

CLAUSE 4.6 VARIATION - SEPARATION

**854-874 Hunter Street
Newcastle West NSW 2302**

Prepared for:
DOMA Group

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DOCUMENT CONTROL

Reference	Date	Prepared	Checked	Authorised
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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 854-874 Hunter Street in Newcastle West NSW 2302.

The development control sought to be varied is contained in Clause 7.4 of the NLEP 2012, which relates to building separation for development within the Newcastle City Centre.

An assessment of this variation, and justification for contravention of the building separation 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 separation development standard.

2 Background – Previous Approvals

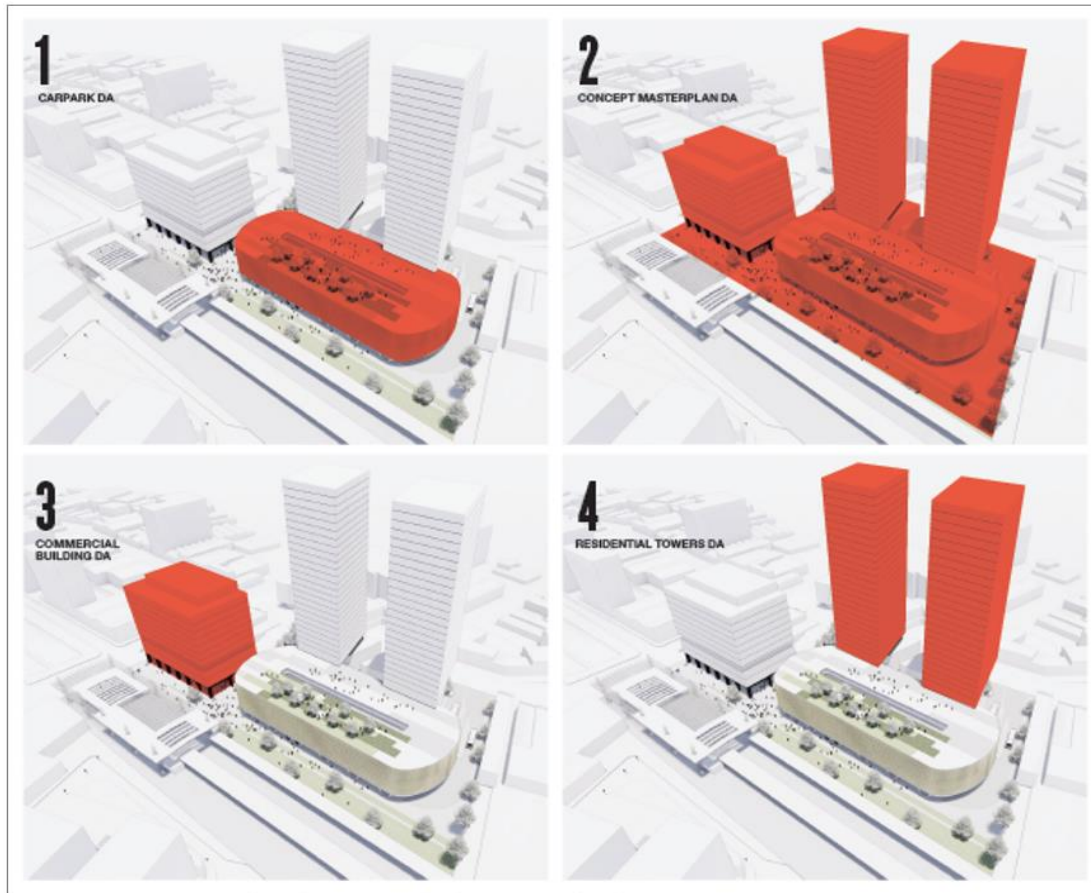
The site is locally known as ‘The Store’, which is a reference to the heritage-listed building that has existed on the site for many years. The site benefits from a Part 5 approval for “railway infrastructure”, which permitted the construction of a ground level Newcastle Transport Interchange (NTI) and 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 including five (5) retail tenancies (ranging from 69-158sqm), a commercial lobby, a residential lobby and service areas;
- Commercial tenancies (office) on Levels 1-2, ranging from 966-1070sqm;
- 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;
 - Internal lobby/lounge areas;
- Level 5 Mezzanine, including 133 individual storage cages;

- 352 residential apartments on Levels 5-29, with 181 units in the western tower and 171 units 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.
- Mechanical plant zones and communal terrace areas on Level 28 (Western Tower) and Level 30 (eastern tower);
- Vehicular and service access via Beresford Lane;
- Associated ancillary works, as detailed on the architectural plans.

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 separation 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 separation 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 Standards to be Varied

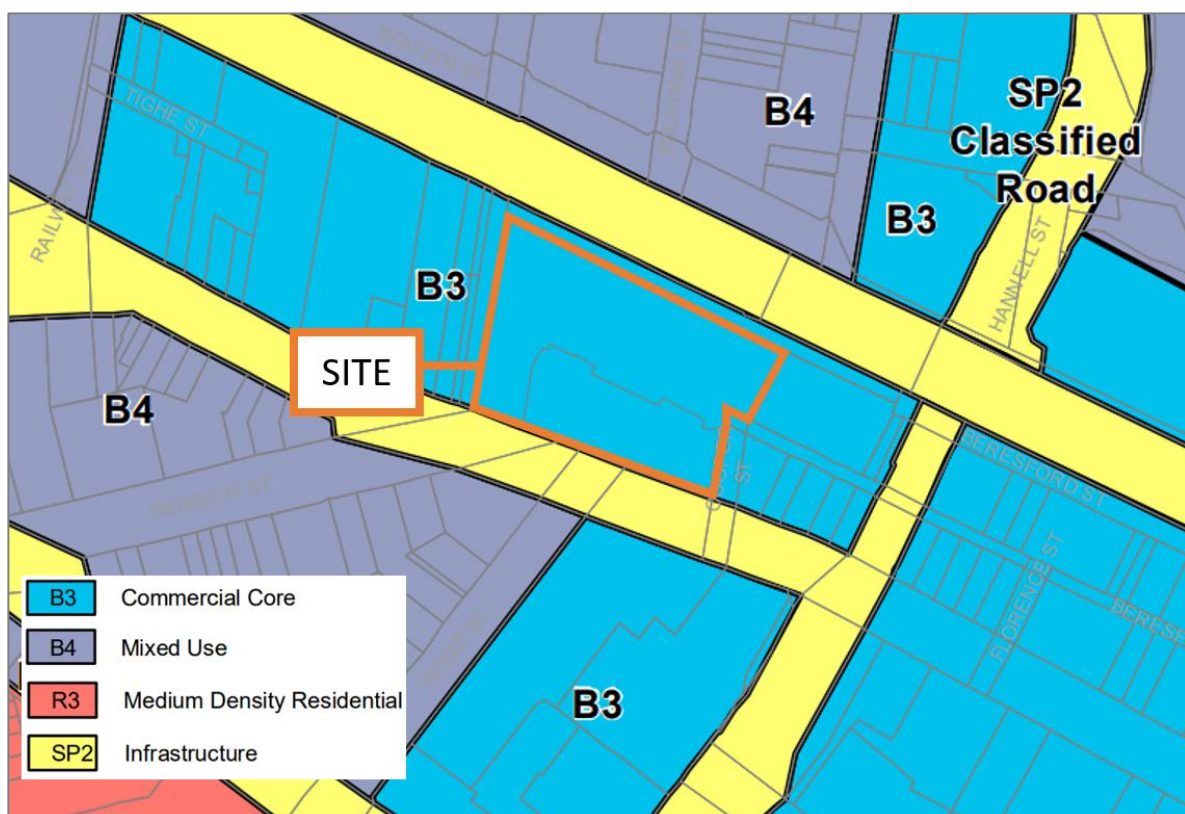
What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012 (NLEP 2012).

What is the zoning of the land?

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

Figure 2 Land Zoning Map Extract 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 separation development standard contained in Clause 7.4 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 7.4 of the NLEP 2021 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?

Clause 7.4 does not include specific objectives, however the objectives of 'Part 7 Additional Local Provisions - Newcastle City Centre' of the NLEP 2012 are:

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

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

Clause 7.4 requires buildings within the Newcastle City Centre to be separated by a minimum of 24 metres once the building is above 45 metres in height. Clause 7.4 is extracted below:

7.4 Building separation

(1) A building on land to which this Part applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.

(2) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.

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

Clause 7.4 requires that new buildings are not within 24m of another building, at a height of 45m above ground level. The adjoining sites located on the corner of Stewart Avenue and Hunter Street (834-850 Hunter Street, Newcastle West) consist of two-to-three storey commercial buildings and as such do not themselves reach the 45m limit specified in Clause 7.4.

The proposal provides a 16.4m building separation distance between the proposed residential tower east and the adjoining commercial building which was built as part of Stage 3 under the Concept Plan Approval. Due to the dynamic shape of the two proposed residential towers, the building separation proposed between the residential tower east and the residential tower west ranges from a minimum of 17.2m and a maximum of 27.9m.

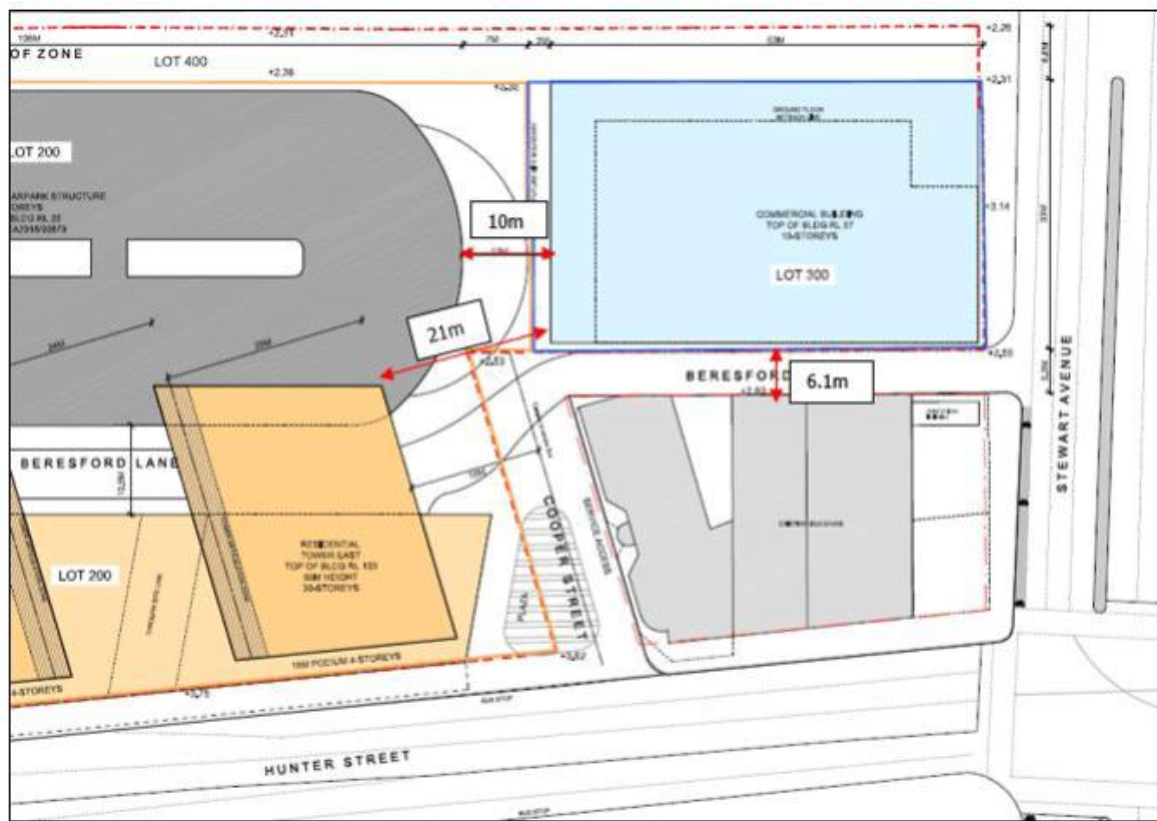
The proposed building separation distances are illustrated in **Figure 3** below.

At the time the Concept Plan Approval was determined, the Regional Planning Panel (as consent authority) approved a variation of the building separation development standard under a previous clause 4.6 variation request with respect to the separation between the residential tower east and the commercial building and multi-storey carpark. The Panel considered that the proposed separation at an oblique angle limited adverse interface outcomes and mitigated privacy issues. **Figure 4** demonstrates the approved separation distances under the Concept Plan Approval (DA2018/01109).

Figure 3 Proposed Building Separation Distances



Figure 4 Approved Concept DA Building Separation Distances (DA 2018/01109)



The below tables provide a comparison between the proposed building separation distances sought as part of the current DA, as compared with the development standard in clause 7.4 of the NLEP 2012 and the approved Concept DA building separation distances.

Table 1 Proposed Building Separation Numeric Differences

Clause	Control	Proposed	Variation
Clause 7.4 – Building Separation	24m between the eastern residential tower and commercial building (Stage 3 development)	16.4m	32%
	24m between the eastern tower and the western tower	Maximum: 27.9m Minimum: 17.2m	Compliant. 28%

Table 2 Approved Concept DA Separation Numeric Distances (DA 2018/01109)

Clause	Control	Approved separation under Concept Plan Approval	Variation
Clause 7.4 – Building Separation	24m between the eastern residential tower and commercial building (Stage 3 development)	21m	12.5%
	24m between the eastern tower and the western tower	24m	Compliant.

As demonstrated above, the building separation distances proposed in this DA vary from both the development standard in clause 7.4 of the NLEP 2012 and from the building separation distances approved under the Concept Plan Approval. However, the proposed variations are considered to be justified.

The building separation non-compliance has arisen due to the rotation of the building floorplates providing a splayed or angled orientation. Although the separation results in a non-compliance at the southern point of the two towers, separation is increased and compliant at the mid-point and northern point of the towers. A variation beyond the approved concept plan is being sought due to the improved amenity resulting from the updated design, including improved outlook, solar access, and privacy to the apartments.

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 separation development standard in Clause 7.4 of the NLEP 2012.

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.

It is noted that there are no specific objectives related to Clause 7.4, therefore the proposal has been assessed against the objectives of the local provisions for the Newcastle City Centre (Clause 7.1).

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

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

The proposed Residential Towers are one component of the staged development of 'The Store' site, injecting approximately \$200 million within the Newcastle City Centre. The proposed development will contribute to meeting current and future demand for commercial/retail use and apartment living within the Newcastle City Centre area. The redevelopment of the site will transform the West End of Newcastle providing high-quality commercial floor space and a substantial number of one, two, three and four-bedroom apartments. The commercial aspects will attract public and private sector users into the revitalised Newcastle City Centre.

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

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

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

The additional office floor space will encourage employment and economic growth consistent with Outcome 4 'Improve connections to jobs, services and recreation' of the Metro Plan. The proposal will continue to support Newcastle remaining a great place to live and work with fast, efficient, and reliable transport options.

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

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

The Store site is the gateway into Newcastle for people traveling to the City Centre via heavy rail; the redevelopment will transform the site into a Key Site for Newcastle. The development provides diverse housing and facilities to suite the existing and future social mix of the area including a range of apartment sizes and a variety of communal spaces and commercial opportunity. The buildings have included architectural elements to respond to the heritage significance and cultural history of the area, while also performing functional and environmental purposes that will provide excellent amenity to the local population. The proposal also incorporates specific features and elements to enhance sustainability including passive solar design and natural ventilation.

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

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

The Metro Plan states that by 2036, 16,800 new dwellings are expected to be required in the Newcastle LGA to cater for the population growth, of which 60% is expected to be as a result of infill development. The proposal will contribute a substantial number of apartments within the Metro Heart.

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

Prior to lodgement of this Development Application, advice was sought from the NSW Government Architects Office (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 has already undergone a design competition-like process through the Hunter Development Corporation competitive tender process. In February 2018, the NSWGA advised that a waiver had been granted and that there was no need for a design competition to be held for this redevelopment project.

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

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

As stated above, the proposed design for the site was the winning entrant in a formal design competition held by HDC. Since its selection, the design has evolved with input from the established 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.

The residential towers are the final component of the redevelopment of the site and have undergone several design changes taking into consideration Council comments from UDRP and DRP meetings. The design has achieved a built form that is appropriate for the site and the buildings' purpose, in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. It is considered that the proposed development has reached a high-quality urban design outcome for the site, with improved amenities and a scale, bulk and height appropriate to the existing and desired future character of the area. The high-quality built form and ground floor retail tenancies contribute to the character of surrounding streetscapes, while activating the building frontages and engaging with the adjacent public domain.

The angled orientation of the building floorplates that have resulted from the detailed design process improves the visual relationship of the two towers in and creates a more sculptural urban design. The orientation of the creates a more interesting visual appearance, contributing the significance of the site.

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

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

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

The site is not identified as being located within an environmental sensitive area. The site is located within a heritage conservation area and previously contained a heritage item of local significance, being the Former Newcastle Co-operative Store. The proposed development responds to the heritage significance of surrounding items, incorporating similar materials and colours into the built elements. The podium has been designed having regard to a number of important contextual and historic references from both the previous The Store buildings on site, as well as surrounding heritage buildings. The proposal is considered to retain and respect the sites local recognition, identity and character in a more contemporary fashion.

A Statement of Heritage Impact (SoHI) has been prepared by a qualified heritage consultant and is provided at Appendix J to the SEE. The report assesses the impact of the proposed works, finds the proposal to be acceptable and concludes that the residential towers will deliver a wide range of positive outcomes for the West End and wider Newcastle City Centre Heritage Conservation Area.

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

The proposed Residential Tower component of 'The Store' redevelopment has a vision to create a mixed-use hub that is a catalyst for new urban development in and around Wickham. It is considered the proposal achieves the above objective through street activation, good public domain design and communal spaces. The proposal has been carefully designed to consider Crime-prevention through Environmental Design (CPTED) principles and these principles have been comprehensively addressed in Appendix P of the SEE.

With specific regard to the proposed changes to the approved concept plan, the change to the geometry of the towers is the result of further design resolution, with the input of the UDRP and DRP.

It is important to note, that an intensive design excellence process has ensued to arrive at the form and massing for the site; which has been tested and optimised to create a superior outcome for the public domain and for its appropriateness in context. During the assessment process of the Concept stage of the development, the following comments were stated during the 18 September 2018 UDRP meeting:

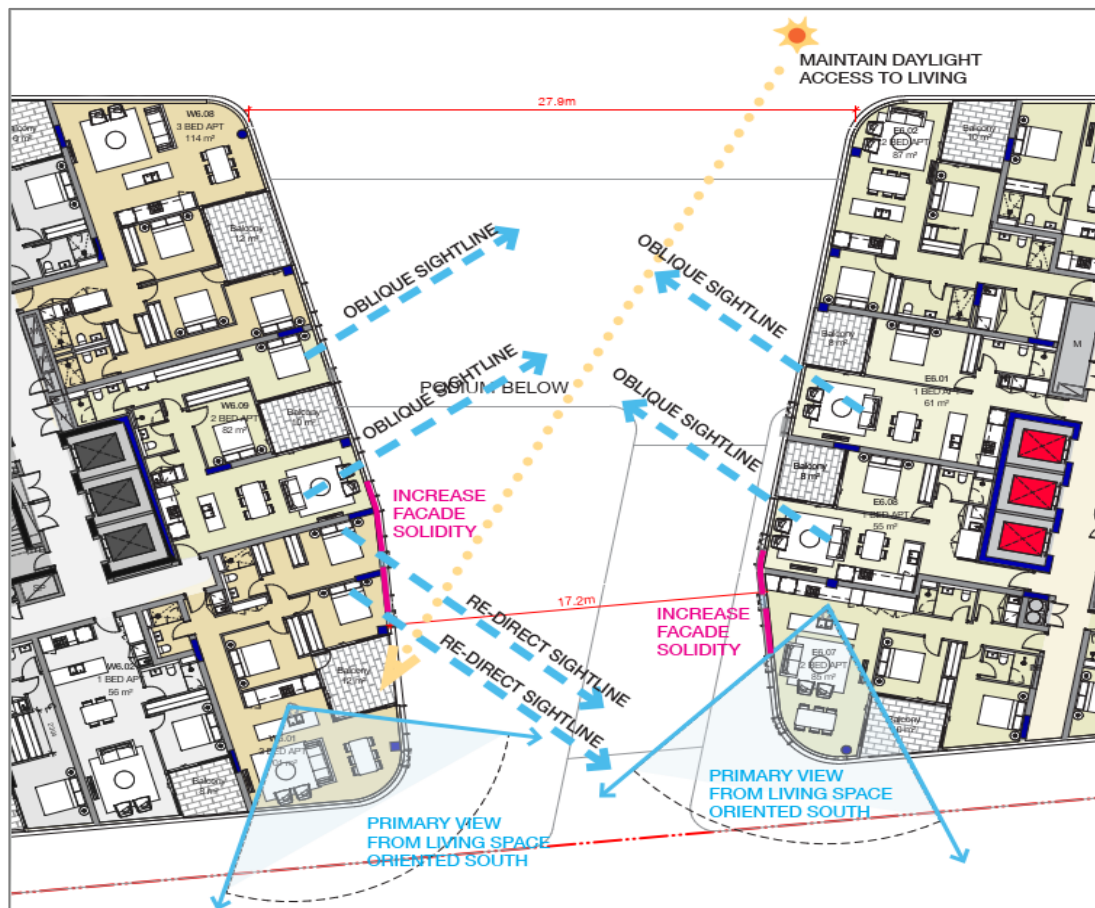
'The issue of outlook from the overlapping towers requires further assessment. There are opportunities to adjust the orientation of one or both towers to maximize outlook and to achieve the optimum orientation for solar access to apartments'

Following the above comments from the UDRP and DRP, a review process for the development included exploring an altered building orientation for the two towers. The comments were taken into consideration, resulting in the improved design. The splayed orientation has been incorporated to achieve the above improvements to amenity for both of the towers, including improved solar access and amenity to the apartments. Privacy is also increase as a result, with increased separation and direct overlooking from apartments on the eastern side of the western towers, and the western side of the eastern tower.

During the DRP meeting held on the 15 May 2018 for the concept development, it was suggested that the towers be 'revisited to optimise views and SEPP 65 controls.' It is considered the proposed design results in increased compliance with the SEPP 65 design quality principles, including increasing internal and external amenity for residents in improving access to sunlight, outlook and visual and acoustic privacy. Solar access, outlook and a variation in height between the two buildings. Detailed analysis of the privacy separation is included in the Design Report located at Appendix E of the submitted development application.

Figure 5 the proposal will adequately provide visual privacy between residential apartments.

Figure 5 Proposed Oblique Sightlines



Following the above comments from the UDRP and DRP, a review process for the development included exploring an altered building orientation for the two towers. The final design now incorporates a tapered tower form with angles building plates and a variation in height between each building, to create two dynamic built forms of varying scales. The amended design of the towers results in the towers being less 'visually assertive' when viewed from the street. Although the building separation is altered from that approved under the Concept DA (DA2018/01109), it is considered the development is providing an increased design outcome for the site.

The towers are now proposed to have a splayed orientation 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.

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 building separation development standard.

The proposed variation does not result in any unacceptable environmental impacts and provides additional benefits to the streetscape and public domain that would not be realised if the development complied strictly with the control. The building orientation increases the visual interest of the development and the prominence of the towers in the skyline. The built form of the towers achieves a design that is appropriate to the desired future character of the area and will become a site of significance for the precinct.

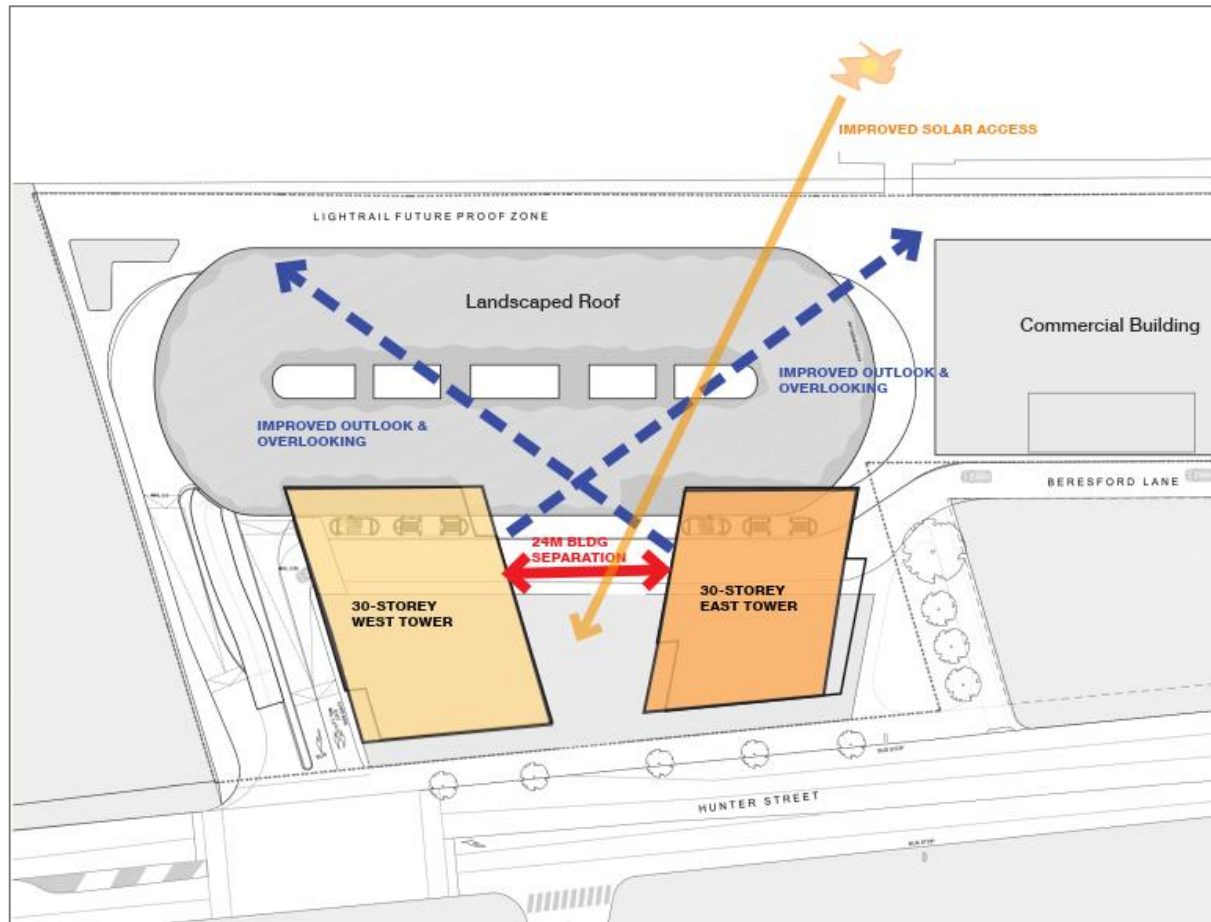
As a result of the detailed design process that has occurred during the preparation of the DA, there is a partial non-compliance to part of the interface between the residential towers. However, this setback widens to 27.9 metres at the northern extent of the residential towers. This widening of the setback to the north has been incorporated into the design to improve solar access between the towers, and to enhance amenity to the relevant apartments.

In relation to the reduced setback between the eastern residential tower and the recently constructed commercial building (Stage 3 of the Concept Plan Approval), it is noted that only the very upper portion of the upper level of the commercial building (Level 11) exceeds 45m in height (in addition to the plant level, which does not include windows and is set back from the main building façade at the west, north and eastern edges). The remaining floor levels for commercial use are less than 45m high. Accordingly, the proposed reduced setback does not create any significant additional non-compliance or associated impacts.

Outlook and Solar Access

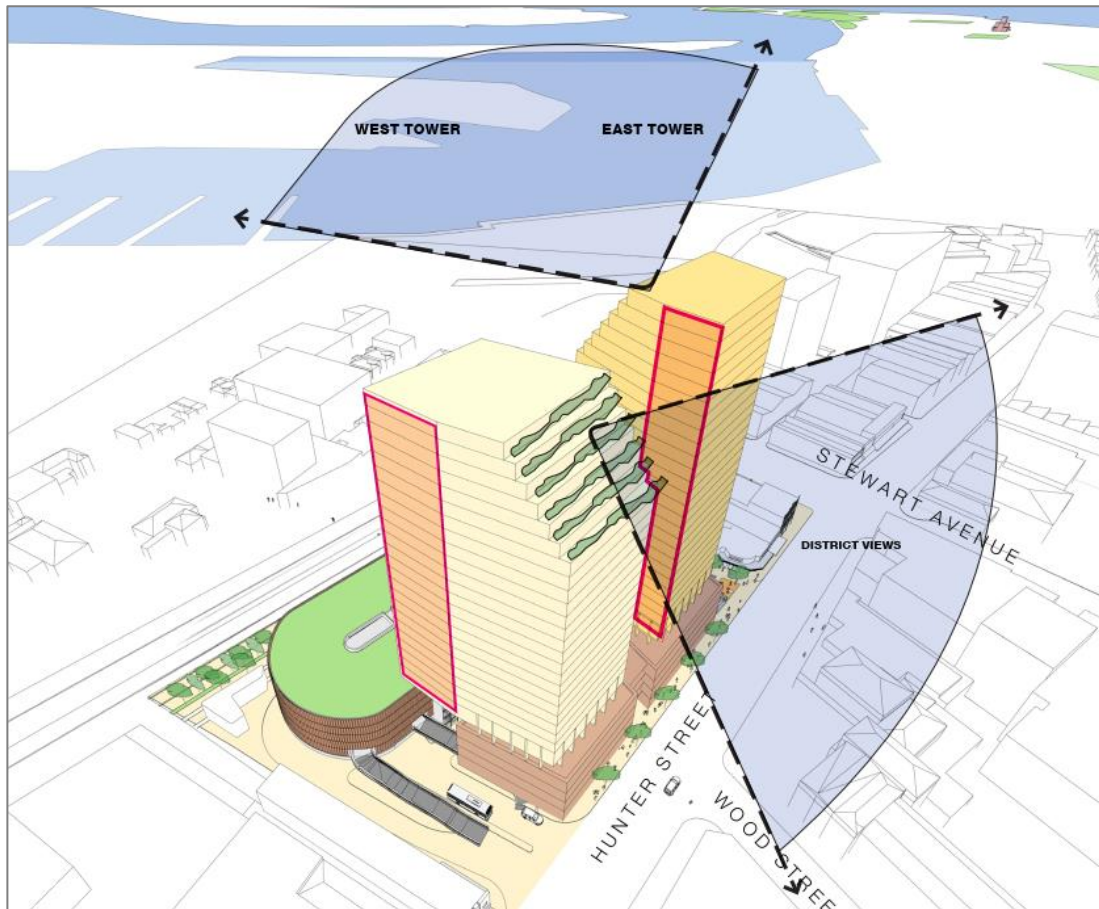
The design of the residential towers has been refined since the Concept Approval (DA2018/01109) to now incorporate an angled or splayed orientation of the building footprint. This updated design opens the floorplates to the north and improves the views past each building. The design improves the outlook from apartments, particularly for apartments located at the eastern side of the western tower and the western side of the east tower. As demonstrated in **Figure 6** below, the splayed orientation of the base means that the apartments will enjoy improved sunshine and extensive views within the private open space and living areas of the apartments.

Figure 6 Illustration of Proposed Outlook and Solar Access (Source: Bates Smart)



The curved, tapered built form of the buildings increases the building separation, particularly between private open spaces of the apartments. The stepped form of the upper levels of the building enhances the amenity of the upper level apartments and allows for larger, terrace style balconies and increases the outlook over the city. This is demonstrated in **Figure 7** below.

Figure 7 Tapered Built Form (Source: Bates Smarts)



During the UDRP meeting held in May 2021, it was concluded that the 'splayed and rotated relationship of the towers avoiding direct overlooking and giving a median separation of 24m is supported'. It is considered this updated design provides a better overall outcome for the site when compared to the Concept DA approval.

Eastern Residential Tower and the Commercial Building

In relation to the reduced setback between the eastern residential tower and the recently constructed commercial building, it is noted that only the very upper portion of the upper level of the commercial building (Level 11) exceeds 45m in height (in addition to the plant level, which does not include windows and is set back from the main building façade at the west, north and eastern edges). The remaining floor levels for commercial use are less than 45m high.

Notwithstanding, the relationship between the commercial building and eastern residential tower has been carefully considered. The positioning and bulk and scale has undergone significant modelling to ensure the proposal delivers acceptable outcomes.

It is acknowledged that the intent of the building separation development standard is to ensure adequate distance is provided between developments to improve amenity, increase solar access, reduce noise issues and limit overlooking, between residential and non-residential uses and with boundaries to neighbours. It is considered that the full 24m building separation distance on all areas of the residential tower is not necessary, as the interrelationship between the two buildings and the proposed arrangement achieves an improved design outcome for the site. The proposed building orientation improves the amenity of the development, with the

angled design of the towers opening the building floorplates to the north, enhancing views, solar orientation, privacy and ventilation to the apartments.

Whilst the proposed development does not meet the building separation requirements specified in Clause 7.4 of NLEP 2012, the proposal has considered the future development potential of adjoining sites and contributes positively to the locality incorporating through-site links which enable view sharing, pedestrian connectivity and built form relief.

Bates Smart recognises the importance of the future development potential of adjacent sites, namely 834, 840, 844 and 850 Hunter Street. The proposed residential towers comply with the required building separation to the existing adjoining buildings. As noted on the plans, the revised design provides a 12-metre setback to the median line of Cooper Street, and accordingly, should these adjoining sites be amalgamated and redeveloped, a shared setback would facilitate compliance with the 24 metre building separation requirement.

The proposed design of the residential towers will enable a high quality, architecturally designed building to be constructed with an active ground floor presence for the benefit of the community and high amenity apartment living opportunity. The objectives of the Newcastle City Centre have been met by the proposed development. In light of this, there is considered to be sufficient environmental planning grounds to justify varying the development standards 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 7.1 of the NLEP 2012 and the objectives of the B3 zone.

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 B3 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 its 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 underlying intent of 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 building separation distance resulting from non-compliance does not result in any significant impacts on adjoining properties, particularly with respect to overshadowing, loss of privacy and loss of views;
- 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 floorplates; 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 separation 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. It is noted that the building separation non-compliance is the direct result of achieving an improved and more dynamic design, that will ensure that the site is a future icon in the Newcastle cityscape. The proposal will not result in any unreasonable impact on amenity or any significant adverse environmental impacts as a result of the variations, which have been arrived at after a design excellence process that involved testing and amending the design to achieve the most appropriate massing of development for the site.

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 7.4 – Building Separation 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.

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