

Our Ref: 17NEW0156

1 November 2019

The General Manager

City of Newcastle

12 Stewart Avenue,

Newcastle NSW 2300

Submitted via email: djaeger@ncc.nsw.gov.au

Dear Damian,

RE: DA2019-00663 43 Station Street, Wickham NSW 2293

We are writing to you in response to the Request for Information (RFI) dated 23 October 2019 received from the City of Newcastle. The request outlined further information was required on several issues which have been responded to below or have been provided as attachments to this letter.

It is understood the following issues have been resolved or are being assessed:

- (a) City of Newcastle funding
- (b) Parking – one car parking space will be dedicated to the commercial unit and the remainder will be dedicated to the tenants.
- (c) State Environmental Planning Policy – (Affordable Rental Housing) 2009 provisions.
- (d) Apartment Design Guideline sections have now been addressed.
- (e) Land use has been confirmed – commercial office space.
- (f) Waste – currently under Council assessment.
- (g) Services and air-conditioning have been resolved.
- (h) Acoustic assessment has been accepted.

The following contains the response to the outstanding issues. We expect that this information will also be helpful for the UDCG to view, particularly regarding the height variation, isolated lots and setbacks.

1. Clause 4.6 variation to Height of Buildings

A revised Clause 4.6 variation to Height of Buildings has been provided. We consider that this will now satisfy Council and justify the variation sought.

2. Setbacks and Isolated Lots

History and Context of land purchase

The current ownership of the lots within the block are shown in Figure 1. The subject site shown in dark blue is surrounded to the north and east by privately owned lots. To the west and north-west are lots privately owned, and lots owned by Land and Housing New South Wales.

Land and Housing New South Wales (Land and Housing NSW) is a State Government owned entity which oversees the provision of social housing in New South Wales. Land and Housing NSW is not affiliated with Compass Housing Services (Compass).

In 2018, Compass was provided the opportunity to acquire a lot from Land and Housing NSW, 43 Station Street, Wickham (the subject site). Funding was also provided by the formally known Family and Community Services, now known as the Department of Communities and Justice under a scheme to support the development of affordable housing. There was no opportunity afforded around the sale of the lots to the west as they continue to be under the Land and Housing NSW portfolio.

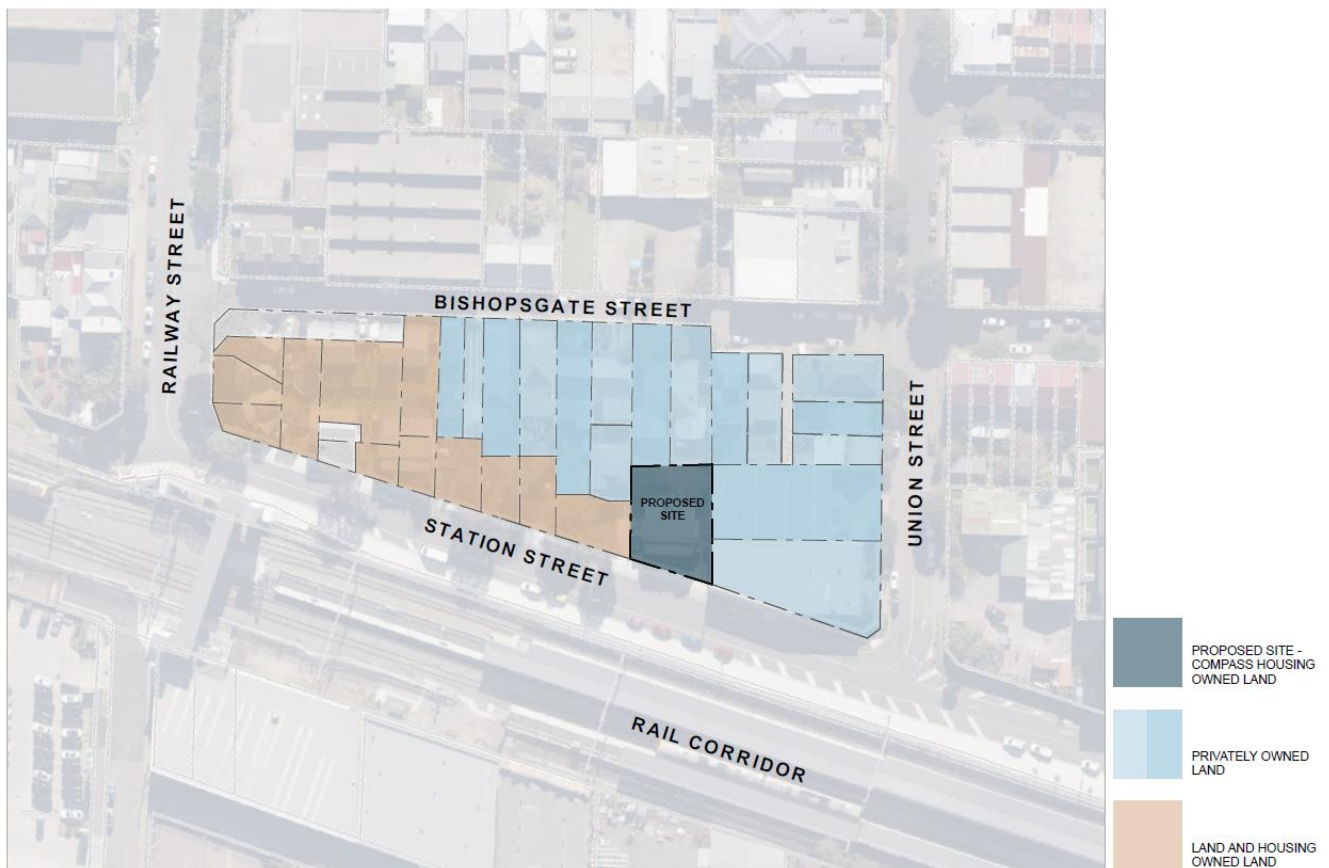


Figure 1: Current lot ownership plan (CKDS, 2019)

Proposed streetscape and setbacks

Within the Wickham Master Plan 2017 (WMP) and Newcastle Development Control Plan 2012 (DCP) a 0m setback on Station Street is allowed for the eastern lot. The subject site and the western lots facing Station Street are required to have a 2m setback.

The proposal includes a 0m and 2m setback to Station Street. The 0m setback is to the east, consistent with the neighbouring lot and the 2m setback is provided to the west to continue the transition to the 2m setback. The 2m setback on site reinforces the 2m setback for the future western properties if they redevelop.

The front of the block to Station Street is approximately 149m. The eastern block with the 0m setback is 35m and the remaining lots make a total of 114m. This results in a desired 23% 0m setback and 77% 2m setback for the envisioned block.

The proposed development would change this to a minor extent resulting in 32% being at 0m and the remaining 68% at 2m. This is not a large variation and considered in the context it will not seem out of place considering the 0m on site aligns with the existing building to the east and what could potentially be built there in the future.

History of designs development

On Tuesday 4 July 2017 Compass Housing Services submitted a tender under Contract 2017/048E for the Provision of AHU's (Affordable Housing Units) for Newcastle LGA. Under the proposal Newcastle Council would contribute \$3.01M in funding to the project via its Building Better Cities Fund and Compass Housing would contribute the balance.

On Tuesday 1 May 2018 at Newcastle Council's Ordinary Council Meeting (Item 6 on the agenda), Council resolved unanimously to accept Compass Housing's tender and contribute \$3.01M in funding from the BBC Housing Program (subject to Compass Housing entering into a funding agreement with Council). The building design included in the tender was that in Figure 2. That design was accepted even though it was shown to be over the building height limit and does not comply with the front, side or street wall setbacks.

The design was revised following the tender design to provide a better aesthetic outcome and to be more consistent with the controls, however contained the same number of units. A Pre-DA Meeting held on 23 January 2019 and a pre-lodgement Urban Design Consultative Group (UDCH) Meeting was held on 21 March 2019.

The key issues of the Pre-DA were:

- Street wall and front setbacks
- Side boundary setbacks
- Height



The front setback was considered potentially acceptable due to the street activation and connection it provides Station Street. The street wall was not supported, in response the architect made changes to the materials and the upper levels had glass handrails and lighter materials included to aide in creating an illusion of a greater setback. The height remained unchanged until the UDCG meeting. Due to the requirement to maintain the internal unit sizes and needing to maximise the number of affordable units provided the location of the street wall was not changed.

The UDCG key suggestions were:

- The height of the building should be reduced with the exception of the communal open space which should be repositioned to be in the central third of the building.
- Consideration should be given to a pergola over the carparking at the rear with a climber to help soften the building for residents and neighbours.
- Consideration to dropping the floor level of the carpark and café to be at ground level, improving accessibility and the relationship to the neighbouring buildings.

In response to the comments from both the Pre-DA and UDCG meeting the top floor unit (No.17) was removed and the communal space was centrally located. The walls were designed to be open, so the structure was open and not bulky. This still encroached above the building height limit; however, it was generally supported by the UDCG so that communal rooftop space was provided. A pergola was added above the carparking that allows for vines and climbing plants and the floor level of the car park and foyer was reduced to improve accessibility.

The UDCG meeting minutes summarized:

'Subject to addressing the above issues, the Group remains broadly supportive of the quality of the design for the development, which has good potential to provide high quality, amenable accommodation'.

Prior to lodgement the landscaping was addressed in greater detail as it was clear that it was not able to meet the minimum requirement of the DCP. Trees, grasses and shrubs were added to the ground level where possible, particularly the north to soften the car park and provide a nice outlook for the proposed building and the neighbours. The communal space on the roof provided the greatest opportunity for planting and a communal garden was included providing a space dedicated to social interaction and landscaping.

Post lodgement amendment were requested by the flooding engineers of Council to revise the floor levels up to 2.2m AHD. These changes were made and with some reductions in the internal ceiling heights between floors the overall height of the building was reduced further.

At present the resulting main non-compliance of the building are contained in the following table.

Control	Policy	Comment
Height of Building	LEP	A Clause 4.6 variation has been provided. The exceedance is for the open walled covered structure of the communal rooftop area and the lift overrun. The structure is considered a positive



Control	Policy	Comment
		contribution to the building and adds visual interest. It also supplements the landscaped area which is not able to be provided on the ground level. Considering the envisaged height for the future of Wickham, the strict compliance with the building height limit is considered unnecessary and unreasonable.
Street Setback	DCP/WMP	The lower level is required to have a 2m front setback. the building provides a 0m and 2m front setback. as discussed previously in this letter, the 0m matches with the building to the east and then transitions to 2m to the west to continue the 2m desired along the western portion of the block.
Street Wall	DCP	The street wall provides a 2m setback over 12m rather than 6m. adhering to the 6m would result in reduced amenity for the units and less affordable housing units. The reduced setback is not considered to have a negative effect on the developing streetscape particularly when considering there are no buildings on the southern side of Station Street. The reduction will not result in a feeling of closeness along the street though results in the ability to have a larger setback to the north for optimal solar orientation which is considered a more desirable outcome.

It is considered that many of the controls within the WMP and DCP were developed with larger building densities in mind. As discussed in the following sections, it is apparent that it is not feasible to expect future development to strictly adhere to these controls considering the existing context. The block the site sits within is made up of many individually owned lots that would require a high number of lots to consolidate in order to facilitate the vision in the WMP. This is not considered to be reasonable or feasible and thus the best design possible to meet the developing streetscape and needs of affordable housing tenants has been provided.

It is important to note that the WMP also identified that the adjoining lots, due to size and fragmented ownership, were unlikely to be developed.





Figure 2: Original design that tender was awarded for (CKDS, 2018)

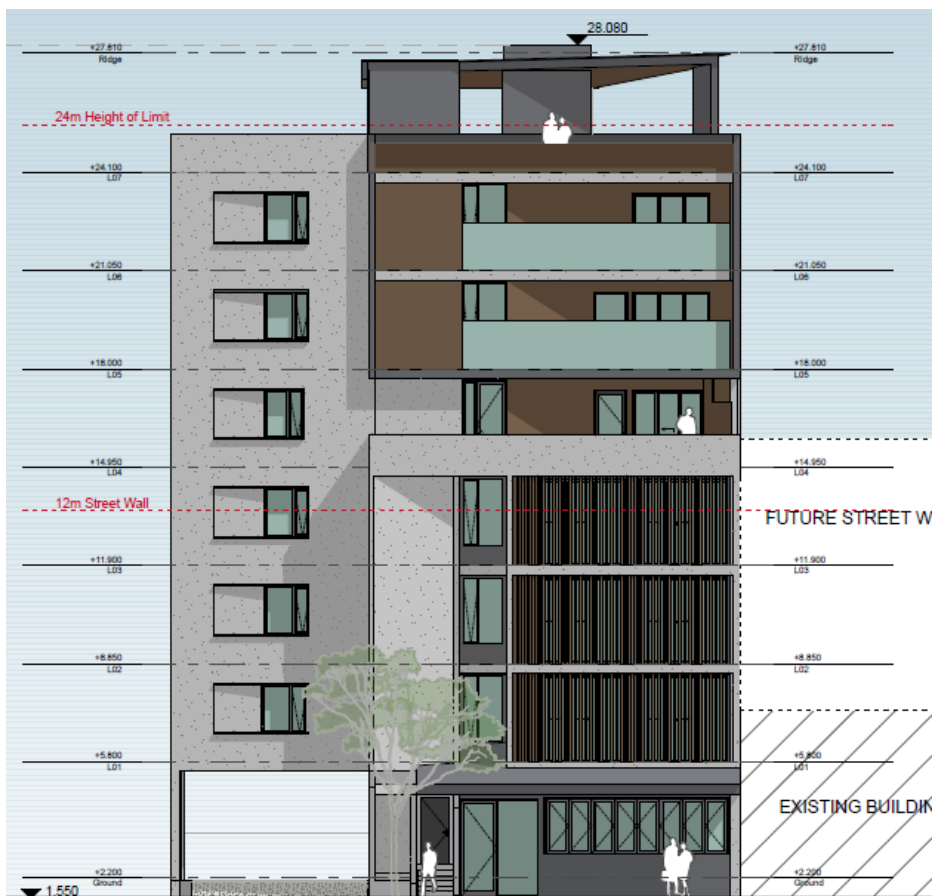


Figure 3: Proposed design (CKDS, 2019).

Wickham Masterplan

The subject site sits within the Rail Edge Precinct in the WMP. The Rail Edge Precinct is envisioned to provide:

“an interface to the emerging commercial core of the Newcastle City Centre (in Newcastle West) through provision of mixed-use development. The precinct capitalises on its location adjacent to the ‘Newcastle Transport Interchange’ and the potential pedestrian trade generated by providing ground level commercial uses along Railway, Union, Wickham, and Charles Streets with neighbourhood level retail and services activating the street corners with Station Street’.

The proposal capitalises on its proximity to the Newcastle City Centre and Newcastle Interchange. The residents will have multiple modes of public transport available in this location providing quick links throughout the Newcastle City Centre. The commercial space on the bottom floor will allow for additional office space in the locality and its proximity to the Interchange allows for more transport options for potential future employees.

‘Additional development capacity may be achieved for development proposals that enable adequate solar access and view sharing, meet relevant design codes, and provide a quantifiable community benefit to Wickham in exchange for additional building height. This approach will require introduction of a clause within Council’s LEP to support a variation from the current height of buildings (HOB) map (this is described further within Part 5 Implementation of the Wickham Master Plan)’.

The development provides 16 units and one commercial space. The building only exceeds the building height to a minor extent, mainly due to the lift overrun which has been addressed in a Clause 4.6 variation. The site receives good solar access and provides much needed affordable housing in the area which benefits the community.

‘Community benefits may include such things as additional social housing, identified road widening along Railway Lane and also Bishopsgate Street and/or provide additional car parking (surplus to the requirements of the uses within the development) to cater for commuters, city employees and the adjoining residential area to the north’.

The proposal includes 16 affordable housing units which will be managed by Compass Housing, a Tier One community housing provider. This will have a great community benefit by providing affordable rental accommodation in the CBD.

The WMP is an important document that was created to help provide a vision for Wickham over the next 20 years. The development has considered this throughout its design, however, certain controls, particularly in relation to the heights the plan envisages, are not able to be delivered due to the provisions of the current LEP. As the WMP has no statutory weight, the development has been assessed against the LEP and DCP.

The WMP outlines that the precinct may have potential for increased building heights from the current 24m and 35m to 45m. That height increase has not been reflected in the LEP and therefore does not allow development to be built to that height.



In the future should amendments be made to the LEP, the proposal will not hinder surrounding sites to achieve that height if they are able to amalgamate to create large enough lots. It is considered unlikely that amalgamation of these blocks will happen soon due to the amount of private ownership in the block, and amalgamation of multiple lots is crucial if the WMPs vision is the realised.

It is not considered that the broader objectives of the WMP would be achieved unless flexibility is provided in the controls. The below diagrams have been provided to show potential development that could occur over time.

Figure 4 shows that the block could potentially develop as if the building heights were increased in the LEP and multiple private and State owned lots were consolidated. The proposed development would not hinder the ability for a scenario as shown in Figure 4 to occur. It is considered unlikely though, that this scenario would come to fruition in the next 10 to 20 years.

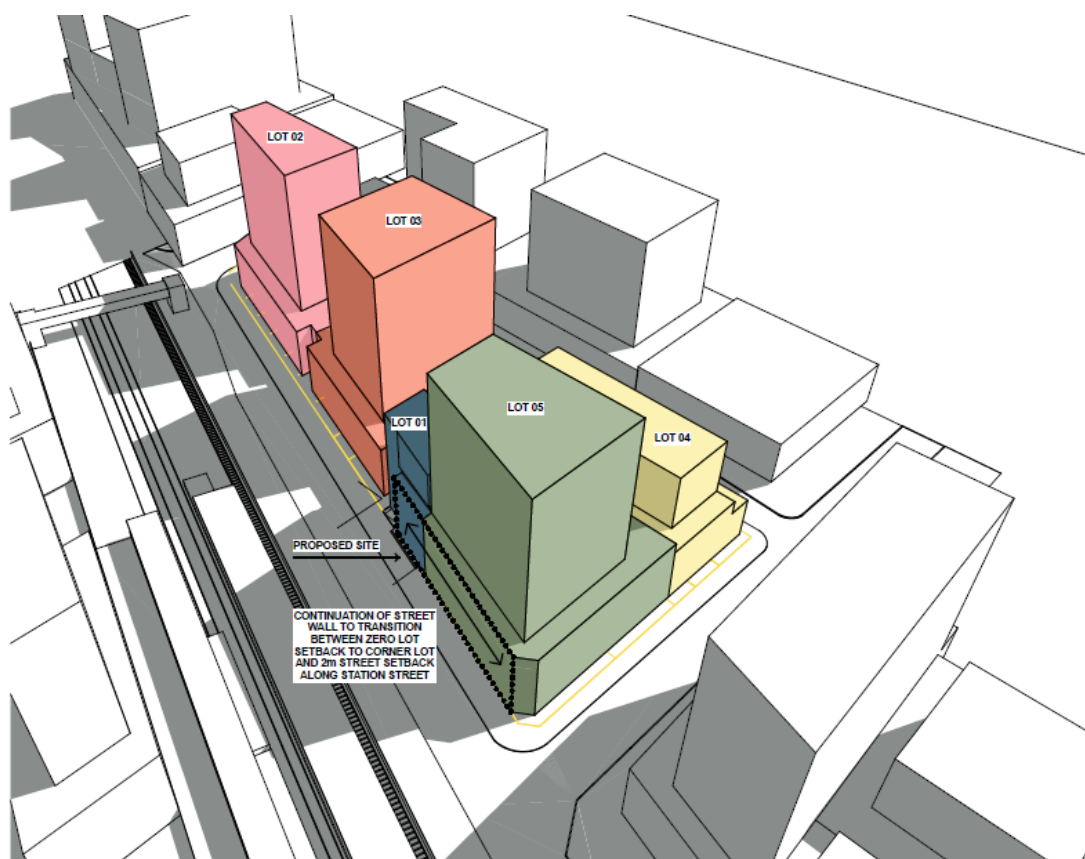


Figure 4: Future development if LEP controls amended to realise the Wickham Master Plan vision (CKDS, 2019).

Fragmentation is the main issue for the blocks potential to redevelop. Figure 5 shows what may be a more likely outcome considering the number of private owners within the block. Development is more likely to be denser on the block ends to the west and east with the centre being a mixture of developing uses. This is not the desired vision within the WMP, but it is the more likely when considering the current planning controls and fragmented lot ownership. The building heights would need to be increased in the LEP to facilitate this also.

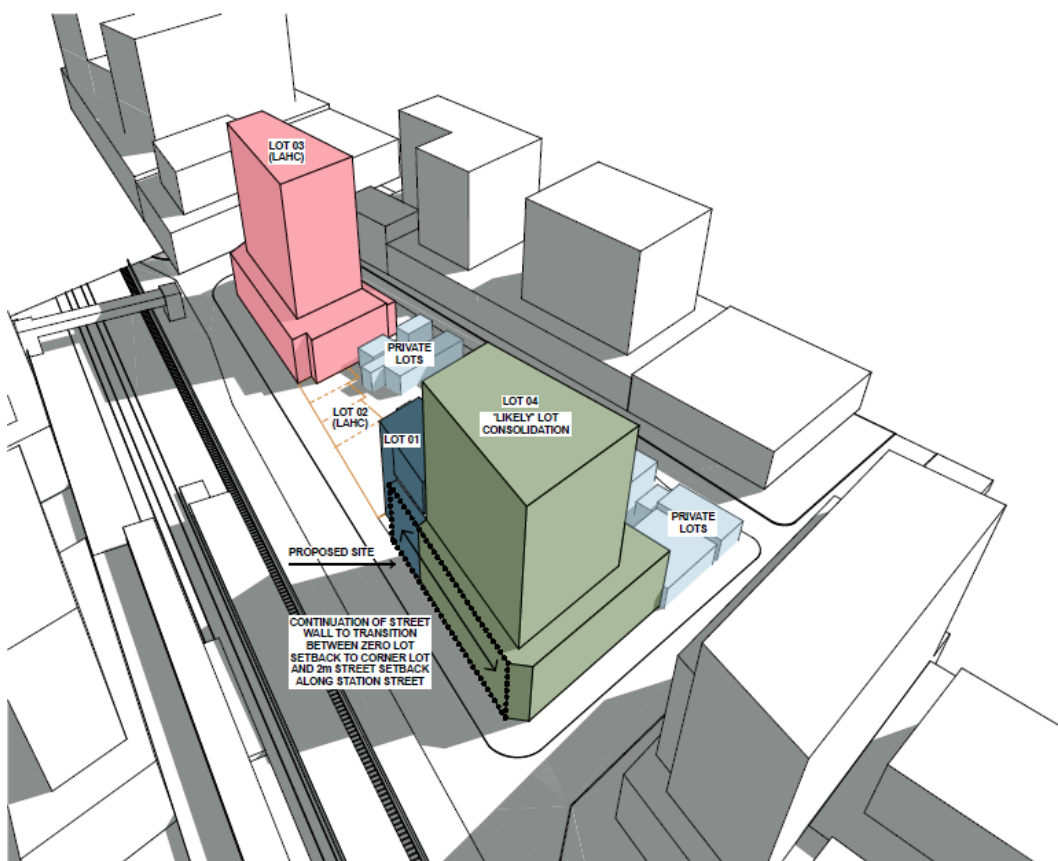


Figure 5: Likely development potential of the block considering land ownership and current controls (CKDS, 2019).

The main issues we can identify for amalgamation are:

- Majority of the lots in the block are owned privately
- Many lots are around 150sqm-300sqm which can't facilitate medium or high densities
- The height maximums of the current LEP don't currently allow for the diagrams in the WMP to be feasible.

Considering the above, flexibility will need to be applied as the current WMP controls will stifle the ability for most lots to have redevelopment potential unless amalgamation of a great scale is undertaken, which is unlikely.

It is important to note that the WMP made an assessment of the development potential of lots. The small fragmented lots in the block containing the development, were identified as being unlikely to be developed.

Planning Caselaw

This development doesn't create any singular or multiple isolated lots. The proposal does not result in any surrounding lots losing the opportunity to develop or amalgamate with other lots to achieve a development outcome. The site did not require amalgamation to provide a high quality and substantial building and the resultant effect of not amalgamating, has not created any isolated lots.

In order to thoroughly address Council concerns, caselaw has been considered. A planning principle was established by the Land and Environment Court that provides two general questions when a site is considered to become isolated through redevelopment (*Karavellas v Sutherland Shire Council* [2004] NSWLEC 251):

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

These principles are addressed separately below.

1. *Is amalgamation of the sites feasible?*

The principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40, where the Commissioner stated:

'Where a property will be isolated by a proposed development and that property cannot meet the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of a development application'.

The proposed development doesn't create any isolated lots, as was the case here. All surrounding lots still can redevelop. The development potential may not be strictly in line with the WMP, however, as discussed earlier it is unlikely that vision will be realised.

Under the Newcastle LEP 2012 the surrounding sites do not have a minimum lot size. Map Sheet LSZ_004FA does not apply a minimum lot size to the subject site or the surrounding sites within the block. Please refer to Figure 6. There are no controls within the LEP which require residential flat buildings or mixed use developments to occur on lots of a certain minimum size.

In *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 the first question was raised regarding feasibility as the subject amalgamated lots did not meet the required minimum lot size. This is not the case for this application as there is no required minimum lot size to facilitate development in the LEP.

The block that the subject site sits within contains many lots of different shapes and sizes. Of the six lots which share a boundary with the subject site, five are privately owned by separate individuals and one is owned by Land and Housing NSW. The consolidation of the subject site with one of these lots does not provide a feasible outcome in terms of development design or yield.



If one or both of the two lots that share the western boundary were acquired and consolidated the resulting lot would be an irregular shape and not serve to allow an increase in setbacks to the street or to the sides as the shape would only provide the ability to potentially increase the size of the building to the west. It would not provide the ability to increase the front setback and may reduce logical lot consolidation to the north.

If the lot was consolidated with the rear two privately owned lots, it would require negotiations to buy from two neighbours. This would not result in increased side setbacks and would require the building to be fragmented to allow for solar access on to the site.

As shown in Figures 2 and 3, the proposed development will not prevent development occurring around the site. There is ample opportunity and options for the types of medium to high density development that could be facilitate.

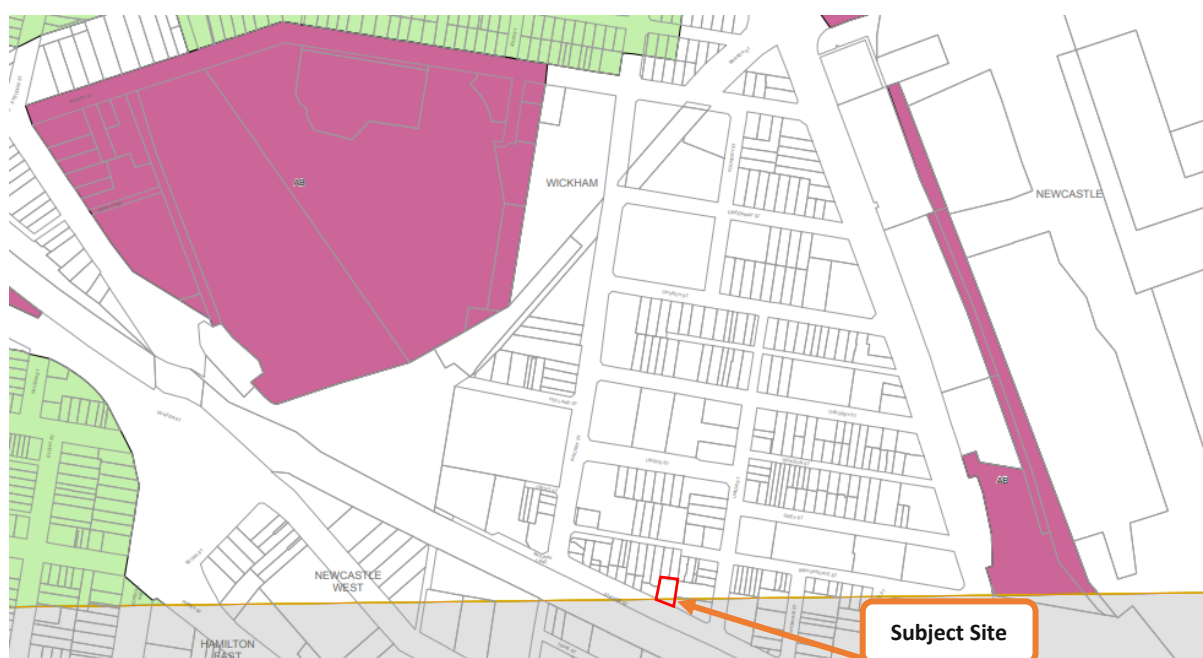


Figure 6: Minimum Lot Size Map (Newcastle LEP 2012).

2. Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

In the previous section it is shown that the amalgamation of lots is not feasible nor required that consolidation is necessary. In order to address this question, the project Architects have provided further diagrams of the block and potential development that may take place around the subject site in the future.

Of the 31 lots, 18 lots are privately owned and 12 are owned by Land and Housing NSW. The below Map 5 on page 21 of the WMP shows the ownership at the time the WMP was made. Compass Housing has since bought the subject site and it is not owned by Land and Housing NSW.

Map 6 on page 22 of the WMP shows that the subject site, the two large industrial sites to the east and some of the Land and Housing NSW land to the west were expected 'likely to change'. The remaining lots, which

makes up majority of the area of the block is considered that they 'may change'. Due to the high level of private ownership in this block it is considered that there is likely to be no significant change in development potential within the foreseeable future. The number of owners that would need to agree to consolidate as well as ensuring that they form logical lots would be difficult. The development pattern in Figure 3 would be the likely scenario which matches the information on Map 6.



Figure 7: Ownership as shown in Wickham Master Plan (WMP, 2017).



Figure 8: Likely development potential in the Wickham Master Plan (WMP, 2017).

The objectives of the applicable B4 Mixed Use zoning on the site under the Newcastle LEP are:

- *To provide a mixture of compatible land uses.*

The building contains a commercial and residential use which is compatible with the permitted development under this zoning as well as the existing character of the locality.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. –*

Commercial and residential is integrated within the building. The building is in an accessible location which will likely see an increase in public transport and active transport rather than private vehicle dependency.

- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The commercial space may add to the economic growth of the area depending on the future businesses that may occupy the space. The new residents of the building may gain employment in the Newcastle CBD, therefore, supporting its growth and making those business more viable.

Conclusion

The development will not be or create any isolated lots. Whilst it is understood that the development is not strictly in line with the vision of the WMP, it is considered unlikely that WMP vision would be realised due to the amount of land in private ownership and the amount of lots that would need to be amalgamated in the block to create large enough lots. The current LEP also does not allow for the densities desired as the height of buildings is currently 24m.

The proposed development is going to provide much need quality affordable housing in a very well located area near the Newcastle CBD. The development provides 16 new homes and a commercial space which are in line with the objectives of the B4 Mixed Use zoning in the LEP.

3. Capital Investment Value

Advice was sought from the Quantity Surveyor who stated:

'Council can look to increase the overall cost of the commercial space by approx. 35% to incorporate walls bordering the residential parts of the building.

Please note this would then decrease the costs associated with the residential portion of the works. It is important to ensure that whichever costs are allocated with the commercial and residential areas, the overall cost needs to still be in accordance with the bottom-line cost (\$4,949,000 excl GST').

The total capital investment value (CIV) is \$5,542,880. The commercial space is \$68,489. If the 35% increase is added that would be \$92,460.15. This is less than the \$250,000 which would require Section 7.11 contributions. It also would not reduce the CIV enough to change the consent authority from the Regional Planning Panel.

4. Sydney trains

A site plan has been prepared with the added closest horizontal measurement from the rail corridor boundary to the development sites southern boundary and the closest point of excavation.



5. Engineering

The floor levels have been revised to natural ground to avoid issues with flooding. We understand that the application is still under the engineering departments consideration.

Conclusion

The above information has addressed the concerns raised. The proposed development is providing a positive outcome for the locality particularly socially and economically through the provision of affordable housing. Whilst the building design does not strictly adhere to all controls, the above assessment has explained how those controls are not reasonable in this situation and provide no benefit if strictly adhered to.

If you have any queries regarding this information, please do not hesitate to contact me as below.

Yours sincerely,



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