

CLAUSE 4.6 VARIATION - HEIGHT

854-874 Hunter Street, Newcastle West NSW 2302

Prepared for:
DOMA Group

SLR Ref: 631.30290-R01
Version No: -v0.1
June 2022



PREPARED BY

SLR Consulting Australia Pty Ltd
ABN 29 001 584 612
Suite 2B, 125 Bull Street
Newcastle West NSW 2302

T: +61 2 4940 0442
E: newcastleau@slrconsulting.com www.slrconsulting.com

BASIS OF REPORT

This report has been prepared by SLR Consulting Australia Pty Ltd (SLR) with all reasonable skill, care and diligence, and taking account of the timescale and resources allocated to it by agreement with DMA Group (the Client). Information reported herein is based on the interpretation of data collected, which has been accepted in good faith as being accurate and valid.

This report is for the exclusive use of the Client. No warranties or guarantees are expressed or should be inferred by any third parties. This report may not be relied upon by other parties without written consent from SLR.

SLR disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the work.

DOCUMENT CONTROL

Reference	Date	Prepared	Checked	Authorised
v0.1631.30290-R01-v0.1	21 June 2022	Grace Moses	Melissa Thomas	Melissa Thomas
631.20290-R01-v0.1	27 October 2021	Grace Moses	Melissa Thomas	Melissa Thomas

CONTENTS

1	INTRODUCTION	4
2	BACKGROUND – PREVIOUS APPROVALS.....	4
3	PROPOSAL.....	5
4	EXCEPTION TO DEVELOPMENT STANDARD.....	7
4.1	Clause 4.6.....	7
5	DEVELOPMENT STANDARD TO BE VARIED.....	8
6	JUSTIFICATION FOR THE CONTRAVENTION	11
6.1	Compliance is Unreasonable or Unnecessary (Clause 4.6 (3)(a))	12
6.2	Sufficient Environmental Planning Ground to Justify Contravention (Clause 4.6 (3)(b))	16
6.3	Public Interest (Clause 4.6(4)(a)(ii))	20
6.4	Secretary’s Concurrence (Clause 4.6(4)(b))	22
7	CONCLUSION.....	22

DOCUMENT REFERENCES

TABLES

Table 1	Proposed Height Variation	10
Table 2	Concept DA Height Comparison.....	19

FIGURES

Figure 1	Stages of the site redevelopment (Source: Bates Smart, Concept Plan DA)	5
Figure 2	Land Zoning Map Extract from LEP 2012 (LZN_004G)	8
Figure 3	Height of Building Extract from Newcastle LEP (HOB_004G)	9
Figure 4	Proposed Building Height – Hunter Street Elevation (Source: Bates Smart)	11
Figure 5	Urban Design Marker (Source: Bates Smart)	15
Figure 6	Shadow Diagrams 21 st June (Source: Bates Smart).....	16
Figure 7	Strictly Compliant Building Mass (Source: Bates Smart).....	17
Figure 8	Concept Masterplan Adjustments (Source: Bates Smart).....	18
Figure 9	Excerpt of Sections showing Re-Distribution of GFA – East Tower (Source: Bates Smart).....	18
Figure 10	Excerpt of Sections showing Re-Distribution of GFA – West Tower (Source: Bates Smart)	19

1 Introduction

This request to vary a development standard in accordance with Clause 4.6 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) relates to the construction of a residential development (shop top housing) with commercial and retail premises located within the podium, located at 854 Hunter Street in Newcastle West NSW 2302.

The development control sought to be varied is contained in Clause 4.3 of the 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 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.

2 Background – Previous Approvals

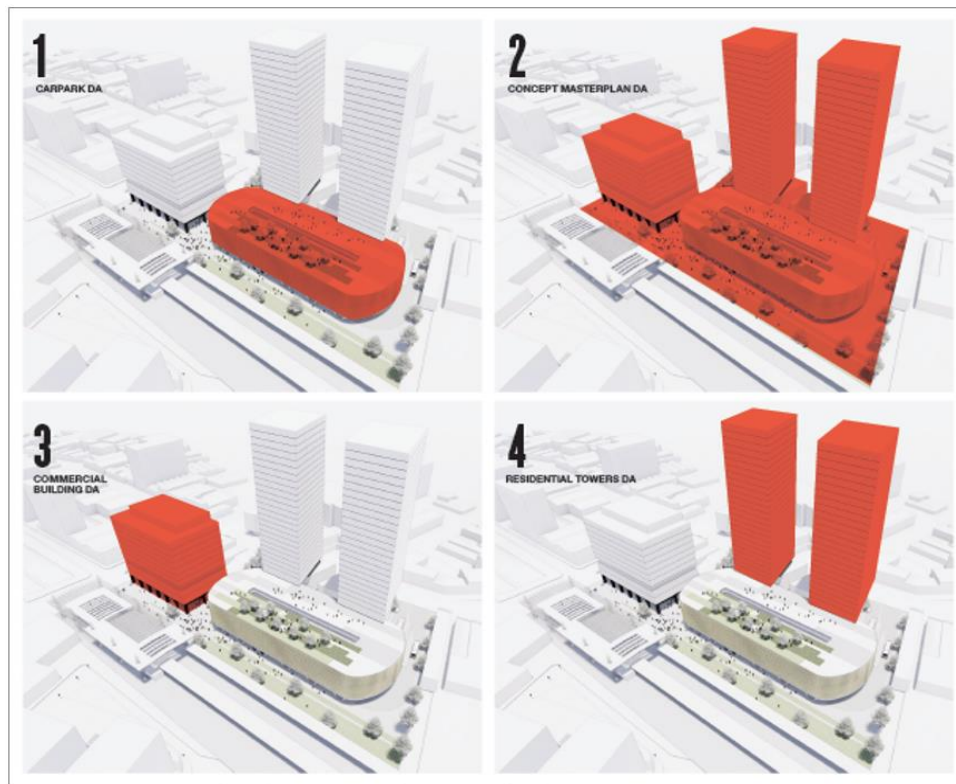
The site is locally known as ‘The Store’, which is a reference to the heritage-listed building that existed on the site for many years. The site benefits from a Part 5 approval for “railway infrastructure”, which permitted the construction of a ground level Newcastle Transport Interchange (NTI) and the demolition of existing structures on the site, including the existing heritage building.

A separate Development Application (DA) (DA2018/00879) was approved for the construction of a multi-storey carpark on the site on 7 August 2018 and a Concept Development Application was approved on 1 April 2019 for the intended staged development of the site (DA2018/01109). A DA (DA2018/01107) was approved on 31 May 2018 for a 12 storey commercial office building with ground floor retail premises and basement carparking, being Stage 3 of the Concept Plan. The multi-storey car park and commercial office building components of the development have been completed and are now operational.

The proposed residential towers and podium retail/commercial development, as proposed under this DA, is Stage 4 of the approved Concept Plan.

Refer to **Figure 1**, illustrating the four stages of the site redevelopment.

Figure 1 Stages of the site redevelopment (Source: Bates Smart, Concept Plan DA)



3 Proposal

The DA seeks approval for the construction of a mixed use development, comprising Stage 4 of the Concept Plan Approval.

A total of 352 residential apartments are proposed, with 181 apartments in the western tower and 171 apartments in the eastern tower. The DA is designed to integrate with the existing carparking structure, and includes the following elements:

- Ground floor level comprising five (5) retail tenancies (ranging from 69-158sqm), a commercial lobby, a residential lobby and service areas;
- Commercial tenancies (office) on Levels 1-2, with 966-1070sqm floor plates;
- Residential Communal Spaces on Level 3, being 1219sqm;
- Level 4 service and storage areas, including 144 individual storage cages;
- Level 5 including the following:
 - Recreation area above existing car park structure, including a tennis court, pool, kids play area, lawn, community garden, lounge areas and terrace areas; and
 - Internal lobby/lounge areas;
- Level 5 Mezzanine, including 133 individual storage cages;

- 352 residential apartments on Levels 5-30, with 181 units in the western tower (Levels 5-28) and 171 units (Levels 5-30) in the eastern tower, comprising of the following apartment mix:
 - 66 x 1-bedroom;
 - 178 x 2-bedroom;
 - 100 x 3-bedroom; and
 - 8 x 4-bedroom;
- Communal terrace on Level 28 (western tower) and Level 30 (eastern tower);
- Mechanical plant zones on roof levels;
- Vehicular and service access via Beresford Lane; and
- Associated ancillary works, as detailed on the architectural plans located at Appendix A.

The Architectural Plans submitted with the application are referenced as follows:

- Project No.S12133, prepared by Bates Smart
 - Site Plan / DA.01.01 Revision 1 dated 03/60/2022
 - Site Analysis Plan / DA.01.02 Revision 1 dated 03/60/2022
 - Level 00 Plan / DA.03.00 Revision 1 dated 20/04/2022
 - Level 01 Plan / DA.03.01 Revision: 6 dated 20/04/2022
 - Level 02 Plan / DA.03.02 Revision: 6 dated 20/04/2022
 - Level 03 Plan / DA.03.03 Revision: 6 dated 20/04/2022
 - Level 04 Plan / DA.03.04 Revision: 6 dated 20/04/2022
 - Level 05 Plan / DA.03.05 Revision: 6 dated 20/04/2022
 - Level 05 Mezzanine Plan / DA.03.05M Revision: 6 dated 20/04/2022
 - Typical Low Rise Plan / DA.03.06 Revision 5 dated 20/04/2022
 - Typical Mid Rise Plan / DA.03.16 Revision: 1 dated 03/06/2022
 - Typical High Rise Plan / DA.03.19 Revision 5 dated 20/04/2022
 - Level 23 Plan / DA.03.23 Revision: 5 dated 20/04/2022
 - Level 24 Plan / DA.03.24 Revision: 5 dated 20/04/2022
 - Level 25 Plan / DA.03.25 Revision: 5 dated 20/04/2022
 - Level 26 Plan / DA.03.26 Revision: 5 dated 20/04/2022
 - Level 27 Plan / DA.03.27 Revision: 5 dated 20/04/2022
 - Level 28 Plan / DA.03.28 Revision: 5 dated 20/04/2022
 - Level 29 Plan / DA.03.29 Revision: 5 dated 20/04/2022
 - Level 30 Plan / DA.03.30 Revision: 5 dated 20/04/2022
 - Roof Plan / DA.03.31 Revision: 3 dated 20/04/2022
 - Hunter Street Context Elevation / DA.09.00 Revision: 1 dated 03/06/2022

- Hunter Street Elevation / DA.09.01 Revision: 5 dated 12/04/2022
- Beresford Lane Elevation / DA.09.02 Revision: 4 dated 12/04/2022
- Northern Elevation / DA.09.03 Revision: 5 dated 12/04/2022
- Western Elevation – West Tower / DA.09.04 Revision: 5 dated 12/04/2022
- Eastern Elevation – East Tower / DA.09.05 Revision: 5 dated 12/04/2022
- Western Elevation – East Tower / DA.09.06 Revision: 5 dated 20/04/2022
- Eastern Elevation – West Tower / DA.09.07 Revision: 4 dated 20/04/2022
- Section AA / DA10.01 Revision: 5 dated 20/04/2022
- Section BB / DA10.02 Revision: 5 dated 20/04/2022
- Section CC / DA10.03 Revision: 5 dated 20/04/2022
- GFA Plans Sheet 1 / DA.22.01 Revision: 1 dated 03/06/2022
- GFA Plans Sheet 2 / DA.22.02 Revision: 1 dated 03/06/2022

4 Exception to Development Standard

4.1 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 in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

5 Development Standard to be Varied

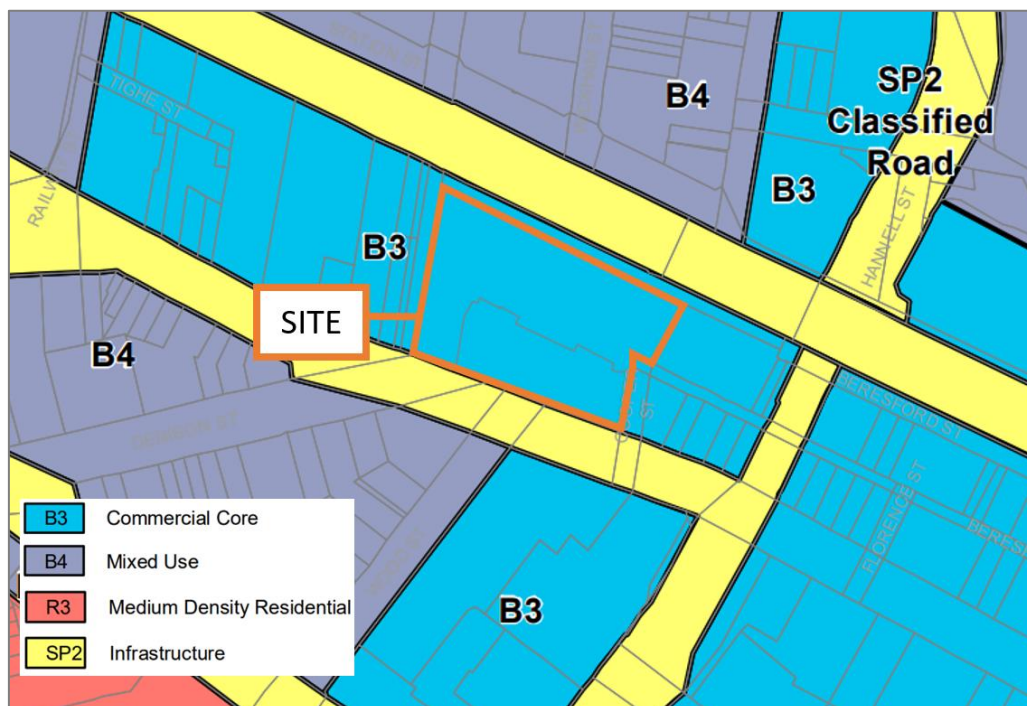
What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012 (NLEP2012).

What is the zoning of the land?

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

Figure 2 Land Zoning Map Extract from LEP 2012 (LZN_004G)



What are the objectives of the zone?

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for commercial floor space within a mixed-use development.
- To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.
- To provide for the retention and creation of view corridors.

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. Clause 4.3 is also not listed under Clause 4.6(8) as a development standard that is not able to be varied.

What are the objectives of the development standard?

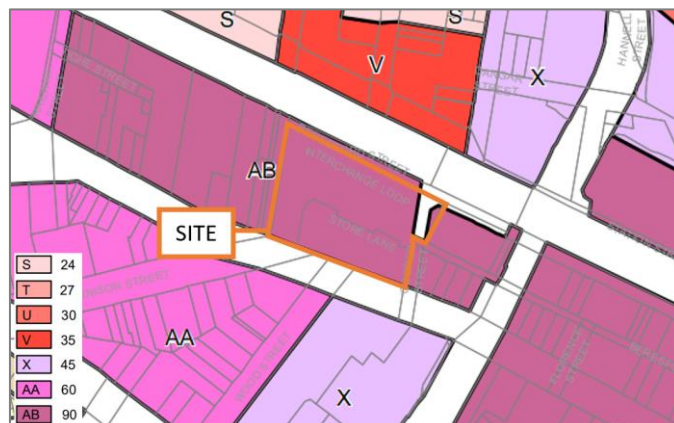
The objectives of Clause 4.3 – Height of Buildings are as follows:

- (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 is subject to a maximum height control under the NLEP 2012 of 90 metres, as shown in **Figure 3**.

Figure 3 Height of Building Extract from Newcastle LEP (HOB_004G)



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

The numerical value of the proposed development and percentage variation is detailed in Table 1 below.

Table 1 Proposed Height Variation

NLEP Height Control (Measured from existing ground level)	Proposed Height (metres from existing ground level)	Reduced Level (AHD)	Variation (m) to NLEP	Variation (%) to NLEP	Area of site impacted (%)
East Tower					
90 metres	<u>Lift Overrun</u> 106.78 metres	<u>Lift Overrun</u> RL109.88	16.78m	18.6%	0.2%
	<u>Mechanical Plant</u> 106.28 metres	<u>Mechanical Plant</u> RL109.38	16.28m	18.0%	0.3%
	<u>Rooftop Plant/ Architectural Roof Feature</u> 105.45 metres	<u>Rooftop Plant/ Architectural Roof Feature</u> RL108.55	15.45m	17.2%	0.9%
	<u>Level 30</u> 101.53 metres	<u>Level 30</u> RL104.63	11.53m	12.8%	6% (approx.)
West Tower					
90 metres	<u>Lift Overrun</u> 100.58 metres	<u>Lift Overrun</u> RL103.68	10.58m	11.7%	0.2%
	<u>Rooftop Plant/ Architectural Roof Feature</u> 99.25 metres	<u>Rooftop Plant/ Architectural Roof Feature</u> RL102.35	9.25m	10.3%	0.8%
	<u>Level 28</u> 95.33 metres	<u>Level 28</u> RL98.43	5.33 metres	5.9%	7% (approx.)

NLEP 2012 defines building height as the following:

building height (or height of building) means:

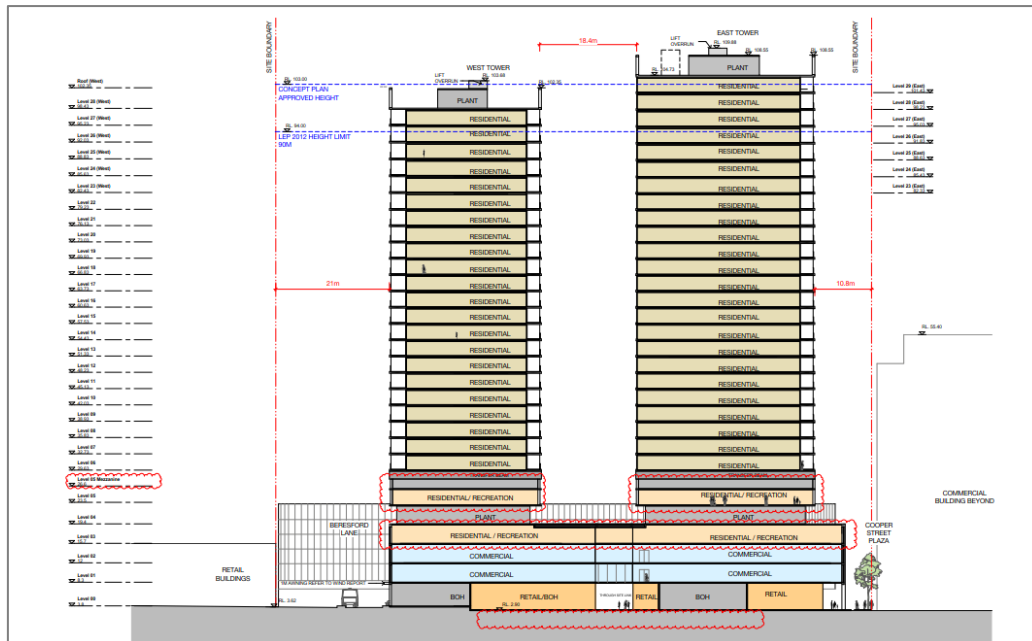
(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(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.

The numerical values in the table above in relation to building height are the vertical distance from ground level (existing) to the highest point of the building. **Figure 4** shows the extent of the proposed exceedance of the building height.

Figure 4 Proposed Building Height – Hunter Street Elevation (Source: Bates Smart)



The proposed non-compliance has arisen due to the variation in height of the towers and the stepped built form used to create visual interest. The variation in height and massing of the towers was introduced to change the perceived scale of the buildings when viewed together, creating visual interest and a more sculptural urban design response. The height increase was established to accommodate for the loss in FSR resulting from the stepped built form of the towers.

6 Justification for the Contravention

This section addresses Clause 4.6 (3), (4) and (5) of the NLEP 2012 and seeks to justify the contravention of the building height development standard in Clause 4.3 of the NLEP 2021.

Clause 4.6(3) – (5) provides as follows:

(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.

6.1 Compliance is Unreasonable or Unnecessary (Clause 4.6 (3)(a))

In the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe Decision), Preston CJ outlined the rationale for development standards (being not ends in themselves, but means of achieving environmental planning objectives) and the common methods by which an applicant may establish that compliance with a development standard might be considered unnecessary and/or unreasonable. Whilst the Wehbe Decision was in relation to the former SEPP 1, case law has confirmed that it applies equally to clause 4.6 of the Standard Instrument LEP (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118).

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

The proposed development achieves the objectives of the building height development standard in Clause 4.3, as outlined in the below discussion.

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

The site is located in the emerging CBD, and as reflected in the height maps contained in the NLEP 2012, it is situated in the area of the city which is envisaged to support some of the tallest and most significant development in Newcastle's revitalisation. The proposed height exceedance is appropriate in the context of the site's key role in reinforcing this established centre hierarchy.

The proposed development has been designed by Bates Smart Architects and consists of high quality, architecturally designed buildings that make a positive contribution to the West End of Newcastle, while responding to the heritage context. The proposed development will improve the vitality, identity and diversity of Newcastle City Centre by contributing to the ongoing revitalisation of 'The Store' site which had previously fallen into disrepair and disuse.

The Store site is the gateway into Newcastle for people traveling to the City Centre via heavy rail; the proposal will continue to transform the site into a key site for Newcastle. The entire development represents a compatible mixed-use development for the site and is consistent with the desired future vision for this area of the West End Precinct to emerge as a revitalised commercial and residential precinct. By providing a mix of retail and office premises, located alongside the NTI, the proposal will enhance the economic success of the Newcastle City Centre.

Prior to lodgement of the development application for the approved Concept Plan, advice was sought from the NSW Government Architect (NSWGA) in relation to achieving design excellence without the need for a design competition to be held, particularly given that the winning design for the site submitted by Bates Smart Architects had already undergone a design competition-like process through the Hunter Development Corporation's (HDC) competitive tender process. In February 2018, the NSWGA advised that a waiver had been granted to the requirements of Clause 7.5 of the NLEP 2012, and that accordingly there was no need for a design competition to be held for this redevelopment project.

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

- Dr. Phillip Pollard – Newcastle Councils Urban Design Review Panel (UDRP, former UDCG)
- Lee Hillam – NSW Government Architect
- Adam Haddow – SJB Architects

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

During the assessment of the Concept Plan Application, the DRP and UDRP suggested a variation in height between the two buildings and the Applicant requested approval for a 10% variation to the building height control to provide a building height of 99m for the towers. During a meeting on 7 August 2018, the DRP suggested a height variation would '*ensure visual interest in the skyline.*' Within the 10 May 2021 meeting, the DRP stated the following:

'The differentiation of the tower heights, understanding that the East tower is over the Newcastle LEP 2012 + 10% height that was approved by the Concept DA. This is seen as a positive design outcome and is supported.'

The UDRP also supported a variation in building height between the two towers and considered a height exceedance to support an 'architectural feature' element of the towers to be appropriate. The comments from the UDRP meeting held on 26 May 2021 included the following:

'The top five residential floors to each tower have been chamfered to the south side of the west tower and north side of the east tower. Modification of the towers in plan form includes curving of corners and variation in outer wall lines between upper and lower floors. This modelling of the towers provides variation in the apparent height of the towers viewed from street level and mitigation of overall height and scale. The towers when complete will form the dominant and tallest element of the skyline, emphasizing the importance of their design being of high standard.'

The panel considered the reallocation of FSR from the western tower to the eastern one provided a desirable differentiation in height, particularly when the buildings are viewed in profile from a distance.

Providing that the moderate additional height beyond the control does not cause adverse solar impacts on properties to the south, which is not anticipated, the benefit of the variation in height was supported. Likewise, the "chamfering" of the building forms both in plan and in elevation was supported, as was the rounding of the building corner forms.'

As part of the Regional Planning Panel's determination of the Concept Plan Application, it noted the potential for a variation to the height limit to allow differential height between buildings but considered it appropriate that the height exceedance be considered at the detailed DA stage.

In particular, Condition 3A of the Concept Plan Approval expressly contemplates the potential for height over the 90m control as follows:

"The height of the proposed towers in Stage 4 to Hunter Street is limited to 90m. While there may be potential to consider a height variation in the future with a detailed development application (up to 99m to allow height variation if facilitating design excellence), this is more appropriately considered at the detailed DA stage..."

Following the above comments from the UDRP and DRP, the detailed design process for the current DA included exploring a variation in height between the two buildings. The final design now incorporates a tapered tower form with a variation in height between each building, to create two dynamic built forms of varying scales. The proposed design of the towers results in the towers being less 'visually assertive' when viewed from the street. The roof top architectural feature of western tower is proposed to be 99.23m (when measured from existing ground level), and the eastern tower variation has been increased to offset the area redistributed in the tapered volumes.

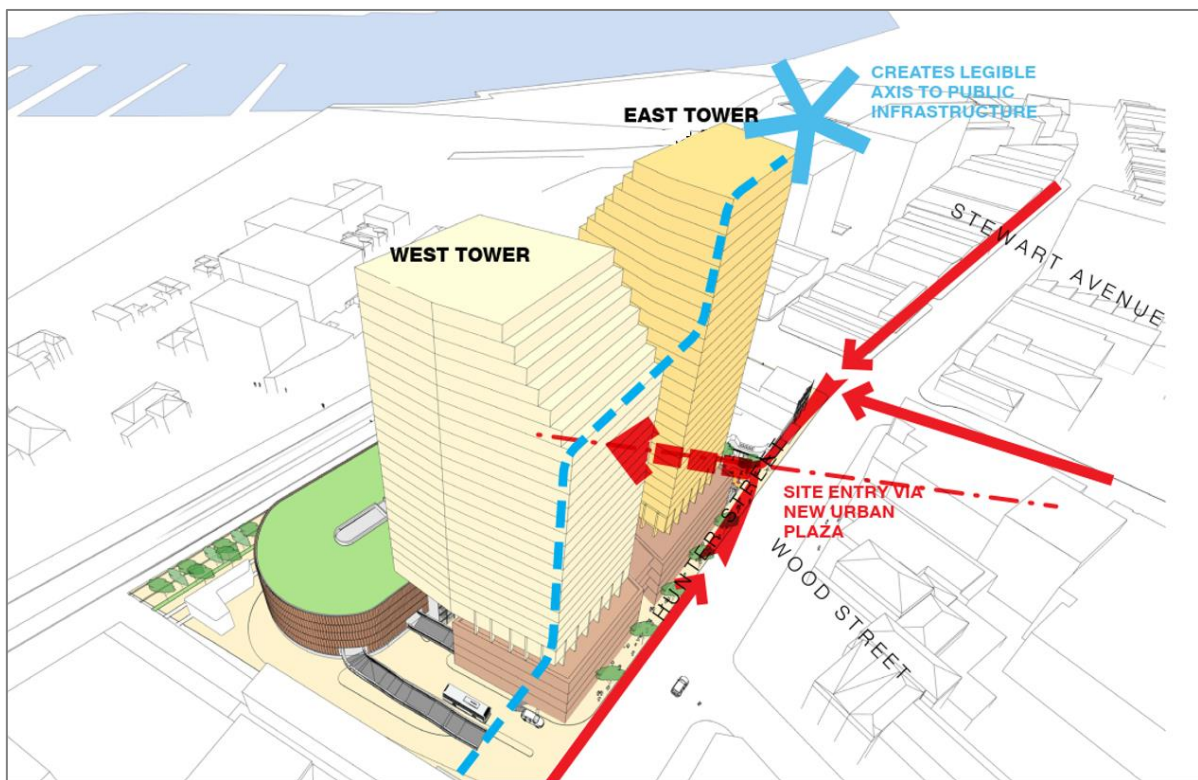
The proposed height variation results in a better design outcome for the site when compared to two complying towers at 90m. The height variation allows for a more dynamic design and enhances the significance and visual interest of the site as a whole. The additional levels of both the towers provides a higher number of apartments of varying sizes, a rooftop communal terrace and architectural roof features. The roof features create an expressive extension of the building's façade to enhance the perceived scale of the building. The built form outcomes and high-level design is a direct result of the height variation, and a reduction in height would not allow for the same manipulation of building elements.

The towers both have a curved and tapered architectural built form, with the roof form of each tower sloping in opposite directions to differentiate the buildings, while also creating visual interest and diversity of the buildings, resulting in a distinctive built form. The location of the development will ensure that the site will become a prominent and defining feature within the precinct, with the whole development forming a gateway to the Newcastle CBD and positively contribute to the centres hierarchy, as demonstrated in **Figure 5** below.

A further UDRP meeting was held on the 26th May 2021. The elements incorporated into the building design, including the variation in height, 'chamfering' of the building forms and the rounding of the building corner forms were supported. The reallocation of the FSR from the western tower to the eastern tower was considered to facilitate a 'desirable differentiation in height, particularly when viewed from a distance'.

Details of the façade treatment and articulation are provided in the Architectural plans provided at Appendix A of the development application.

Figure 5 Urban Design Marker (Source: Bates Smart)

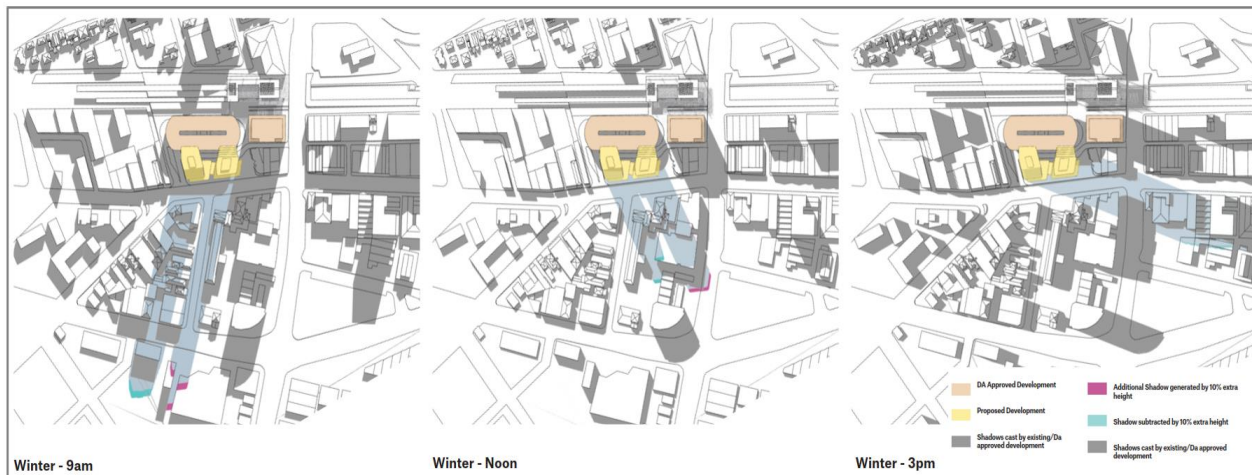


For these reasons, strict application of the development standards for maximum height is unreasonable and unnecessary because the scale of the proposed development will make a positive contribution towards the desired built form that is consistent with the established centres hierarchy (being the first objective of the height of buildings development standard in clause 4.3 of the NLEP 2012).

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

Reasonable daylight access is provided to all surrounding developments. The proposed height variation will not result in any detrimental impact to any sensitive land uses, as illustrated in the shadow diagram analysis provided within the architectural plans (refer Appendix A), refer to **Figure 6** below.

Figure 6 Shadow Diagrams 21st June (Source: Bates Smart)



The shadow diagrams depict the extent of the additional overshadowing related to the extent of the height variation. As detailed, the development will not unreasonably overshadow either of the private lands to the south or west; and does not cause unreasonable overshadowing of the public domain in comparison to a fully compliant proposal on the site. These drawings illustrate that the proposed development does not cause an unreasonable amount of overshadowing, particularly when compared with the shadowing that would be caused by a strictly compliant scheme.

To the extent to which the second objective in clause 4.3 relates to this development, the additional height is achieving the objective. It should be acknowledged that the height variation is not seeking additional development yield, given the proposal is below the permitted FSR for the site, but is rather aiming to maximise amenity. The design varies from that envisaged as part of the Concept Plan Approval to enable a superior development outcome. 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.

The proposed development achieves the objective in clause 4.3(1)(b), irrespective of the proposed non-compliance and therefore strict compliance with the 90m height standards within the site would be unreasonable and unnecessary.

6.2 Sufficient Environmental Planning Ground to Justify Contravention (Clause 4.6 (3)(b))

This request for variation demonstrates that there are sufficient environmental planning grounds to justify a contravention to the height control.

The proposed height variation does not result in any unacceptable environmental impacts and provides additional benefits to the streetscape and public domain that would not be able to be realised if the development complied strictly with the 90m height control.

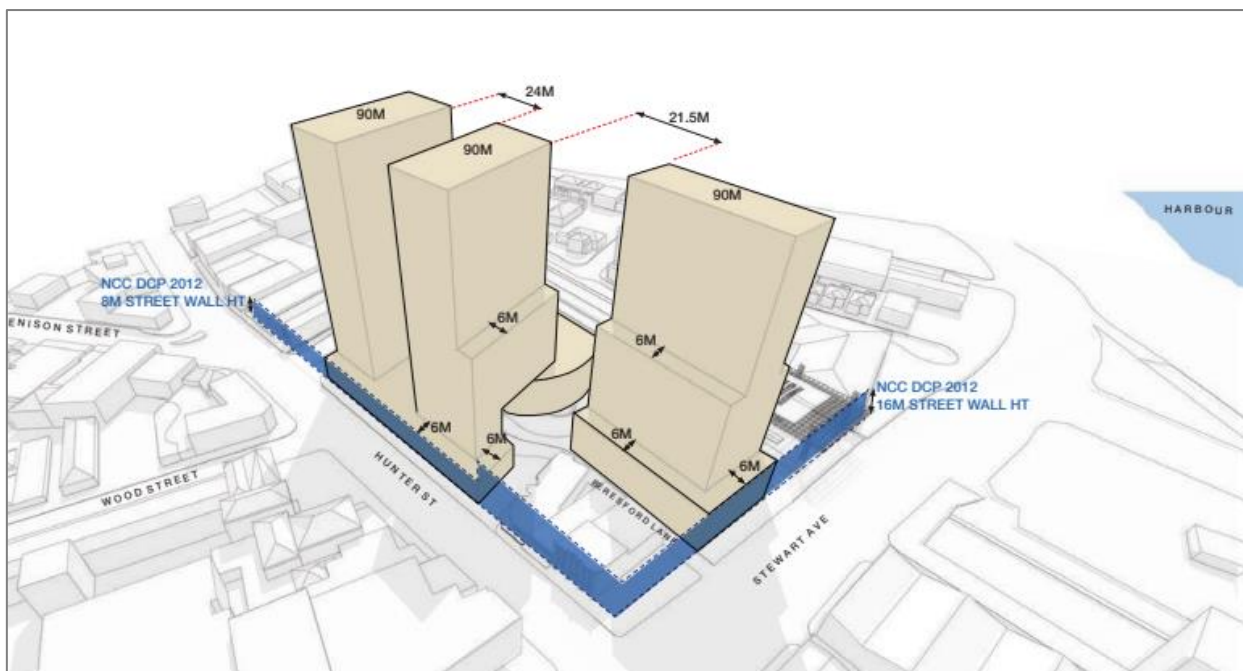
An intensive design excellence process has ensued to arrive at the form and massing for the site; which is optimised to create a superior outcome for the public domain and for its appropriateness in context.

The approach to the site regarding height has been carefully considered to ensure the outcome adheres to the design objectives for the development while also incorporating comments from the UDRP and the DRP. To

achieve the best outcome, the proposal includes the redistribution of area for the taller residential towers from longer floor plates to smaller footprints. The development has created variation between the two buildings through a tapered tower form facing opposite directions, creating a dynamic built form of varying scales between the buildings. These urban design benefits are able to be achieved by providing taller towers and redistributing the GFA loss resulting from the tapered tower form. Whilst the towers exceed the 90m height control, the consistent 3m setback above 16m street wall height is maintained. The proposed height exceedance will therefore have minimal impact when viewed from street level, yet still achieve separation between podium and tower forms.

Figure 7 illustrates the rationale for the previously approved Concept Plan and demonstrates that a strictly compliant DCP and LEP scheme in comparison to the proposed scheme. Full compliance with the prescribed controls would have resulted in a design of three 90m towers, with upper level setbacks and street wall heights that were not considered to be appropriate for the context. The decision to distribute the building mass to more slender residential towers was considered a better design outcome for the site, with a shorter more appropriate commercial building. The slender tower forms act as markers for the major transport interchange and result in built form that allows for daylight access to key public domain areas as well as maximising key views and outlooks for future residential occupants.

Figure 7 Strictly Compliant Building Mass (Source: Bates Smart)



The proposed outcome of the non-compliance allows for an enhanced design, resulting in an elegant composition of volumes. The design outcome allows for increased amenity to apartments, through a tapered built form which increases the of the terrace area for upper-level apartments. The height increase allows additional building features and a higher standard of design, which is desirable due to the dominance of the towers being the tallest element in the skyline.

As previously noted, the Concept Plan Approval contemplates the potential for a height exceedance over the 90m control to facilitate design excellence and to allow differential height between the buildings. The proposed design has incorporated comments from DRP and the UDRP, resulting in a tapered built form and a height

differential between the two towers. The height exceedance has resulted from a re-distribution of gross floor area (GFA) between the two towers to facilitate the dynamic built form, refer to **Figure 8** and **Figure 9-10** below.

Figure 8 Concept Masterplan Adjustments (Source: Bates Smart)

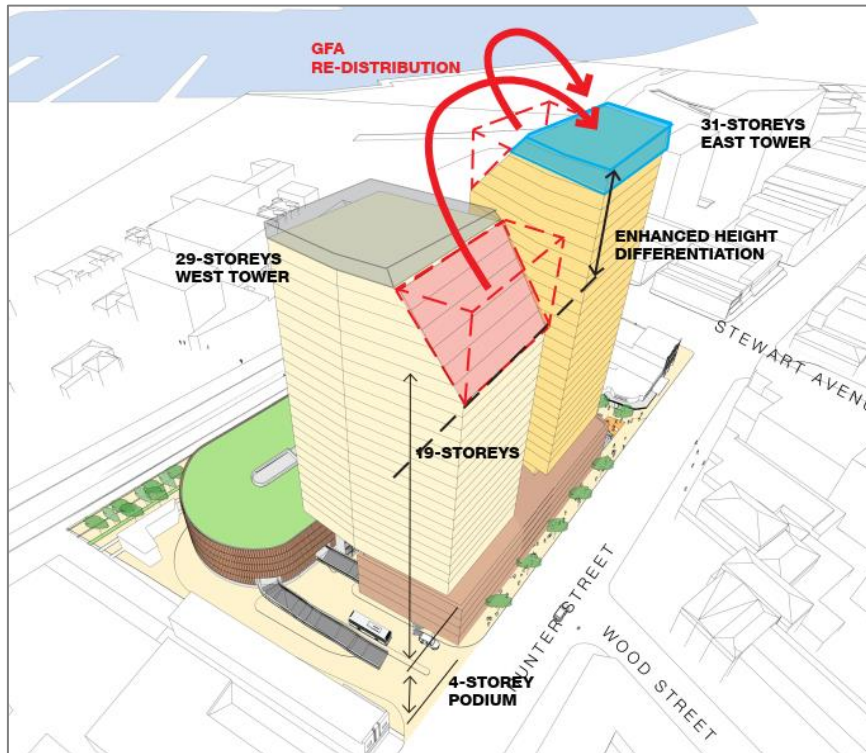


Figure 9 Excerpt of Sections showing Re-Distribution of GFA – East Tower (Source: Bates Smart)

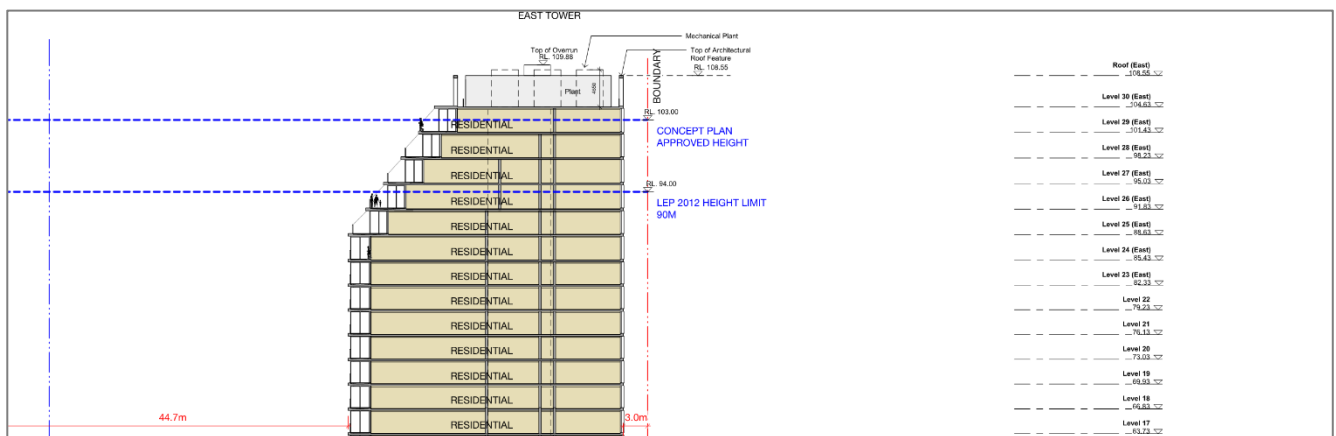
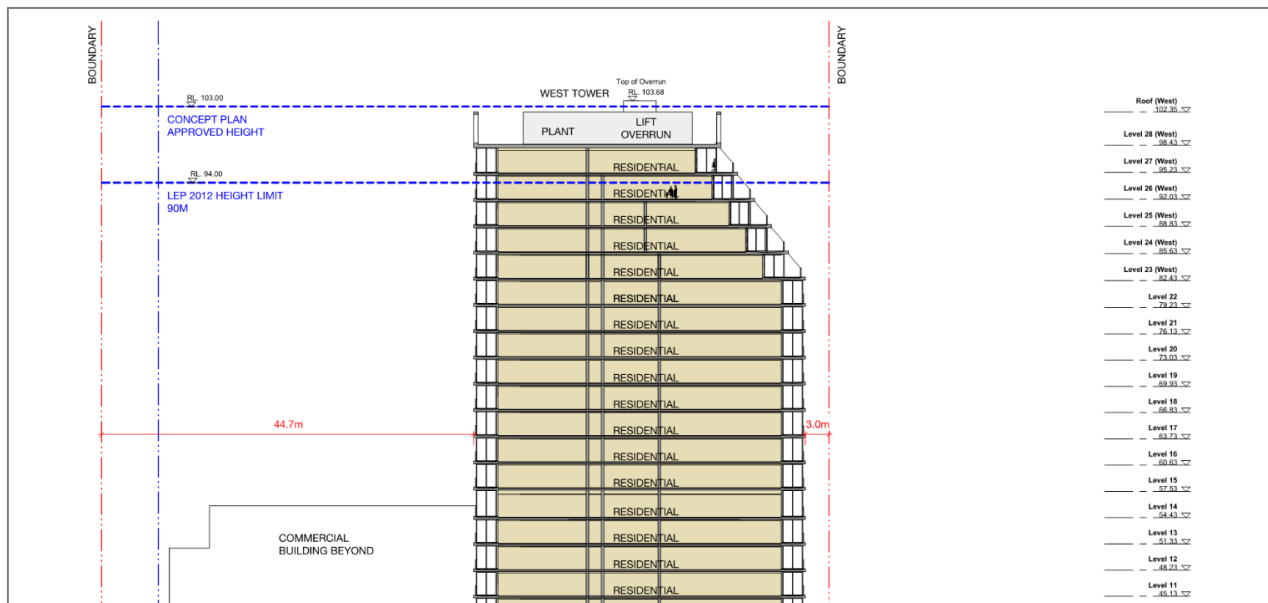


Figure 10 Excerpt of Sections showing Re-Distribution of GFA – West Tower (Source: Bates Smart)



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 design also facilitates disability access to the rooftop area via lift access.

The Concept DA approval considered the previously proposed height of 99m for both towers (RL103), as demonstrated in **Table 2** below. The conditions of the Concept DA approval stated that a variation to the LEP Height would be considered based on merit if it facilitated design excellence for the proposal. The western tower will remain relatively consistent with the proposed height under the concept DA; however, the eastern tower has increased in height to achieve an improved design outcome for the site. The proposal has undergone several design changes taking into consideration Council comments from UDRP and DRP meetings and as a result is considered to facilitate design excellence.

Table 2 Concept DA Height Comparison

Control (from EGL)	Concept DA Plan Height	Proposed Maximum Height (to lift overrun)	Variation to Concept Plan Height	Variation (m) to NLEP	Variation (%) to NLEP
East Tower					
90 metres	RL103 99 metres (from EGL)	RL109.88 106.78 metres (from EGL)	+6.88m	16.78m	18.6%
West Tower					
90 metres	RL103 99 metres (from EGL)	RL103.68 100.58 metres (from EGL)	+0.68 metres	10.58m	11.7%

As demonstrated above, the height exceedance is a direct result on the tapered built form and the subsequent loss of GFA. The additional levels, particularly on the eastern tower, provide additional high quality living options

including four-bedroom apartments resulting in a greater diversity of apartment types and sizes that cater to different household requirements. The additional height does not result in any unreasonable overshadowing or a loss in privacy or views to surrounding developments. The stepped built form provides enhance amenity to the upper level apartments, including a wider terrace and expansive views.

In light of the above, there is considered to be sufficient environmental planning grounds to justify varying the development standard in this instance.

6.3 Public Interest (Clause 4.6(4)(a)(ii))

As demonstrated in this assessment, the proposed development will be in the public interest as it is consistent with the objectives of Clause 4.3 (the height of building development standard) and the objectives of the B3 Zone.

As discussed in section 6.1 above, the proposal is consistent with the objectives of clause 4.3 of the NLEP 2012. The proposed variation has also been considered in accordance with the objectives of the B3 Commercial Core Zone. The objectives of the B3 Commercial Core zone 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 proposal is consistent with the zone objectives for the following reasons:

- It will provide a wide range of land uses that serve the needs of the local and wider community. This proposal is one component of a mixed-use development which incorporates retail, residential and office uses. These uses are compatible with surrounding land uses and strengthen the Newcastle City Centre, particularly in the vicinity of the NTI, active West End and Honeysuckle Foreshore Precincts;
- The development will result in a wide range of employment generating uses, including construction jobs and jobs during the operational phase for both skilled and unskilled workers. The overall site redevelopment will result in a desirable mixed-use precinct to live, work and play in a highly sustainable proposition for the future Civic Centre of Newcastle;
- The site is integrated with the NTI, and the site's intensification will maximise public transport patronage and encourage walking and cycling;
- The development includes three levels of commercial space within a mixed use development;
- The proposal will contribute to strengthening the position of Newcastle as the leading metropolitan city in the area, with the proposal bringing investment opportunities associated with the commercial business spaces. The provision of commercial floor area will likely attract more investment opportunities in the area;

- The proposal will contribute to the sense of place and will reinforce the Newcastle City Centre as an attractive destination for residential and commercial development. Furthermore, the proposed development is in keeping with the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036 strategic direction. Within the Hunter Regional Plan direction 3 states the need to revitalise the Newcastle City Centre and maintain Newcastle as being a leading metropolitan city for the region. The proposal is aligned with these aims and will help in achieving these objectives; and
- The design of the proposal capitalises on opportunities for views toward the harbour to the north-east of the site; CBD views to the east of the site; and the city west and river/wetland views to the north-west and south-west. The design does not impede existing views currently from nearby developments and provides view corridors and through-site link. The towers, due to their height will be highly visible from a number of sites in the locality, however, the slender nature of the towers and their positioning minimises any impacts in this regard, allowing for viewing between structures.

The proposed development responds to the attributes of the site and aims to enhance the value of this prime location. It presents a highly functional, contemporary building that has been carefully planned and designed to afford its future occupants' comfort and amenity; whilst contributing positively to the public domain as a unique and interesting building on a site located adjacent to the Newcastle Interchange. The proposed development achieves the desired future outlook for the revitalisation of Newcastle West and is consistent with recent and approved developments within the area.

The proposed variation is considered justified on the basis that:

- The updated design allows for visual diversity of densities, and is compatible with the character of the locality;
- The proposal meets the objectives of the development control and B3 zone and is a compatible form of development that does not result in unreasonable environmental amenity impact;
- The proposed development will further reinforce the long-term viability of the West End of Newcastle providing high quality residential accommodation close to public transport;
- The development and will have an acceptable level of impact on the heritage value of nearby heritage items and the general heritage conservation area;
- The proposed development has been architecturally designed to present as a family of forms and minimise the overall bulk of the buildings with slender residential towers and smaller floor plates;
- 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 additional building height resulting from the exceedance does not result in any significant impacts on adjoining properties, particularly with respect to overshadowing, loss of privacy and loss of views; and
- The application satisfies other LEP numerical controls, including those pertaining to the city centre, which results in a high-quality development proposal.

This proposal is one component of a mixed-use development which incorporates retail, residential and office uses. These uses are compatible with surrounding land uses and strengthen the Newcastle City Centre, particularly in the vicinity of the NTI, active West End and Honeysuckle Foreshore Precincts. Whilst exceeding the building height standard for the site, the proposal contributes positively to the locality incorporating through-site links which enable view sharing, pedestrian connectivity and built form relief.

The proposal is consistent with the vision of the Newcastle City Centre within the DCP, and the Newcastle Community Strategic Plan 2030. The development has been designed based on the significance of the site being a community-based cooperative with social importance and retains the local recognition, identity and character of the previous use of the site through architectural elements. The development provides high quality buildings and public spaces including active laneways and plazas to create a vibrant location, making a positive contribution to the public domain.

The proposed development represents a high-quality urban design, which seeks to reinvigorate and enhance the West End Precinct of Newcastle City Centre.

6.4 Secretary's Concurrence (Clause 4.6(4)(b))

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.

7 Conclusion

This Clause 4.6 Variation to Development Standard submission has been prepared in response to numerical non-compliance with the development standard for Clause 4.3 – Height of Buildings in NLEP 2012. The extent of non-compliance is considered to be justified having regard to the requirements of clause 4.6 of the NLEP 2012.

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

ASIA PACIFIC OFFICES

ADELAIDE

60 Halifax Street
Adelaide SA 5000
Australia
T: +61 431 516 449

BRISBANE

Level 16, 175 Eagle Street
Brisbane QLD 4000
Australia
T: +61 7 3858 4800
F: +61 7 3858 4801

CANBERRA

GPO 410
Canberra ACT 2600
Australia
T: +61 2 6287 0800
F: +61 2 9427 8200

DARWIN

Unit 5, 21 Parap Road
Parap NT 0820
Australia
T: +61 8 8998 0100
F: +61 8 9370 0101

GOLD COAST

Level 2, 194 Varsity Parade
Varsity Lakes QLD 4227
Australia
M: +61 438 763 516

MACKAY

21 River Street
Mackay QLD 4740
Australia
T: +61 7 3181 3300

MELBOURNE

Level 11, 176 Wellington Parade
East Melbourne VIC 3002
Australia
T: +61 3 9249 9400
F: +61 3 9249 9499

NEWCASTLE CBD

Suite 2B, 125 Bull Street
Newcastle West NSW 2302
Australia
T: +61 2 4940 0442

NEWCASTLE

10 Kings Road
New Lambton NSW 2305
Australia
T: +61 2 4037 3200
F: +61 2 4037 3201

PERTH

Grd Floor, 503 Murray Street
Perth WA 6000
Australia
T: +61 8 9422 5900
F: +61 8 9422 5901

SYDNEY

Tenancy 202 Submarine School
Sub Base Platypus
120 High Street
North Sydney NSW 2060
Australia
T: +61 2 9427 8100
F: +61 2 9427 8200

TOWNSVILLE

12 Cannan Street
South Townsville QLD 4810
Australia
T: +61 7 4722 8000
F: +61 7 4722 8001

WOLLONGONG

Level 1, The Central Building
UoW Innovation Campus
North Wollongong NSW 2500
Australia
T: +61 2 4249 1000

AUCKLAND

Level 4, 12 O'Connell Street
Auckland 1010
New Zealand
T: 0800 757 695

NELSON

6/A Cambridge Street
Richmond, Nelson 7020
New Zealand
T: +64 274 898 628

WELLINGTON

12A Waterloo Quay
Wellington 6011
New Zealand
T: +64 2181 7186

SINGAPORE

39b Craig Road
Singapore 089677
T: +65 6822 2203