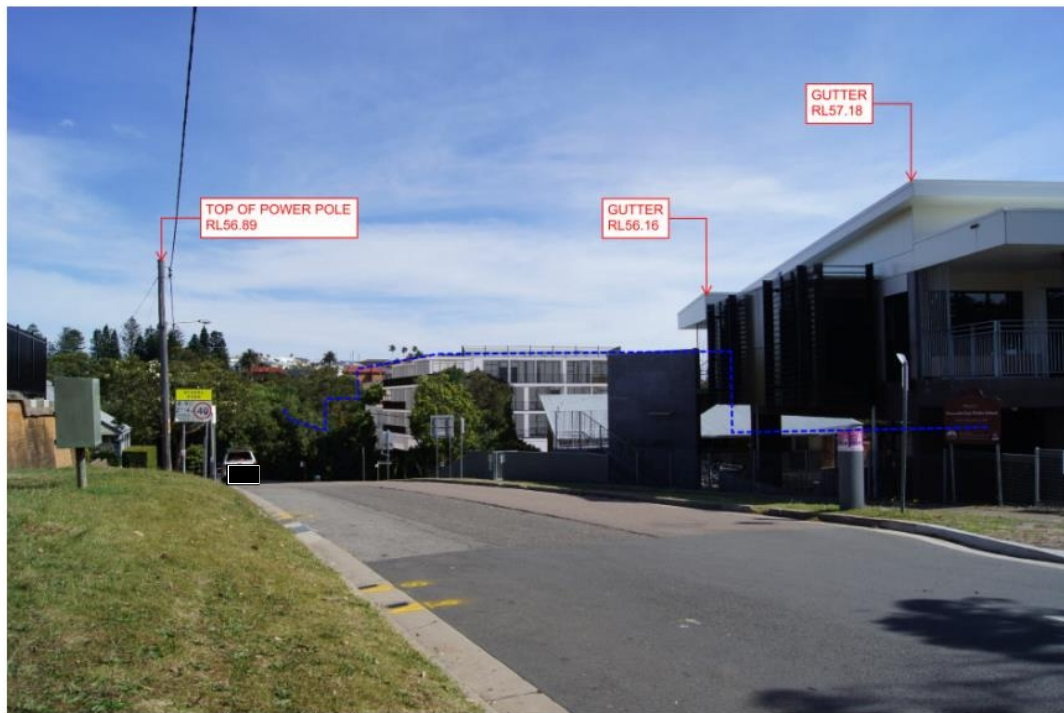
This request for variation demonstrates that the proposed height variation sought does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the height control.

Due to the large elevation drop from Kitchener Parade, the proposed building heights maintain an appropriate street edge and overall heights sit comfortably below ridge lines. The rooftop exceedance will be visibly difficult to detect given the proposed setbacks, and as demonstrated in the shadow diagrams, does not cause an unreasonable amount of shadowing. Excerpts from the VIA relating to Kitchener Parade shown at Figures 14 and 15 demonstrate that the extent of rooftop exceedances do not result in any significant visual bulk and scale impacts compared to a fully compliant building envelope.

Figure 14 – Southern side of Kitchener Parade facing east



Figure 15 – Brown Street adjacent to pedestrian crossing (eastern side) facing Kitchener Parade



Having regard to numerical compliance regarding height, as demonstrated in Table 1, the greatest extent of the non-compliance relates to the lift overruns, which comprise a very small proportion of the site, as illustrated in Figure 4, 5 and 6. The location of the lift overruns can be supported having regard to visual bulk and scale, overshadowing or view loss. This is also consistent with the approach taken in the Planning Proposal documents, which confirmed that the '*Top roof RL does not assume inclusion of lift overrun*'.

The proposed bulk and scale of the proposed development is considered appropriate for the site's unique location and site specific planning controls included in NLEP 2012 and the site specific DCP. The Planning Proposal process recognised that the recent changes to the height and FSR controls would produce a high quality residential development that complements the surrounding topography and built form. The Council's Urban Design Consultative Group (UDCG) have reviewed the proposal on a number of occasions and recognised the challenges of developing this sloping site. The UDCG are supportive of the proposal, which achieves design excellence satisfying the requirements of the Apartment Design Guide.

The design responds to the Planning Proposal intent of incorporating design strategies that mitigate the development's visual impact through strategic placement of buildings in relationship to site's topography, including some increased landscaped setbacks, orientation of buildings to address the short frontage to the street, and stepping height to the corner of the site that is the less visible from surrounding residential development and public spaces.

In part, the height exceedance is attributed to the provision of a rooftop communal area, which ensures that the future occupants are afforded high quality facilities and amenity without impacting in an unreasonable manner on the amenity of surrounding development.

It should be acknowledged the height variation is not seeking additional development yield given the proposal complies with the FSR for the site, but rather aiming to maximise amenity on the site. If made to strictly comply with Clause 4.3, there would be no significant additional benefit to the streetscape or public domain in the local area. It is noted that the proposed development is compliant with the FSR, and that should the bulk and scale be 'flattened' across the site, this would impact on the design of the human scaled element of the proposal framing Mosbri Crescent, as well as resulting in less landscaping.

The partial height exceedance from the pergola associated with the pool terrace on Building B, above the main roof line of this building, is considered to contribute to the high quality appearance of the development, as well as provide a high level of amenity for the future occupants. The pergola is an open structure, ensuring that it does not have any unreasonable bulk and scale impacts. The provision of this pergola and associated communal areas results in positive social and amenity outcomes for future users, without resulting in unreasonable impacts.

The following environmental planning grounds justify contravening the development standard:

- + During the detailed design stage, it was considered more appropriate to locate a rooftop communal area on Building B rather than on Building A adjacent to Kitchener Parade. This location has enabled the rooftop area to be substantially setback from residential buildings on adjoining land, to mitigate visual and acoustic privacy impacts including to NEPS.
- + The DCP identifies a number of small rooftop communal open spaces, however the approach adopted has been to focus on creating one communal space that provides exceptional amenity for residents. The proposed rooftop area is located to minimise impacts on neighbouring properties, and is fully integrated with the rooftop features, rather than being two passive spaces that were less attractive to future residents and would have additional impacts such as potential overlooking and acoustic impacts to NEPS, 41 Kitchener Parade and 9 Mosbri Crescent. The design also facilitates disability access to the rooftop area via a lift access, which is considered to result in a justifiable height exceedance.
- + The proposed rooftop area has also been located to address the recommendations of John Carr Heritage Design, which recommended removing non essential roof top structures and gardens/recreational areas from Building A (both east and west blocks).
- + The area fronting Mosbri Crescent and the southern boundary has a maximum height of 12m (measured above ground level), which the Planning Proposal noted could accommodate up to four-storeys. The current scheme proposes townhouse style development in this area, to provide a more human scaled built form to this frontage. The townhouse concept to Mosbri Crescent proposes a two storey terraced presentation, rather than a four storey residential flat building, which is a more sensitive built form to this street frontage. The proposed development provides a more intimate streetscape presentation, which given the road alignment, is a superior outcome for the site.
- + The indicative building layout in the DCP identified a large terrace style building to the southern boundary, which adjoins residential properties that front Hillview Crescent. This outcome would have resulted in a longer building form facing these residents, together with windows and private open space areas facing the common boundary. The proposed development has achieved solar access and private open space areas that do not face the adjoining dwellings on Hillview Crescent.
- + The DCP layout also permitted longer built forms along the boundaries of 41 Kitchener Parade, 9 Mosbri Crescent and the Hillview Crescent properties. The design of Building A allows the majority of the built form of the development to be located away from residential properties. It is considered to be a superior outcome, due to the separation of the road to NEPS and the existing building form of the existing structures within the NEPS. The proposed development has facilitated an increased setback to the adjoining properties at 41 Kitchener Parade and 9 Mosbri Crescent than was envisaged in the DCP.
- + The proposed development has enabled one driveway access point, which will have traffic benefits to Mosbri Crescent. Further, this has reduced the amount of internal circulation required, facilitating a more generous landscaping outcome.

The granting of development consent will enable a high quality, architecturally designed residential development, which can be supported having regard to the impacts of the proposed development. In light of this, there are considered to be sufficient environmental planning grounds to justify varying the height development standard in this instance.

5.3 PUBLIC INTEREST (CLAUSE 4.6 (4)(A)(II))

As demonstrated in this request, the proposed development will be in the public interest as it is consistent with the objectives of the height standard and the objectives of the R3 Medium Density Residential Zone, for the reasons provided in Section 5.1 and 5.2 of this request. The intent of the R3 zone is to facilitate higher residential dwelling density in central accessible locations.

The proposed development is consistent with the zone objectives as it will:

- + Provide for the housing needs of the community within a medium density residential environment;
- + Provide a variety of housing types within a medium density residential environment;
- + Allow some diversity of densities of a scale and height which is compatible with the character of the locality;
- + Result in no significant adverse impact on the amenity of any existing nearby development; and

- + Result in increased population in a location that will support the commercial viability of centres with a development that has regard to the desired future character of residential streets and does not significantly detract from the amenity of any existing development.

It is considered that a contravention of the height standard within Clause 4.3 of the NLEP2012 is justified for the following reasons:

1. The proposed built form has been purposely designed to ensure design excellence and to contribute to the locality;
2. The height breach does not result in an overdevelopment of the site given the proposed FSR complies with the applicable control 1.5:1;
3. The proposed height exceedance does not result in any significant detrimental amenity impacts in relation to overshadowing, privacy or view loss, to or from neighbouring properties;
4. The proposed overall development offers built form, responding to the topography of the site, including high quality communal open space and amenities;
5. The proposed development satisfies the objectives of the R3 Medium Density Residential Zone;
6. The proposed development satisfies the objectives of Clause 4.3; and
7. The proposed design successfully responds to the site's topography and surrounding streetscape.

Council noted in the Planning Proposal supporting the changes to zoning and height, that the site is considered to satisfy the criteria for a 'Substantial Growth Precinct' under the Local Planning Strategy, being within a ten minute walk of a major commercial centre, being Darby Street. The land is also within the walking catchment to the City Centre. That report also considered that the relatively large area and 'bowl like' topography of the land containing the existing NBN television studios lends itself to being able to physically accommodate additional development beyond the standard R3 Medium Density Residential development controls. The Planning Proposal report concluded that the additional development for the site is justified on the unique site attributes. Due to the large elevation drop from Kitchener Parade, the building heights can maintain a three to four-storey 'human scaled' street edge and overall heights sit comfortably below ridge lines. The proposed built form, bulk and scale is generally consistent with what was envisaged by the DCP controls.

The rooftop communal area is proposed on Building B, to address the recommendations of John Carr Heritage Design, including that all non-essential roof top structures and gardens/recreational areas be removed from Building A (both east and west blocks), to reduce the visual impact on adjacent heritage conservation areas and items. The location on Building B has also enabled the rooftop area to be substantially setback from residential buildings on adjoining land, to mitigate visual and acoustic privacy.

The design does not seek to construct a four-storey building element to Mosbri Crescent, as envisaged by the DCP. Rather, the townhouse style development facing Mosbri Crescent facilitates a human scaled development to this frontage, which respects the existing development while providing a strong streetscape presence. The presentation of the proposed buildings to Kitchener Parade and Arcadia Park are generally consistent with the aims of the DCP, in achieving a higher density residential development on the site with adequate setbacks and appropriate height, responding to the topography of the site.

The proposed development will deliver a range of dwelling sizes, thereby providing a variety of housing choices for future residents. The proposed development represents a high-quality urban design, which seeks to continue to redevelop and enhance the locality. The height exceedance is justified given the merits of the proposed development and its contribution to the social fabric and built form of Newcastle/The Hill. The design will be prominent and modern, and these characteristics are both viewed as highly appropriate for the site.

The proposed scale of development is consistent with the character envisaged by the DCP, and will facilitate the urban renewal of a large, consolidated site close to the Newcastle City Centre, thereby achieving the objectives of the R3 zone and the broader principles of reducing urban sprawl. The design ensures that this objective is achieved without resulting in any unreasonable impacts.

In this regard, the desired future character of residential streets has been achieved through the human scaled design to Mosbri Crescent, and general consistency with the built form outcomes of the site specific DCP. Further, as noted in this request, the proposed development does not significantly detract from the amenity of any existing nearby development, in relation to matters including views, privacy and overshadowing.

The proposed development is in the public interest because it is consistent with the objectives for development within the R3 zone and the objectives of the building height development standard.

For the reasons provided above, it is considered that the variation to the development standard is supportable.

5.4 SECRETARY'S CONCURRENCE

It is understood that the Secretary's concurrence under clause 4.6(4) of NLEP 2012 has been delegated by the Department of Planning, Industry and Environment.

6 CONCLUSION

This Clause 4.6 Variation to Development Standard request has been prepared in response to numerical non-compliance with the development standard for the site specified in Clause 4.3 – Height of Buildings in NLEP 2012.

As demonstrated within this written request, compliance with the development standard is considered unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the building height development standard.

It is therefore requested that development consent be granted for the proposed development.

Yours sincerely,



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