

**COUNCIL ASSESSMENT REPORT**

<b>Panel Reference</b>	PPSHCC-14
<b>DA Number</b>	DA2019/00663
<b>LGA</b>	Newcastle
<b>Proposed Development</b>	Mixed development - demolition of two dwellings and erection of an eight-storey mixed use commercial/residential flat building containing 16 dwellings and one commercial unit (SEPP Affordable Rental Housing)
<b>Street Address</b>	Lot 1 DP 131687 43 Station Street Wickham NSW 2293
<b>Applicant/Owner</b>	Compass Housing Services Co Ltd
<b>Date of DA lodgement</b>	18 June 2019
<b>Number of Submissions</b>	None
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the application is referred to the JRPP as the development has a capital investment value of more than \$5 million and falls under clause 5(b) Private infrastructure and community facilities over \$5 million (affordable housing). The application submitted to Council nominates the capital investment value of the project as \$5.5 million.
<b>List of All Relevant Section 4.15 (1)(a) Matters</b>	<p><b>Environmental planning instruments: s4.15(1)(a)(i)</b></p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy No.55 - Remediation of Land</li> <li>• State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul> <p><b>Development Control Plan: 4.15 (1)(a)(iii)</b></p> <ul style="list-style-type: none"> <li>• Newcastle Development Control Plan 2012</li> </ul>

	<ul style="list-style-type: none"> <li>Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<b>Appendix A</b> - Conditions of consent <b>Appendix B</b> - Documents submitted with the application for assessment including plans <b>Appendix C</b> – Clause 4.6 – Building Height (Clause 4.3) prepared by Barr Property & Planning) <b>Appendix D</b> - External Referral Comments <b>Appendix E</b> – Urban Design Consultative Group (UDCG) comments
<b>Report prepared by</b>	Newcastle City Council
<b>Report date</b>	2 <sup>nd</sup> December 2019

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

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

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

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

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

Does the DA require Special Infrastructure Contributions conditions?

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

**Conditions****Yes / No**

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

#### Background

The proposal involves the development of affordable housing by Compass Housing, a *social housing provider* under the SEPP – Affordable Rental Housing. The proposal is being jointly funded by the Compass Housing and the City of Newcastle

It is noted that the determination of the application by the Planning Panel, as an independent assessment body (i.e. as opposed to, for example, being determined by 'full Council'), addresses any issues arising in terms of probity associated with the City of Newcastle's joint funding of the proposal.

#### Proposed Development

Development application (DA2019/00663) has been lodged with Council, seeking consent for:

- Eight-storey mixed use building as *affordable housing* under the provisions of SEPP (Affordable Rental Housing) 2009.
- One commercial unit, 22m<sup>2</sup> (i.e. to be used as *office premises*) on ground floor and associated lobby, services and parking to the rear of the site (i.e. seven spaces).
- Proposed levels 1 to 6 consist of 16 apartments involving a mix of nine x 1-bedroom dwellings and seven x 2-bedroom dwellings (varying in size from 50m<sup>2</sup> to 75 m<sup>2</sup>).
- The proposed rooftop level includes landscaping, a large solar panel system, bicycle lockers and a covered rooftop terrace common area.

#### Referral to Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Section 4.5(b) of the *Environmental Planning and Assessment Act 1979* as the proposed development is listed within Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, being affordable housing under clause 5(b) Private infrastructure and community facilities over \$5 million. The application submitted to Council nominates the capital investment value of the project as \$5.5 million.

It has been further confirmed that affordable housing component of the proposal (i.e. excluding the commercial aspect) is over \$5million dollars and that the *capital investment value* (CIV) has been correctly calculated (e.g. excluding goods and services tax - G.S.T.)

### Permissibility

The applicable planning instrument is Newcastle Local Environmental Plan 2012 (NLEP 2012) and the subject site is zoned B4 Mixed Use. The proposal constitutes a mixed use development involving the combination of a *residential flat building* and an *office premises*, which are both permitted with consent within the zone.

### Integrated Development

The proposal does not constitute integrated development under to Section 4.46 of the EP&A Act.

### Consultation

The proposal was placed on public exhibition for a period of 16 days from 26 June to 12 July 2019 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012 (DCP). No submissions were received during the notification period.

### Key Issues

The key issues raised in the assessment relate to:

- Clause 4.6 variation request to the Height Standard (Clause 4.3).
- Wickham Master Plan/Future Development – Ramifications of the proposed development on the current and future intended development within the Wickham area.
- Setbacks/Urban Form – Proposed variations to the provisions of the Apartment Design Guide and the Newcastle Development Control Plan 2012 – Section 6.03 Wickham.
- SEPP Affordable Rental Housing (SEE ARH) – Proposed variations to provisions
- Parking Variation
- Waste Management
- Flooding

### Recommendation

Approval



## 1. INTRODUCTION

This report provides a detailed overview of the development proposal for a mixed development involving demolition of two dwellings and erection of an eight-storey mixed use commercial/residential flat building containing 16 dwellings and one commercial unit (SEPP Affordable Rental Housing) at 43 Station Street Wickham.

The proposal is referred to the Planning Panel for determination pursuant to Section 4.5(b) of the *Environmental Planning and Assessment Act 1979* as the proposed development is listed within Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, being affordable housing under clause 5(b) Private infrastructure and community facilities over \$5 million. The application submitted to Council nominates the capital investment value of the project as \$5.5 million.

## 2. BACKGROUND

The proposal involves the development of affordable housing by Compass Housing, a *social housing provider* under the SEPP – Affordable Rental Housing. The proposal is being jointly funded by Compass Housing and the City of Newcastle. The applicant's have provided the following details regarding the background of the development's funding as extracted below: -

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).

Council's Urban Design Consultative Group (UDCG) reviewed the initial concept design on 21 March 2019 at the pre-lodgement stage. A revised design was assessed by the UDCG on 20 November 2019, following lodgement of the development application. The UDCG raised a number of issues regarding the design of the building and the application was subsequently amended to address those concerns.

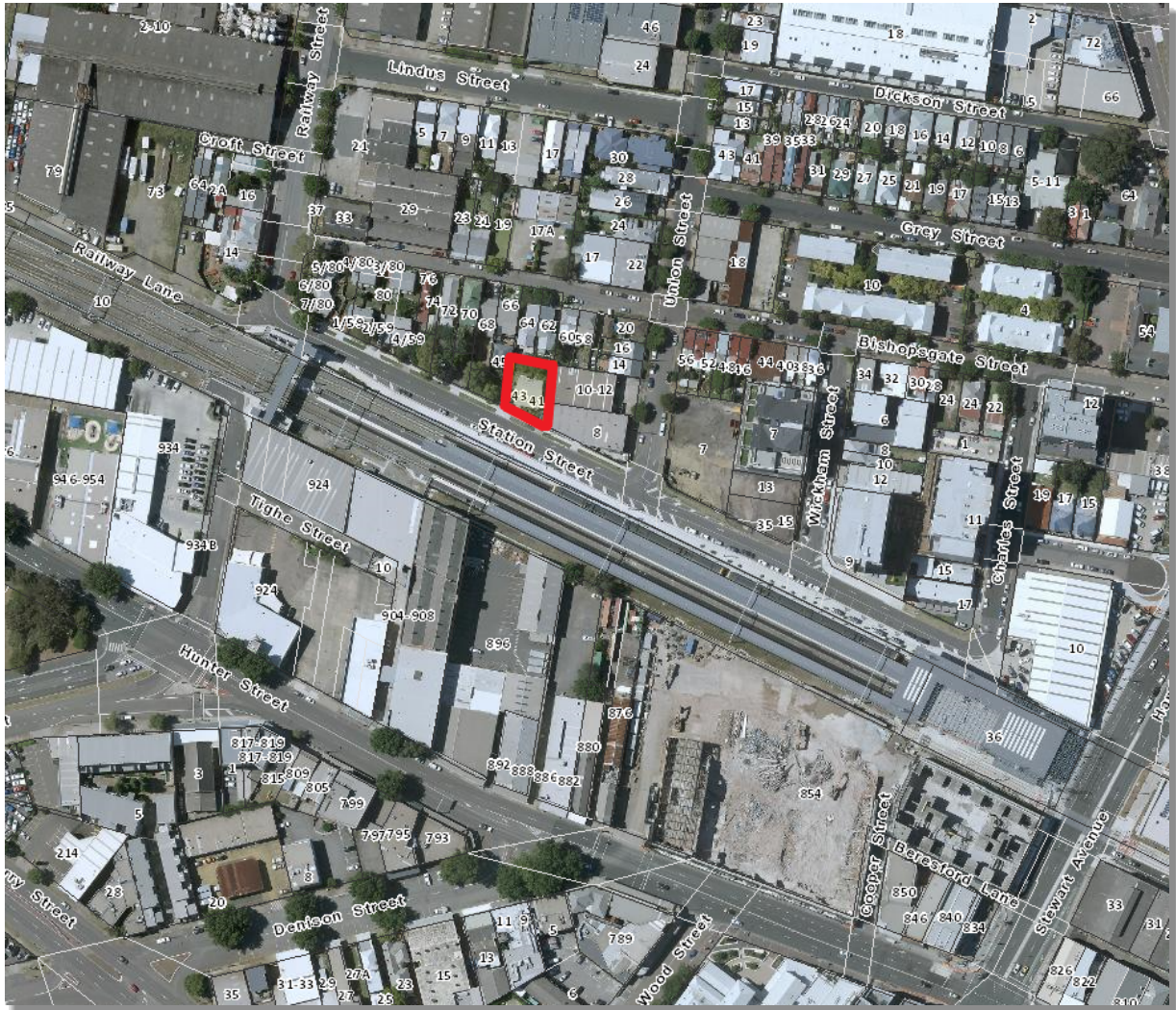
## 3. SITE DESCRIPTION

The subject site is described as Lot 1 DP 131687, 43 Station Street Wickham. The site has an area of 408.9 m<sup>2</sup>, with a northern boundary (rear) of 17.665 metres, a western side boundary of 20.155 metres, an eastern side boundary of 26.145 metres and a southern frontage to Station Street of 18.74 metres.

A two-storey dual occupancy (two dwellings) is currently located on the site. The immediately surrounding development in the area is a mixture of single and two-storey single dwellings and multi-dwelling housing. Directly adjacent the eastern boundary of the site is industrial buildings.

The wider area has a broad mixture of land uses and building types which shows the historic nature of Wickham and Newcastle West combined with more recent emerging development. In the general neighbourhood of the site are larger

industrial buildings, lower scale dwellings and multi-dwelling housing developments (typically to the north and north-east), larger multi-storey mixed use apartment buildings (e.g. along northern and southern sides of the rail line), the rail line itself directly south of the subject site and a mixture of commercial and mixed use developments within Newcastle West. The Newcastle Interchange is located at the south eastern end of Station Street. (See **Figures 1 & 2** - Aerial Maps show the general area and subject site). Photographs 1 to 5 show the site and the nearby streetscape.



**Figure 1 - Aerial Photograph of Site**





**Figure 2 - Aerial Photograph of Site (Zoomed view)**



**Photograph 1: View of the site from Station Street**





**Photograph 2:** View of the site from Station Street



**Photograph 3:** View to the north east along Station Street



**Photograph 4:** View to the south west along Station Street (i.e. 7 Union Street - DA2017/01532 foreground left, 11 Charles Street – DA2015/10123 midground left & Newcastle Interchange to the right)



**Photograph 5:** View to the south west along Station Street (i.e. 11 Charles Street – DA2015/10123)



## 4. PROPOSAL

The application is seeking consent for an eight-storey mixed use building as *affordable housing* under the provisions of SEPP (Affordable Rental Housing) 2009. The proposal consists of a commercial unit (i.e. *office premises*) and the ground floor associated lobby, services and parking to the rear of the site (i.e. seven spaces). Proposed levels 1 to 6 consist of 16 dwellings. The mix of proposed dwellings includes nine x one-bedroom dwellings and seven x two-bedroom dwellings.

The proposed rooftop level includes landscaping towards the northern and eastern boundaries, a large solar panel system/bicycle lockers to the western boundary and a covered common area towards the middle and southern side of the site.

The proposed building is located predominately towards the Station Street frontage with zero setbacks to the side boundaries.

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

## 5. PLANNING ASSESSMENT

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

#### 5.1.1 Section 4.5 – Joint Regional Planning Panels

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Section 4.5(b) of the *Environmental Planning and Assessment Act 1979* as the proposed development is listed within Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, being affordable housing under clause 5(b) Private infrastructure and community facilities over \$5 million. The application submitted to Council nominates the capital investment value of the project as \$5.5 million.

It has been further confirmed that affordable housing component of the proposal (i.e. excluding the commercial aspect) is over \$5million dollars and that the *capital investment value* (CIV) has been correctly calculated (e.g. excluding goods and services tax - G.S.T.)

#### 5.1.2 Section 4.46 – Integrated Development

The proposal does not constitute integrated development under to Section 4.46 of the EP&A Act.

#### 5.1.3 Section 4.15(1) Evaluation

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

### **5.1.3.1 The provisions of any environmental planning instrument**

#### State Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the Joint Regional Planning Panel to be the determining authority for development included in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

The proposal constitutes affordable housing under clause 5(b) Private infrastructure and community facilities over \$5 million under Schedule 7 of the SEPP. The application submitted to Council nominates the capital investment value of the project as \$5.5 million.

It has been further confirmed that affordable housing component of the proposal (i.e. excluding the commercial aspect) is over \$5million dollars and that the *capital investment value* (CIV) has been correctly calculated (e.g. excluding goods and services tax - G.S.T. as per the Department of Planning's Circular PS 10-008).

#### State Environmental Planning Policy (Affordable Rental Housing) 2009 – (SEPP ARH)

The application has been made under the provisions of SEPP (ARH) as '*In-fill affordable housing*' by a *social housing provider*.

#### Social Housing Provider (CI 4)

A *social housing provider* is defined under Clause 4 of the SEPP (ARH) as extracted below:

***"social housing provider means any of the following:***

- (a) the Department of Human Services,*
- (b) the Land and Housing Corporation,*
- (c) a registered community housing provider,*
- (d) the Aboriginal Housing Office,*
- (e) a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998,*
- (f) a local government authority that provides affordable housing,*
- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants."*

The applicant's have provided the following further information regarding their client Compass Housing: -

Compass Housing Services (Compass) is one of Australia's largest non-government social housing providers with over 30 years' experience in providing secure and affordable housing, as well as delivering housing products for disadvantaged people who have difficulties sourcing adequate and affordable housing. Compass manages social housing in a similar manner to state government provided social housing, with operations regulated by the national community housing performance-based registration system. Compass is registered under the National Community Housing Regulatory System (NCHRS) as a Tier 1 provider and holds a full certificate of accreditation under the National Community Housing Standards.

It is further confirmed, via a search of the National Regulatory System for Community Housing's register of accredited providers, that Compass Housing holds a Tier 1 accreditation (Registration Number R4546140610).

## In-Fill Affordable Housing Applicability (CI10)

Under Clause 10 of the SEPP (ARH), in-fill affordable housing applies where:

### **10 Development to which Division applies**

- (1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:
  - (a) the development concerned is permitted with consent under another environmental planning instrument, and
  - (b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the [Heritage Act 1977](#).
- (2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.
- (3) Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.

The proposal meets the provisions of Clause 10 as: -

- i) *Residential flat buildings* are permissible within the B4 Mixed use zone as *residential accommodation* with consent (i.e. as they are not listed as a permitted without consent or prohibited), and
- ii) The site does not include any heritage items.

Additionally, it is advised that the site is outside of the Sydney Metropolitan area (i.e. subclause 10(3)) and the proposal is within land zoned B4 Mixed Use meeting this further criteria.

## Floor Space Ratios (Clause 13)

The proposal is almost entirely for *affordable housing* with a small commercial unit on the ground floor. The development is entitled to a bonus 20% FSR above that which is allowable under the environmental planning instrument (EPI).

The allowable FSR under Clause 4.4 of the Newcastle LEP 2012 (the relevant EPI) is 4:1.

The subject site is further affected by clause 7.10A under the Newcastle LEP 2012, which decreases the allowable FSR to 3:1, as the site is below 1500m<sup>2</sup> (i.e. site is approximately 409m<sup>2</sup>), as extracted below:-

### **7.10A Floor space ratio for certain other development**

The maximum floor space ratio for a building that is located on land with a site area of less than 1,500 square metres is whichever is the lesser of—

- (a) the floor space ratio identified on the [Floor Space Ratio Map](#), or
- (b) 3:1.

In terms of clause 13 SEPP (ARH), the effective allowable FSR under an EPI is 3.0:1. The proposal, under subclause 13(2)(b), gains a 20% bonus to the allowable FSR becoming a total of 3.6:1.



The development complies with the allowing FSR under clause 13 of the SEPP-ARH proposing an approximate FSR of 2.8:1.

It is further noted that clause 7.10A of the Newcastle LEP 2012 cannot provide an absolute limit on the FSR applicable in this instance as this would be inconsistent with the provisions of clause 13 and 8 of the SEPP (ARH). Clause 8 of SEPP (ARH) confirms that the SEPP prevails in terms of any inconsistencies as extracted below:-

#### 8 Relationship with other environmental planning instruments

If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

#### Standards that cannot be used to refuse consent (Clause 14)

SEPP (ARH) provides for various design standards which if met, cannot be used as a ground to refuse an application. It is further advised that where a development does not meet the standard, a proposal can still be supported by a consent authority under subclause 14(3).

These design standards are assessed below:-

<b>Design Standard</b>	<b>Proposed</b>
<b>Site Area</b> 450m <sup>2</sup>	409m <sup>2</sup> . The proposal does not meet this area. The small site area of itself is not considered an issue. The issues arising from the scale of the proposal on the small site are discussed under the Apartment Design Guidelines (SEPP 65) section and the Newcastle DCP assessment under Section 5.1.3.1.
<b>Landscape Area</b> 35m <sup>2</sup> per dwelling where the application is made by a social housing provider – 560m <sup>2</sup> required.	88m <sup>2</sup> approximately. The proposal does not meet the area which is discussed further within the report under the Apartment Design Guidelines (SEPP 65) section.
<b>Deep Soil Zones</b> <ul style="list-style-type: none"> <li>15% of site area– 61m<sup>2</sup> required.</li> <li>3 metre minimum width</li> <li>2/3rds of deep soil zone located at rear of the site.</li> </ul>	23m <sup>2</sup> approximate area.  Width is variable between 1.16-1.59 metres with all of the deep soil zone being at the rear of the site.  The proposal does not meet the area or width elements which is discussed further within the report under the Apartment Design Guidelines (SEPP 65) section.
<b>Solar Access</b> 70% of dwellings to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in mid-winter	The proposal provides over 70% of dwellings with the required solar access.

<p><b>Parking</b></p> <ul style="list-style-type: none"> <li>• 0.4 spaces per 1 bedroom, and</li> <li>• 0.5 spaces per 2 bedroom,</li> </ul> <p>Where made by a social housing provider. Total 7.1 required.</p> <p>It is further noted that the commercial requires parking under the provisions of the Newcastle DCP 2012 (1 per 50m<sup>2</sup>) – 0.44.</p> <p>Total spaces required – 7.54 (8 spaces)</p>	<p>7 spaces are provided. The applicants have confirmed that the commercial unit would be provided a dedicated space. The remaining residential apartments would be managed so that the demand for parking is not greater than the six spaces remaining.</p> <p>The proposal does not meet the overall parking which is discussed further within the report at 5.1.3.1 – Section 7.03.</p>
<p><b>Dwelling Sizes</b></p> <ul style="list-style-type: none"> <li>• 35 square metres bedsitter/studio,</li> <li>• 50 square metres 1 bedroom, and</li> <li>• 70 square metres 2 bedrooms</li> </ul>	<p>All of the respective dwellings (i.e. proposed one and two bedrooms) meet the requirements of the SEPP in this respect.</p>

Design Requirements (Seniors Living Policy: Urban Design Guidelines for Infill Development) (Clause 15)

This clause does not apply to a proposal where SEPP 65 also applies to the development (subclause 15(2)).

Character of local area (Clause 16A)

The proposal is not consistent with the existing character of the local area and notably the immediate street block which consists of low scale one-two storey development.

The current allowable controls under the combination of the Newcastle LEP 2012 and Newcastle DCP 2012 provides for a significant increase in development which has been evidenced in the recent approvals and construction especially along the southern part of Wickham near the railway line. It is therefore not unexpected that the new developments, including the current proposal, are not compatible with the existing character of the local area.

The planning principles determined by the Land and Environment Court indicate that the compatibility of a development with the desired future character of an area becomes increasingly more important where the adopted planning controls allow for a significant change in development (e.g. via height, FSR and design controls).

The strategic planning direction encouraged by the currently adopted planning controls within Wickham, especially within the Rail Edge precinct along the south portion of Wickham, envisions a significant change in height (i.e. 24-35 metres being allowed), FSR (i.e. 4:1 FSR generally being allowed) and likely development types/forms (e.g. the development of large mixed use apartment towers).

It is additionally noted that the future direction of the Wickham area may further increase if the Wickham Masterplan changes to the Newcastle LEP are adopted and these greater intended strategic planning outcomes are pursued. It is noted that concern remains regarding the effect of developing such a very small allotment which is likely to have ramifications of the development of the surrounding allotments. The

applicant's have shown a possible future development scenario. As discussed within the report under the Apartment Design Guidelines (SEPP 65) section and the Newcastle DCP assessment under Section 5.1.3.1, the proposal is considered to be adequate.

It is considered that the proposal is acceptable in terms of character, on balance, when having regard to the comparison of existing character with the future desired character.

#### Affordable Housing for 10 Years (Clause 17)

The proposal must be used for affordable housing for a minimum of 10 years and managed by a registered community housing provider under the provisions of the SEPP (ARH). This aspect is required under SEPP (ARH) to be imposed as a restriction under Section 88E of the *Conveyancing Act 1919* against the site. A condition is recommended within **Appendix A** in this respect.

#### Subdivision (Clause 18)

No subdivision is proposed by the submitted application.

#### State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. Clause 28(2) of the SEPP requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

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

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

Design Quality Principles	Assessment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u>  <i>The site is located on the north side of Station Street which runs along the side of Newcastle's main train station connecting to Charles Street in the east and Railway Street in the west. The site is centrally located on the block which currently comprises mainly small-scale</i></p>	<p><u>Officer's Comments:</u></p> <p>Noted.</p>

<p><i>residential development. A single level warehouse is immediately to the east. Directly over the road are the lengthy train station platforms. The surrounding area currently is a mixture of automotive businesses, commercial uses and residential lots and has recently been transitioning into higher density residential buildings with small scale retail at ground level.</i></p> <p><i>The site is relatively flat and is listed as flood prone.</i></p> <p><u>20/11/19</u> – Nothing new to add.</p>	
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>The applicant has analyzed the redevelopment potential of the surrounding sites assuming that some are going to be amalgamated. Using the controls of the DCP 2012 a block model was formed to support deviations from the controls.</i></p> <p><i>The DCP calls for a 12-metre street wall with a 2-metre front setback which changes on the eastern boundary to a 14 metre street wall with zero setback. The applicant has opted to incorporate this change into their site providing certainty to this transition in the streetscape. Part of the front façade of the proposed building is setback the required 2-metres and part of the site has no setback with the 14-metre street wall expressed in the building which allows the adjacent building to sit comfortable next door when redeveloped.</i></p> <p><i>The side setbacks do not provide the 3-metre width by 6-metre depth to comply with the Landscape requirements of Section 6.03 of the DCP, however these controls were in anticipation of much larger blocks being consolidated and the need to break up the mass by inserting</i></p>	<p><u>Officer's Comments:</u></p> <p>The proposed design is considered to address the overall issues raised by the UDCG. Further discussion of the urban design issues is contained within the Apartment Design Guideline assessment below.</p>

*landscaping. Here only two small lots are consolidated making such a gesture unpractical to include.*

*The DCP calls for a 6-metre setback above the 12-metre street wall. The proposal only sets the upper levels back 2-metres. The setback as proposed appear reasonable, however this is because this is the first redevelopment on this block. The 2-metre setback above 12-metres may look out of place if the adjacent sites maintain the 6-metre setback when they are redeveloped.*

*The DCP calls for a 24-metre height limit. The proposal exceeds the height limit by 2.7-metres. This height exceedance cannot be supported. The Panel recommends that the roof top communal space be moved to the centre third of the building. The remainder of this level should be deleted, allowing the 2.7-metre exceedance to be centrally located and only for communal living, reducing the visual bulk of the building as seen from the east.*

*The upper levels above 12-metres should be setback 9-metres from the rear boundary to allow adequate distances for visual and acoustic privacy from any future development to the north.*

20-11-19

The applicant has removed the unit from the upper level and maintained the roof top communal space as recommended by the panel.

A minor encroachment into the 9-metre setback for the upper two levels remains but is considered acceptable.

### **Principle 3: Density**

UDCG comments:

### Officer's Comments:

The amended proposal has a floor space ratio of approximately 2.8:1 and

<p><u>21/3/19</u></p> <p><i>The maximum FSR under the Newcastle LEP controls is 3:1 with an allowable height of 24-metres. With a bonus of 0.6:1 for providing affordable rental housing an FSR of 3.6:1 is allowable. With an FSR of 3.1:1 the development complies with the FSR but exceeds the height limit by 2.7metres. While the applicant is providing Social Housing the exceedance of the height limit cannot be supported except if just the communal open space on the roof.</i></p> <p><u>20-11-19</u></p> <p>The removal of the unit from the top level makes the exceedance of the height limit acceptable to the Panel.</p>	<p>complies with the allowable FSR of 3.6:1 (i.e. a combination of the Newcastle LEP 2012 and the SEPP (ARH)).</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>The apartments have been well laid out with all of the apartments having good solar access and 65% of apartments with good cross ventilation.</i></p> <p><i>The building proposes to have solar hot water and photovoltaics for energy production. The development should consider the inclusion of other energy saving initiatives including water reuse.</i></p> <p><u>20-11-19</u></p> <p>With the small number of cars accessing the site, consideration could be given to reducing the width of the driveway for a portion of its length to allow for bicycle parking to be included in the development which would be appropriate given the affordable nature of the development.</p>	<p><u>Applicant's submission:</u></p> <p><i>"The dedicated driveway area has been reduced as shown on drawing SK-101. A garage door and access door are now located along the mid-point of the driveway. Visitor bicycle parking has been provided in the south-west corner with the inclusion of a bike rack. Bicycle parking for residents has been incorporated on the top level, drawing SK-108 through separate bicycle cages located under the photovoltaic panels. This is considered a satisfactory outcome as it places the bicycles in a secure area which does not impede on the flow of vehicle or pedestrian traffic in the car park area or block any access to service rooms on site. "</i></p> <p><u>Officer's Comments:</u></p> <p>The amended proposal has addressed the UDCG concerns. The provision of the roof top bicycle parking is a good design outcome which ensures a greater provision of bicycle parking in an efficient location on a relatively small site.</p> <p>Additionally, the amendments to the ground floor level has improved the</p>

	access to and size of the waste storage area.
<p><b>Principle 5: Landscape</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>While there is little opportunity for landscaping the Panel suggested having trees to shade the carparking as well as additional shrubs and climbing plants planted in the areas not needed for parking. A pergola over the parking was considered to be a cost-effective way to soften the development and create some shading for the cars and create an attractive feature to look down on from the apartments above.</i></p> <p><u>20-11-19</u></p> <p>The applicant has cleverly pulled back the hard paving in the carpark to the wheel stops to allow for additional vegetation along the northern boundary. This may now support small trees which will provide shade to the carpark area.</p> <p>The Panel also suggested additional landscaping incorporating climbing species could be included beside the carpark driveway in between the angled blade walls. This would visually soften the development for the adjoining property.</p>	<p><u>Applicant's submission:</u></p> <p><i>"A landscaping strip has been added beside the car park driveway in between the angled blade walls. Climbing plants are proposed which will climb the boundary security screen. Please refer to details on SK-101."</i></p> <p><u>Officer's Comments:</u></p> <p>The amended proposal has addressed the UDCG concerns.</p> <p>Additional landscaping along the western boundary, as a climbing species, has been recommended within <b>Appendix A</b> as a condition of consent.</p>
<p><b>Principle 6: Amenity</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>All apartments are likely to achieve a good standard of amenity with orientation and layout. Where some apartments have bathrooms on external walls but no windows, the amenity of the space could be improved by providing natural light into these spaces using glass blocks or similar. The roof top</i></p>	<p><u>Applicant's submission:</u></p> <p><i>"The walls to the bedrooms have been shifted to allow for an increase in size. This is reflected on drawings SK-102 and SK105."</i></p> <p><i>"The area in front of the lift has not been increased. Due to the location constraints on the ground floor, it is not able to be moved and a reduction in size would be undesirable as it would restrict the size of furniture and people that could fit in the lift. It is considered that adequate</i></p>

<p><i>communal space is a good size and contains a laundry with drying area.</i></p> <p><i>Common area such as lobbies have natural light and ventilation and the café downstairs could act as a meeting place for residents. The amenity could be improved by dropping the floor level to ground level to facilitate easier access to the café and carpark.</i></p> <p><u>20-11-19</u> Whilst it is acknowledged that the site is tight some minor suggested amendments were recommended by the panel.</p> <ul style="list-style-type: none"> <li>• Some units could benefit from a slight increase in area for the main bedroom.</li> <li>• Additional distance in front of the lift would be desirable to allow easier maneuvering of furniture in and out of the lift.</li> <li>• Ramped access to the lift from the carpark would be preferable rather than having to go around to the front of the building. This may be a DDA issue.</li> </ul>	<p><i>circulation space is available in front of the lift on all floors and can provide adequately for the residents."</i></p> <p><i>"Ramped access has been included in drawing SK-101 in front of the rear door which provides internal access from the car park."</i></p> <p><u>Officer's Comments:</u></p> <p>The proposal has increased the bedroom sizes for all the one bedroom dwellings in accordance with the UDCG's recommendations.</p> <p>The development has not increased the access to the lift area. While it is agreed that the lift access issue raised by the UDCG has merit it is not possible for the proposal, on this site, to achieve this functionally in addition to all the other elements which are necessary on the ground floor level.</p> <p>The amended proposal has achieved a ramp at the rear of the site, in addition to a stair lift at the street front, to address disabled access for the site.</p> <p>The amended proposal is considered to be acceptable in terms of the UDCG concerns.</p>
<p><b>Principle 7: Safety</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>No issues at this stage.</i></p> <p><u>20-11-19</u></p> <p>The Panel expressed concern over the openness of the carpark area. Securing the western boundary with a fence or mesh, along with a roller shutter located halfway along the driveway, allowing cars to queue either side, would secure</p>	<p><u>Applicant's submission:</u></p> <p><i>"A security fence has been proposed along the western boundary. A perforated security garage door is also included around the mid-point of the driveway to prevent open access to the rear car parks and rear entry of the building by non-residents, providing a safer environment for residents."</i></p> <p><u>Officer's Comments:</u></p> <p>The amended proposal has addressed the UDCG concerns.</p>



<p>the carpark providing a safer environment for residents.</p>	
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>The mix of one, two- and three-bedroom apartments is acceptable.</i>  <i>It would be highly desirable to provide an enclosed space fitted with basic kitchenette facilities for the communal area, so it can be enjoyed at all times, - windy weather, cool evenings etc.</i></p> <p><u>20-11-19</u>  The communal area at rooftop level 7 should be designed to provide screening from winds, and desirably a small fully enclosed room for use in all weathers should be provided.</p>	<p><u>Applicant's submission:</u></p> <p><i>"A wall has been provided on the Level 7 to the south of the corridor to provide an enclosed space to accommodate for all weather and protect residents from the elements."</i></p> <p><u>Officer's Comments:</u></p> <p>The amended design has increased the level of weather protection via the inclusion of a small wall which will limit the 'wind tunnel' effect within the rooftop area.</p> <p>The amended proposal has addressed the UDCG concerns.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDCG comments:</u></p> <p><u>21/3/19</u></p> <p><i>The treatment of the street wall and setbacks provides an attractive transition. The breakdown in scale as the building rises is carefully crafted to lighten the bulk and form. While acknowledging the drawings are very preliminary, the proposal has been skillfully articulated in form and carefully broken down with a combination of materials which would an attractive and sculptural addition to the streetscape.</i></p> <p><u>20-11-19</u>  Nothing further to add.</p>	<p><u>Officer's Comments:</u></p> <p>Noted.</p>
<p><b>Amendments Required to Achieve Design Quality</b></p> <p><u>UDCG comments:</u></p>	<p><u>Officer's Comments:</u></p>

<p><u>21/3/19</u></p> <ul style="list-style-type: none"> <li>• <i>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.</i></li> <li>• <i>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.</i></li> <li>• <i>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.</i></li> </ul> <p><u>20-11-19</u></p> <ul style="list-style-type: none"> <li>• All of the above recommendations have been duly addressed.</li> </ul> <p>The additional minor items listed above in Sustainability, Amenity, and Safety should be incorporated to complete an affordable housing project of high quality.</p> <p><b>Summary Recommendation:</b></p> <p>Subject to addressing the additional above issues, the Group remains very supportive of the quality of the design for the development, which has good potential to provide high quality, amenable accommodation.</p>	<p>The amended proposal has addressed the concerns raised by the UDCG at each of its meetings.</p>
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### Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks and guidelines for the design and assessment of a residential apartment development. The following section contains an assessment of the development against key controls of the ADG.

#### 2B Building Envelopes:

The ADG and Section 6.03 of the Newcastle DCP 2012 both include controls regarding building envelopes.

The street wall height setback aspect is discussed under Section 5.1.3.1, Section 6.03-Wickham as the prevailing control in this instance. It is advised that the proposal does not meet the street wall height setback requirement in this instance.

The side and rear elevations largely complies with the ADG setbacks as discussed under *3F Visual Privacy* detailed below. The proposal has blanks side walls which are allowed as a zero setback.

### 2C Building Height

Under NLEP 2012 the site has a maximum height of 24m. The submitted height is approximately 26.53m and does not comply with this standard. The applicant's have submitted a Clause 4.6 variation request which is assessed under Section 5.1.3.1.

### 2D Floor Space Ratio

The effective allowable FSR is 3.6:1 under the combination of the NLEP 2012 and SEPP (ARH). The submitted FSR is 2.8:1 and complies.

### 2E Building Depth

The proposed design meets the requirements of the ADG in terms of depth of the dwelling floor plates, ensuring adequate natural ventilation and sunlight.

### 2F Building Separation

The side and rear elevations largely comply with the ADG setbacks as discussed under *3F Visual Privacy* detailed below. The proposal has blanks side walls which are allowed as a zero setback.

Overall the building separation of the proposal is considered to be acceptable.

### 2G Street Setbacks

This aspect is assessed under Section 5.1.3.1, Section 6.03.02 – Building Envelopes as the Wickham DCP section has specific street setback controls.

### 2H Side and Rear Setbacks

The side and rear elevations largely comply with the ADG setbacks as discussed under *3F Visual Privacy* detailed below. The proposal has blanks side walls which are allowed as a zero setback.

The overshadowing impacts of the proposal are considered to be acceptable and are discussed in Section 5.1.3.1. of this report - *Siting the development (3.03.02)*.

### 3B Orientation

The orientation of the building and floor plans respond to the specific site conditions to allow for available views, optimising solar access to units and creating a high level of cross ventilation to all apartments.

The overshadowing impacts of the proposal are considered to be acceptable and are discussed in Section 5.1.3.1. of this report - *Siting the development (3.03.02)*.

### 3C Public Domain interface

Ground level access to the commercial unit is directly addressing the street. The proposal replaces two, two-storey attached dwellings facing Station Street. The proposed ground level commercial tenancy supports street activation along Station Street, with multiple dwellings above ensuring a good interface to the public domain.

### 3D Communal and Public open space

The amended proposal provides communal open space at the covered roof top level. This communal open space area is supported by landscaping towards the north east.

### 3E Deep Soil Zones

The ADG acknowledges that deep soil zones may not be possible on some sites, due to their location, and the fact that there are non-residential uses at ground floor level. Both of these conditions are relevant to this site.

The proposal has limited deep soil zones towards the rear boundary, which is considered acceptable in terms of the ADG in this instance.

### 3F Visual Privacy

The majority of the proposed development does not have privacy impacts towards the side boundaries as there are no windows proposed in side elevations. The front elevation of the property only faces Station Street and the railway line and has no privacy impacts.

The rear elevation largely complies with the ADG setbacks. The proposed levels from the ground floor to level 4 meet the required 6 metre setback required under the ADG. The proposed levels 5-6 are approximately 8.0-8.5 metres and level 7 are approximately 8.3 metres from the rear boundary (i.e. 9 metres required under the ADG).

On levels 5 and 6 the rear elevation consists of a living rooms, bedroom and a balcony per dwelling. It is considered that the small variation is acceptable in this instance and will not result in significant privacy impacts.

On level 7 the proposal consists of a large landscape area towards the north eastern corner, the western portion being dedicated banks of solar panels/bicycle lockers and a central covered common area. The positioning of the landscape area and the solar panels is such that it would lessen possible privacy impacts towards the east, west and north.

Overall the proposal is considered to be adequate in terms of privacy.

### 3G Pedestrian Access and Entries

The main building entry is accessed from Station Street.

The access consists of stairs and a vertical stair lift which is necessary due to the required floor levels to address flooding. The proposal also has a separate entry to the rear from the car park which utilizes a ramp for access.

### 3H Vehicle Access & 3J Bicycle and Car Parking

Vehicle access is from the Station Street which is allowable under Section 6.03-Wickham NDCP 2012.

The proposal requires 8 spaces and includes 7 spaces. The parking variation is discussed within Section 5.1.3.1, Section 7.03.

It is further noted that a total of 18 bicycle lockers and a separate bicycle rack are proposed as part of the development.

### 4A Solar and Daylight Access

The proposal is designed to optimise sunlight to all apartments. Each proposed dwelling has a direct northern orientation for at least the proposed living rooms.

All of the apartments receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter.

It is considered that the design has good overall solar access.

### 4B Natural Ventilation

At least 70% of the apartments are naturally cross ventilated and do not exceed 18m in depth.

### 4C Ceiling Height

2.7m minimum floor to ceiling heights for habitable rooms and 2.4m minimum heights for non-habitable rooms has been achieved, while the floor plate depths allow for maximum penetration of natural light into the space.

### 4D Apartment Size and Layout

All apartment sizes meet the minimum identified in the ADG, providing an acceptable level of amenity for future residents. It is advised that the bedroom sizes, within the one bedroom apartments, was increased in size at the recommendation of the UDCG so to improve the functionality of the bedrooms.

### 4E Private Open Space and Balconies

All apartments have at least one balcony with a minimum depth of 2m or greater and meet the minimum area requirements. The configuration of balconies and apartments will provide a good level of surveillance to public and private areas.

#### 4F Common Circulation and Spaces

The proposal meets the provisions of the ADG in respect to the layout and design of circulation spaces.

#### 4H Acoustic Privacy & 4J Noise and Pollution

The building layout has been designed to achieve minimisation of noise transfer to and from apartments.

### **SEPP 65 Concluding Comment**

The proposal is considered to be acceptable having regard to the provisions of SEPP65, taking into consideration the design criteria in the ADG and comments received from the UDCG in respect of the design quality principles.

#### State Environmental Planning Policy (Infrastructure) 2007

*State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency.

#### *Noise impacts*

The potential for impacts from rail noise and vibration has been assessed by Council's Environment Protection Officer in accordance with Clause 87 of the ISEPP. The assessment also included noise impacts from the demolition and construction aspects of the proposal. The following comments have been made by Council's Environment Protection Officer:

##### "Acoustics"

*The proposed site is within the 'Rail Edge Precinct' of Newcastle. The proposed development boundary is located within approx. 27 m north of the heavy rail line (in direct line of sight with Newcastle's main train interchange).*

*Noise is the primary environmental concern in relation to this development. As internal habitable rooms have the potential to be impacted by train noise, RAPT consulting undertook a noise assessment.*

*The assessment demonstrated that to attain acceptable amenity for future occupants, a reduction of up to 16 dB (A) is required to meet the noise criteria in accordance with the NSW Road Noise Policy, the Infrastructure SEPP 2007 and the supporting document Department of Planning Guideline Development near Rail Corridors and Busy Roads.*

*Internal noise level criteria are 35 dB(A) in any bedroom between 10:00 pm and 7:00 am and 40 dB(A) at any time anywhere else in the building.*

*To achieve this noise reduction, it is recommended that the bedrooms facing Station Street (on all levels) are designed in accordance with Specification B and that living areas fronting Station Street (on all levels) are designed in accordance with Specification A from the Department of Planning Guideline "Development near Rail Corridors and Busy Roads – Interim Guideline". It is considered that the design can comply with these specifications.*

*Operation of train horns and brake air release systems also have the potential to generate sleep disturbance impacts at the most affected residential receivers. The noise assessment determined that using Specification B will meet the requirements of the NSW Rail Infrastructure*

*Noise Guideline regarding the potential for sleep disturbance if a minimum of Category 3 window glazing is used for the units.*

*Demolition must be undertaken in accordance with AS2601:2001 The Demolition of Structures, the EPA NSW Noise Manual and the waste management plan. The Noise Assessment also recommends measures to reduce emissions during demolition and construction.*

*In summary, the ESU considers that noise from the rail line is theoretically demonstrated to remain below relevant criteria for all assessed receivers, providing the recommended noise controls and management strategies in the noise assessment are implemented.*

*The above points are addressed by the following conditions of consent.*

#### Vibration

*The potential adverse vibration impacts were considered in line with NSW Infrastructure SEPP (2007) and the supporting "Development near Rail Corridors and Busy Roads – Interim Guideline".*

*The applicant provided information on 13 September 2019 that piles are to be grout injected to 7m BGL outside the zone of influence of the rail corridor and therefore vibration is not expected to impact the rail infrastructure. The ESU considers that vibration impacts will not impact on rail infrastructure in relation to the proposed development.*

#### Ventilation

*Natural ventilation is to be provided to the habitable areas of the units. Mechanical ventilation is to be provided where natural ventilation is not (as some windows must remain closed for effective noise reduction). To minimise sleep disturbance, air should be ducted into these rooms from a quiet area not exposed to rail noise or using quiet, acoustically treated ventilators.*

*Mechanical ventilation and Air Conditioning systems to additional areas are to comply with AS/NZS 3666.1 and the National Construction Code whilst maintaining the required level of acoustic attenuation as detailed in the noise assessment. This is addressed in a condition of consent.*

#### Managing Construction

*As the construction is near residential premises (at 45 Station Street and houses along Bishopgate Street), the ESU must consider the potential impacts of construction noise on neighbouring properties.*

*It is noted that the nearest heritage building in the Lass O'Gowrie pub over 100m away and unlikely to be impacted by the construction.*

*Proposed construction noise management is outlined in Section 5 of the noise assessment which includes the requirement for an Environmental Management Plan (CEMP), notification to affected neighbours, using best practice measures (such as adhering to standard construction hours) and complaints handling. The ESU further recommends that the developer consider non-tonal reversing alarms and careful selection of equipment for the construction period to avoid generating "Offensive Noise" under the Protection of the Environment Operations Act 1997."*

Conditions of consent has been recommended to require compliance with the recommendations of the acoustic report and manage the potential demolition/construction impacts. The provisions of the ISEPP are considered to have been met in these respects.

#### *Development adjacent to rail corridor*

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

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

Concurrence has been obtained from Sydney Trains (20 November 2019), subject to consent being granted. Concurrence was granted subject to the imposition of conditions and operational conditions, as outlined in attachments to their concurrence letter (refer to **Appendix D**).

The conditions relate to the follow aspects:

- Noise and vibration
- Electrolysis
- Design Materials (i.e. limiting visual glare on rail corridor)
- Construction Methods (i.e. to ensure safe work methods in vicinity of rail corridor).
- Inspections
- Construction reports

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (SEPP) (BASIX) 2004 applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

Accordingly the provisions of the SEPP apply to the current development proposal. In this regard the applicant submitted a BASIX Certificate (dated 6 June 2019) which list the commitments to achieve appropriate building sustainability. A condition is included on the development consent requiring such commitments to be fulfilled.

#### State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The proposal has been assessed by the Environment Protection Officer and is considered to be satisfactory subject to conditions of consent, an extract of their assessment is included below:

##### "Contamination"

*The Environmental Service Unit considers that the proposed development does not require further consideration of contamination for the following reasons:*



- *The current use of the site is for residential purposes, so the proposed development does not constitute a change of use to a more sensitive land use.*
- *The subject site has not been identified on Councils Contaminated Land Mapping Layer.*

*Therefore, no further investigation into the presence of contaminated land has been undertaken or proposed. However, the zone is B4 (Mixed Use) and the adjacent site to the east is currently used for engine works activities, which is a potentially contaminating activity. In the event of unexpected finds (i.e. stained or odorous soil) during demolition and construction, a suitably expert should be engaged to further investigate.*

*Considerations will need to be given to any disposal of material from the site, disposal of waste as well as any fill entering the site. This will be addressed by the following conditions of consent."*

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

State Environmental Planning Policy (Coastal Management) aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

The subject site is defined as a *coastal environment area* under the SEPP and consideration must be given to the matters under Clause 13 under the SEPP as extracted below:

#### **13 Development on land within the coastal environment area**

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - (b) coastal environmental values and natural coastal processes,
  - (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (f) Aboriginal cultural heritage, practices and places,
  - (g) the use of the surf zone.
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

The subject site within an inner city location that has a long history and has been utilized for urban purposes for over at least 100 years. It is considered that the proposal would have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site, and its highly disturbed nature, means that it is highly unlikely that any evidence of Aboriginal cultural heritage, practices and places would remain on the site.

It is considered that the provisions of the SEPP are satisfied and that the proposal will not have any adverse impacts on the aspects detailed in subclause (1).

### State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017.

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

The proposal has been considered in accordance with the DCP, as detailed in this report, and is considered to be satisfactory.

### Other State Environmental Planning Policies

The proposal is not contrary to the provisions of any other relevant State Environmental Planning Policy.

### Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

#### Clause 1.3 – Land to which Plan applies

*Newcastle Local Environmental Plan 2012* (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

#### Clause 2.3 Land Use Table - Zoning

The subject property is included within the B4 Mixed Use zone (see Figure 3 below) under the provisions of the NLEP 2012, within which zone the proposed mixed use development consisting of a combination of an *office premises and 16 apartments* (ie *residential flat building*) that are permissible with CN's consent.



Figure 3 - Zoning Map Extract

The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

**“Zone B4 Mixed Use**

**1 Objectives of zone**

- To provide a mixture of compatible land uses.
- 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.
- To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.”

The proposal provides for a mixed use development allowing for increased housing accommodation. The development is for the purpose of *affordable housing* which is an important planning and housing outcome within the inner city of Newcastle. The proposal is within proximity of public transport which will encourage use of public transport, walking and cycling. The proposal will contribute to increased housing density in the area which will support the nearby commercial area.

Clause 2.6 Subdivision - consent requirements

The application does not propose any subdivision.



### Clause 2.7 Demolition Requires Development Consent

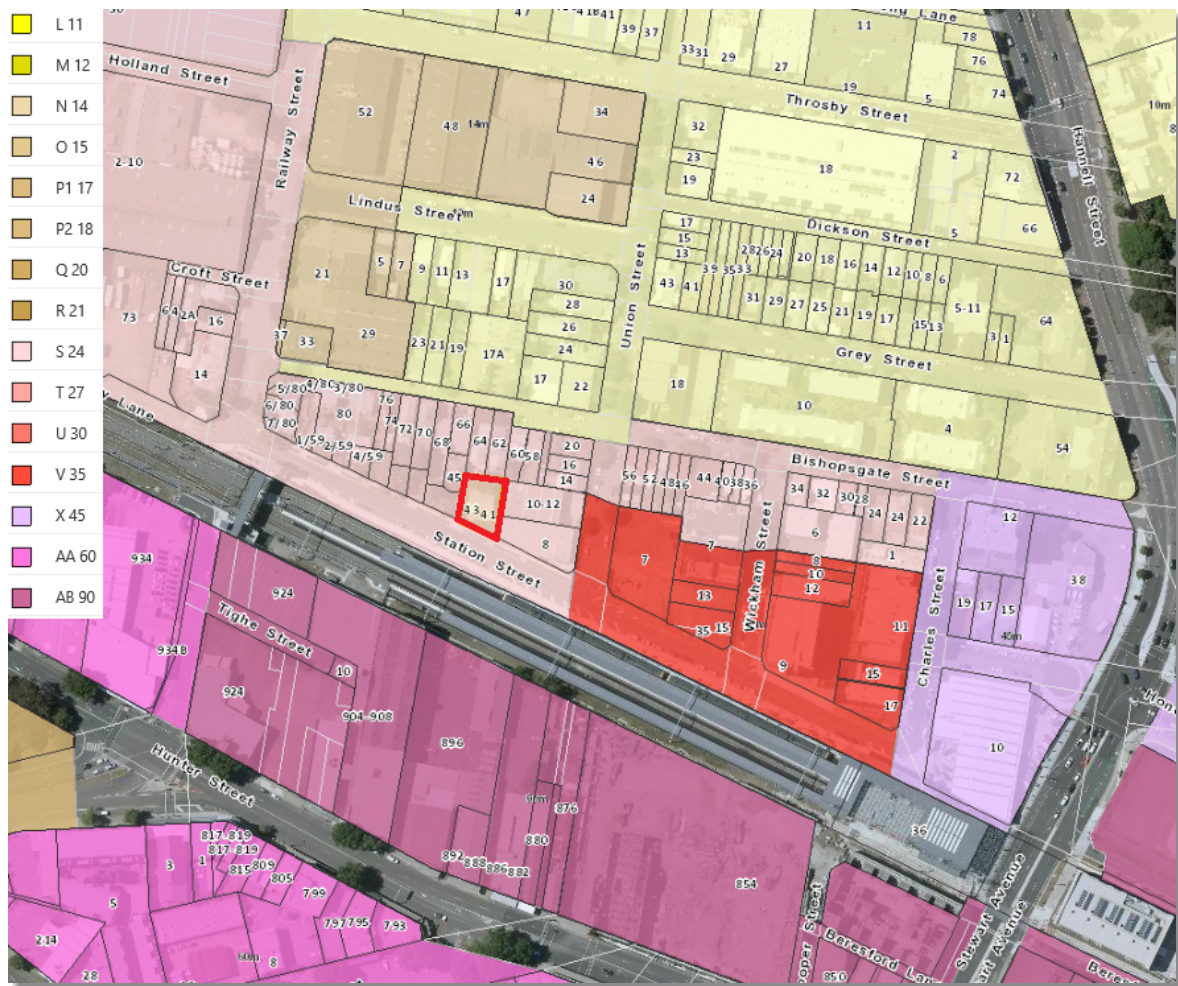
The proposal includes the demolition of the structures on the site. Conditions are recommended to ensure that demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

### Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 24m (see Figure 4 below).

The proposed development has a maximum height of 26.53m.

The applicants have submitted a Clause 4.6 request to variation the height standard as which assessed under Clause 4.6 below



**Figure 4 - Height of Buildings Map Extract**

### Clause 4.4 Floor Space Ratio

The maximum allow FSR is discussed under SEPP (ARH) within Section 5.1.3.1 due to the interaction between the SEPP and the Newcastle LEP 2012.

### Clause 4.6 Exception to Development Standards

The applicant has submitted a detailed request for the variation of the height (Clause 4.3) development standards under Clause 4.6 of the Newcastle LEP 2012. The applicant's Clause 4.6 variation request is included in full at **Appendix C**.

To allow variations to development standards under the Newcastle LEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3) (i.e. the applicant's Clause 4.6 variation request is attached at **Appendix C**). Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest, is consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

The Clause 4.6 request to vary the height standard, as it applies to the current amended design, is supported and a detailed assessment is included below.

#### *Preliminary*

Firstly, it is noted that the subject site has a height standard under the current Newcastle LEP 2012 provisions, Clause 4.3, of 24 metres and the submitted proposal is 26.53 metres.

The Wickham Masterplan project intends to propose an amendment to the Newcastle LEP 2012 which would allow increased heights in the area, subject to a future 'public benefit' mechanism. The framework of the 'public benefit' mechanism has not as yet been finalised. While the Wickham Masterplan itself has been adopted, this has not as yet translated to the City of Newcastle resolving to exhibit or adopt any amendments to the Newcastle LEP 2012. In this respect these possible future height standard amendments to Newcastle LEP 2012 are far from certain or imminent and less weight can be placed on these aspects in relation to any Clause 4.6 assessment.

#### *Clause 4.6(3)*

The applicant's written request for the Clause 4.6 variation must demonstrate the proposal is justified under Clause 4.6(3) (a) & (b), 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.'*

It is considered that the applicant's Clause 4.6 variation request (as attached at **Appendix C**) meets these requirements as detailed above. It is considered that the urban design, visual impacts, overshadowing and visual impacts are acceptable.

#### *Clause 4.6(4)*

The consent authority must not grant consent to a Clause 4.6 variation unless it is satisfied with the matters under Clause 4.6(4) as detailed below:

*“(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.’*

The detailed assessment below addresses Clause 4.6 and specifically Clauses 4.6(3) and 4.6(4) demonstrating that these clauses have been satisfied.

#### *Height Standard Variation (Cl4.6(3))*

The applicant's written submission contends that the variation to the height standard should be supported as the resultant impacts are acceptable and it would be unreasonable and unnecessary in this instance to require strict compliance in this instance.

It is considered that the impacts resulting from the amended proposal are acceptable and, as such, it is recommended that support for the variation be given.

#### *Height Standard Variation Cl 4.6(4)(a)(i))*

It is considered that the applicant has satisfactorily addressed the provisions of Clause 4.6(3) as detailed above and contained within **Appendix C**.

#### *Height Standard Variation Cl 4.6(4)(a)(ii))*

#### *Height Standard Objectives*

The height objectives under Clause 4.3 are as follows:

### **‘4.3 Height of buildings**

- (1) The objectives of this clause 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.’*

Following an assessment of the proposal under the provisions of the Apartment Design Guideline (ADG) and the objectives of the Newcastle LEP 2012 (i.e. zone and height objectives), it has been determined that the scale of the amended development (i.e. 26.53m high) makes a positive contribution to the desired form intended under the adopted planning controls and the hierarchy of the area. It is further noted that the effective reduction of a residential floor to achieve compliance with the height standard would not significantly improve the development and, conversely, may lessen the overall planning outcomes for the site.

It is further advised that the applicants provided a late amendment to the rooftop design to incorporate bicycle lockers underneath the solar panels on raised frame structures. While these structures are partially over the height limit, they are significantly lower than the rooftop terrace element which forms the main exceedance of the height standard. Notwithstanding that the submitted Clause 4.6 request does not address the bicycle parking element, this is not considered to be fundamental to the variation request and does not negate support for the Clause 4.6 variation.

The applicants have submitted comparative shadow diagrams which show the relative differences in the overshadowing between a compliant conceptual design and the current proposal. The diagrams show that the extent of additional shadowing resulting from the height variation does not have any significant additional impacts. The majority of the additional shadowing in this instance falls onto the public roadway and the railway line.

#### Zone Objectives- Height Cl 4.6(4)(a)(ii)

The proposed development is in the public interest and the variation to the height standard is consistent with the objectives of clause 4.3, as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. The proposal also allows for reasonable daylight access to the public domain and nearby developments.

Overall it is considered that the submitted Clause 4.6 variation request is adequate and support for the variation should be given.

#### Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place. The site contains little vegetation at present and therefore the development will not have a negative impact on existing ecosystems or biodiversity in the area. An adequate stormwater management system has been proposed as part of the development to minimise any impacts from water and effluent disposal.

#### Clause 5.10 Heritage Conservation

The subject site does not contain any heritage items and there are none near the proposal (i.e. nearest being Lass O'Gowrie at 14 Railway Street over 110 metres away). South of Station street is the Newcastle West conservation area and the proposal will have no significant impact on this conservation area. The Wickham area has been highly disturbed over a long period and, as such, it is highly unlikely that any evidence of Aboriginal cultural heritage, practices and places would remain on the site.

It is considered that the proposal is acceptable in regard to the issues of heritage conservation.

#### Clause 6.1 Acid Sulfate Soils

The subject site is identified as containing Class 3 Acid Sulphate Soils (ASS). An acid sulphate soil management plan is recommended as a condition of consent at **Appendix A**.

#### Clause 6.2 Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

#### Part 7 Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is considered to be consistent with the objectives of Part 7 of NLEP 2012.

#### Clause 7.3 Minimum Building Street Frontage

This clause does not apply to the subject site which is zoned B4 Mixed Use and is only applicable to sites zoned B3 Commercial Core.

#### Clause 7.4 Building Separation

This clause requires that a building must be erected so that the distance "*to any other building is not less than 24 metres at 45 metres or higher above ground*". The proposal is only 26.53 metres high and complies with this requirement.

#### Clause 7.5 Design Excellence

The development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality.

An Architectural Design Statement has been submitted with the application that addresses the design principles that have been used to formulate the proposal.

The proposal does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

The application was referred to the UDCG on two occasions as part of the assessment of the application. The UDCG provided initial feedback to ensure the overall design achieved design excellence.

The plans were subsequently amended in line with the recommendations from the UDCG. It is considered that the amended plans have adequately addressed the recommendations of the UDCG and satisfy the design excellence criteria. The design is considered to be of a high standard, providing for good mix of residential accommodation and retail/commercial use, which will help to further activate this part



of Wickham. Furthermore, the development provides for alternative housing supply options within the City Centre consisting of 16 'affordable housing' apartments.

#### Clause 7.6 Active Street Frontages in Zone B3 Commercial Core

This clause does not apply to the subject site which is zoned B4 Mixed Use and this clause is only applicable to sites zoned B3 Commercial Core.

#### Clause 7.9 Height of Buildings

The subject site is not identified as being within 'Area A' or 'Area B' on the Height of Buildings Map. Accordingly, the provisions of this clause do not apply to the proposal.

The maximum building height of the proposal is addressed under Clauses 4.3 and 4.6 of NLEP 2012 in this report.

#### Clause 7.10 Floor Space Ratio for certain development in Area A

The subject site is not located within 'Area A' as shown on the Floor Space Ratio Map.

#### Clause 7.10A Floor space ratio for certain other development

The proposed development has a site area of less than 1,500m<sup>2</sup>. Accordingly, the following provisions of this clause apply to the proposal: -

*"The maximum floor space ratio for a building that is located on land with a site area of less than 1,500 square metres is whichever is the lesser of—*

- (a) the floor space ratio identified on the Floor Space Ratio Map, or*
- (b) 3:1."*

The Floor Space Ratio Map under the Newcastle LEP 2012 indicates that a 4:1 FSR is applicable.

The applicable FSR under the Newcastle LEP 2012 then becomes 3:1 due to the site being less than 1,500m<sup>2</sup>. It is further advised that this ultimately becomes 3.6:1 due to the provisions of SEPP(ARH) as discussed under Section 5.1.3.1 SEPP (ARH).

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

There is no exhibited draft environmental planning instrument relevant to the application.

#### **5.1.3.3 Any development control plan (and section 94 plan)**

#### **Newcastle Development Control Plan (NDCP 2012)**

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below.

### Subdivision - Section 3.01

The proposal does not include any subdivision.

### Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

#### *Principal controls (3.03.01)*

##### *A. Frontage widths*

#### Frontages

The proposal is required to have a minimum frontage of 15m, being within the R4 High Density Residential Zone. The proposal complies, having a frontage of 17.105m.

#### Isolated Lots & Wickham Masterplan/Section 6.03 Wickham

The proposal is considered to be acceptable having regard to the Land and Environment Court Planning Principles regarding redevelopment and isolated lots as detailed within the NDCP 2012. The applicants have submitted a concept design demonstrating that the remaining allotments within the 'street block' could be redeveloped into the future (see **Appendix B**).

Concern remains that the current proposal may limit achieving the optimal strategic outcomes within this street block being achieved due to the resulting size and shape of the remaining sites.

It is also noted however that the size and shape of the overall street block is such that the optimal strategic outcomes under the Wickham Masterplan may not be achievable considering the combined effective urban design requirements of the Apartment Design Guidelines and the allowable height/FSR's under the Newcastle LEP 2012 (e.g. combination of allowable floor plates, solar access, setback and separation requirements).

The proposal, on balance, is considered to be adequate. The design proposed results in the provision of 16 affordable housing apartments on a small site (409m<sup>2</sup>) in an inner city location, admittedly with some variations to the applicable planning controls.

*B. Front setbacks and C. Side and rear setbacks*

The controls under Section 6.03 Wickham (NDCP 2012) and the Apartment Design Guideline (ADG – SEPP 65) prevail over these controls.

*C. Landscaped Area*

The controls under the Apartment Design Guideline (ADG – SEPP 65) prevail over these controls.

*Siting the development (3.03.02)*

*D. Local character and context*

The proposal located within the 'Rail Edge' precinct and is broadly consistent with the intended planning outcomes envisaged under Section 6.03 Wickham. A discussion of the detailed aspects of the design in context of the desired future character and the Wickham Masterplan is included under 3.03.01 above 'Isolated Lots & Wickham Masterplan/Section 6.03 Wickham'.

*E. Public domain Interface*

The interface proposed by the development is broadly consistent with the provisions of the Section 6.03 Wickham which allows for significantly greater development within the area than that which exists currently within the street block. The development further to east (i.e. 7 Wickham Street, 7 Union Street and 11 Charles Street) provides examples of the intended desired future character within the 'Rail Edge' precinct.

A further discussion of the setbacks is included as part of the Section 6.03 – Wickham assessment.

*F. Pedestrian and vehicle access*

Vehicular access is from Station Street which is the only frontage available to the subject site. It is noted that there is no on-street parking along the northern side of Station Street. The existing pedestrian access is considered to be good with footway along the northern side of this street block and all of the southern side of Station Street from Railway Street to the Newcastle Interchange.

*G. Orientation and siting*

The Newcastle NDCP 2012 details the following solar access provisions:

*"The principal area of private open space and the window to a living room of an adjoining dwelling receives greater than 2 hours of solar access between 9am and 3pm on the winter solstice. Where the window or principal area of private open space is already overshadowed, solar access is not reduced by more than 20%."*

The adjoining sites to east (i.e. 8 & 10-12 Union Street) are industrial in nature and the proposal does not have any unreasonable overshadowing in this respect. It is considered that there is a reasonable amount of site unaffected by shadowing that future development of these sites could reasonably be undertaken.

The site to the west is (known as 15/80 Bishopgate Street) is undeveloped and owned by the NSW Land and Housing Corporation. The proposal would be acceptable in terms of its shadowing impacts on the current site. It is considered that the degree of shadowing on this allotment, having regard to any future development is considered to be acceptable. It is further noted that this site is unlikely to be developed on its own due to its very small size and relative dimensions (i.e. 178m<sup>2</sup> area and a variable depth of 8.88-12.595 metres).

On balance, the shadowing impacts are not considered to be unreasonable or significant on the neighbouring properties to the east and west and are largely an expected outcome that results from a combination of the allowable controls and the strategic intent for the future character of the area (i.e. Section 6.03 Wickham/Wickham Masterplan).

#### *H. Building Separation*

The controls under Section 6.03 Wickham (NDCP 2012) and the Apartment Design Guideline (ADG – SEPP 65) prevail over these controls.

#### *Amenity (3.03.03)*

##### *I. Solar and daylight access*

The controls under the Apartment Design Guideline (ADG – SEPP 65) apply to the proposal and the development is considered to be acceptable in this regard.

##### *J. Natural ventilation*

The controls under the Apartment Design Guideline (ADG – SEPP 65) apply to the proposal and the development is considered to be acceptable in this regard.

##### *K. Ceiling heights*

The proposal meets or exceeds the floor to ceiling height of 2.7 metres under Section 3.03. It is noted that the proposed commercial unit has a ceiling height of approximately 3.3 metres.

##### *L. Dwelling size and layout*

The controls under the Apartment Design Guideline (ADG – SEPP 65) and SEPP(ARH) apply to the proposal and the development is considered to be acceptable in this regard.

##### *M. Private Open Space*

The controls under the Apartment Design Guideline (ADG – SEPP 65) and SEPP(ARH) apply to the proposal and the development is considered to be acceptable in this regard.

*N. Storage*

The controls under the Apartment Design Guideline (ADG – SEPP 65) apply to the proposal and the development is considered to be acceptable in this regard.

*O. Car and bicycle parking*

The combination of controls under Section 7.03 Traffic, Parking and Access and (i.e. commercial unit) SEPP(ARH) (i.e. affordable housing apartments) apply to the proposal. Assessment of the parking is made under Section 5.1.3.1, Section 7.03.

*P. Visual privacy*

The controls under Section 6.03 Wickham (NDCP 2012) and the Apartment Design Guideline (ADG – SEPP 65) apply to the proposal. The development is considered to be acceptable in terms of privacy impacts.

*Q. Acoustic privacy*

The proposal consists of blank walls towards the side boundaries. The rooftop common area is setback from the side boundaries and includes a larger enclosed area. The proposal is considered to largely meet the ADG setbacks from side boundaries with small variations towards the rear boundary.

It is further noted that the main railway line is relatively close to the overall area and would contribute significantly greater noise levels than likely to be generated from the proposed residential accommodation.

Overall the proposal is considered to be reasonable in terms of acoustic privacy and is an expected outcome typical of the allowable planning controls applicable to the subject site.

*R. Noise and pollution*

An acoustic report addressing the potential acoustic impacts of rail noise on the proposed dwellings and the potential acoustic impacts arising from construction has been submitted. The acoustic report has been assessed by CN's Environmental Protection Officer and is considered to be acceptable subject to recommended conditions of consent. The officer's assessment is included below:

"Acoustics"

*The proposed site is within the 'Rail Edge Precinct' of Newcastle. The proposed development boundary is located within approx. 27 m north of the heavy rail line (in direct line of sight with Newcastle's main train interchange).*

Noise is the primary environmental concern in relation to this development. As internal habitable rooms have the potential to be impacted by train noise, RAPT consulting undertook a noise assessment.

The assessment demonstrated that to attain acceptable amenity for future occupants, a reduction of up to 16 dB (A) is required to meet the noise criteria in accordance with the NSW Road Noise Policy, the Infrastructure SEPP 2007 and the supporting document Department of Planning Guideline Development near Rail Corridors and Busy Roads.

Internal noise level criteria are 35 dB(A) in any bedroom between 10:00 pm and 7:00 am and 40 dB(A) at any time anywhere else in the building.

To achieve this noise reduction, it is recommended that the bedrooms facing Station Street (on all levels) are designed in accordance with Specification B and that living areas fronting Station Street (on all levels) are designed in accordance with Specification A from the Department of Planning Guideline "Development near Rail Corridors and Busy Roads – Interim Guideline". It is considered that the design can comply with these specifications.

Operation of train horns and brake air release systems also have the potential to generate sleep disturbance impacts at the most affected residential receivers. The noise assessment determined that using Specification B will meet the requirements of the NSW Rail Infrastructure Noise Guideline regarding the potential for sleep disturbance if a minimum of Category 3 window glazing is used for the units.

Demolition must be undertaken in accordance with AS2601:2001 The Demolition of Structures, the EPA NSW Noise Manual and the waste management plan. The Noise Assessment also recommends measures to reduce emissions during demolition and construction.

In summary, the Environmental Services Unit (ESU) considers that noise from the rail line is theoretically demonstrated to remain below relevant criteria for all assessed receivers, providing the recommended noise controls and management strategies in the noise assessment are implemented.

The above points are addressed by the following conditions of consent.

#### Vibration

The potential adverse vibration impacts were considered in line with NSW Infrastructure SEPP (2007) and the supporting "Development near Rail Corridors and Busy Roads – Interim Guideline".

The applicant provided information on 13 September 2019 that piles are to be grout injected to 7m below ground level (BGL) outside the zone of influence of the rail corridor and therefore vibration is not expected to impact the rail infrastructure. The ESU considers that vibration impacts will not impact on rail infrastructure in relation to the proposed development.

#### Ventilation

Natural ventilation is to be provided to the habitable areas of the units. Mechanical ventilation is to be provided where natural ventilation is not (as some windows must remain closed for effective noise reduction). To minimise sleep disturbance, air should be ducted into these rooms from a quiet area not exposed to rail noise or using quiet, acoustically treated ventilators.

Mechanical ventilation and Air Conditioning systems to additional areas are to comply with AS/NZS 3666.1 and the National Construction Code whilst maintaining the required level of acoustic attenuation as detailed in the noise assessment. This is addressed in a condition of consent.

Managing Construction

*As the construction is near residential premises (at 45 Station Street and houses along Bishopgate Street), the ESU must consider the potential impacts of construction noise on neighbouring properties.*

*It is noted that the nearest heritage building in the Lass O’Gowrie pub over 100m away and unlikely to be impacted by the construction.*

*Proposed construction noise management is outlined in Section 5 of the noise assessment which includes the requirement for an Environmental Management Plan (CEMP), notification to affected neighbours, using best practice measures (such as adhering to standard construction hours) and complaints handling. The ESU further recommends that the developer consider non-tonal reversing alarms and careful selection of equipment for the construction period to avoid generating “Offensive Noise” under the Protection of the Environment Operations Act 1997.”*

Overall the proposal is considered to be acceptable in terms of acoustic issues subject to recommended conditions of consent included at **Appendix A**.

Configuration (3.03.04)*S. Universal design*

The proposal is considered to be acceptable in terms of the universal design provisions.

*T. Communal area and open space*

The controls under SEPP (ARH) and the Apartment Design Guideline (ADG – SEPP 65) apply to the proposal. The development is considered to be acceptable in terms of communal area and open space.

*U. Architectural design and roof form and D. Visual appearance and articulation*

The proposal has been assessed by the UDCG and is considered to be acceptable. At the UDCG’s recommendation, the rooftop common area has been further enclosed to ensure a more all-weather facility.

The proposed development is considered to be acceptable in relation to the abovementioned NDCP 2012 section. The development establishes a scale and built form that is appropriate for its location. The proposed development provides good presentation to the street with good residential amenity, while maintaining reasonable solar access privacy for adjoining neighbours.

Commercial Uses - Section 3.10

The development provides for a design that is acceptable having regard to the provisions of this section, in terms of appearance, streetscape and street activation.

Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

***“ Flood Management***

*The site is subject to Local (Flash) and Ocean flooding. A flood certificate FL2018/00232 has been provided by City and the following flood data is noted;*

*The 1% AEP Flash flood level is noted as 2.10m AHD and 2.20m AHD for Ocean flooding.  
PMF Level for Flash flood in noted as 3.0m AHD and 3.4m AHD for Ocean flooding.  
The site is classified as a flood storage area for local flooding and risk to life is noted as L4 (High Risk).  
Flood refuge is required to be provided at PMF level at 3.0m AHD.*

*Peer Review Process*

*In view of the uniqueness and sensitivity of the site and in understanding that the flood risks associated with the development, a peer review of the revised submitted design has been undertaken with Alastair Peddie (Senior Engineer who had also reviewed the Pre-DA plans for the site), Steve Masia (Engineering Assessment Team Coordinator) and Rajnesh Prakash (Senior Engineer – Engineering assessing officer for the DA).*

*The peer review generally includes in depth discussions regarding the locality, implications of the proposed development to the surrounding area, setting precedence for the area generally in relation to the flood planning level (FPL) for the ground floor level. The focus of the review was in regard to managing the risks associated with the risk to life and property. The review also discusses the possible impacts on the adjoining properties, the risk to proposal and future use of the sites.*

*The review deliberated on the proposed ground floor level, which initially set commercial room at 1.790m AHD and the Lift level area at 1.865m AHD. Both these levels are well below the recommended FPL of 2.60M AHD. The panel also considered the issues around access to the site (including vehicular and pedestrian) and also noted that the site was a flood storage area and the impact of the retaining walls on the surrounding property was discussed.*

*The flood risks associated with the FPL for any development is generally for property damage. As the ground floor is proposed well below the FPL and the 1% AEP levels, the ground floor maybe subject to frequent flooding, thus limiting access to the property and additional costs for rectification/repair to the lift and ground floor retail. The peer review process has considered the constrains of the site and it is recommended the ground floor lift be set to at least the 1% AEP Ocean Flood level of 2.20m AHD. Although below the recommended FPL, the change will at least mitigate flood risks associated with more frequent flash flood event and any impact from ocean impact. Similarly, the commercial area was recommended to be set at 2.2m AHD, however material compatibility will need to be considered.*

*The review also recommended that the vehicular access areas to be set as low as possible to allow for flood storage to be maintained and the reduced the height of the retaining walls. A flood management plan will need to be prepared for the site to ensure awareness about flooding and appropriate action can be taken during flood event.*

*Conclusion*

*The revised stormwater plans prepared by Northrop Consulting Engineers have noted the floor levels and vehicular access areas to manage the flood planning and stormwater for the site. The retaining wall have been designed with blade type system to manage flood waters and to mitigate impacts on adjoining properties.*

*It is noted that the architectural plans will need to be revised at CC stage to match the levels set in the civil drawing.*

*The proposed building and vehicular levels are acceptable and conditions to address floor levels and flood storage areas are maintained.”*



Accordingly, the proposal is acceptable in relation to flooding subject to recommended conditions at **Appendix A**.

#### Safety and Security - Section 4.04

The development is considered to be adequate in terms of Crime Prevention Through Environmental Design principles:

- i. surveillance
- ii. access control
- iii. territorial reinforcement
- iv. space management

The proposal was modified to incorporate, at the UDCG recommendation, a security roller door to the driveway to avoid access to the rear of the site and potential safety and security issues.

Overall, the proposal is considered to be acceptable in terms of the Crime Prevention Through Environmental Design principles.

#### Social Impact - Section 4.05

It is considered that the proposed development is consistent with the zone objectives and is appropriate having regard to the strategic planning intent for the future of the area. It is considered that the proposal is acceptable in terms of its social impacts.

The proposal will have the positive social effect of providing for additional *affordable housing* within the inner city area of Newcastle.

#### Soil Management - Section 5.01

It is considered that the proposal is acceptable subject to recommended conditions of consent regarding soil and sediment control.

#### Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55 at Section 5.1.3.1.

#### Vegetation Management - Section 5.03

The proposal involves the removal of three trees from the site varying in height from approximately 5-12 metres. Two of the three trees have been assessed as being of a moderate retention value within the applicant's arborist report.

The proposed landscape concept plan provides for three trees along the northern boundary within a relatively small landscape bed. The inclusion of trees within the proposal is supported especially considering the relatively small size of the site.

Overall, the proposal is considered acceptable subject to two compensatory trees being provided as required within the recommended conditions of consent included at **Appendix A**.

### Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

### Part 6.00 Locality Specific Provisions

#### Wickham - Section 6.03

The proposal is located within the 'Rail edge' precinct within Section 6.03 – Wickham of the Newcastle DCP 2012. Section 6.03 describes the current and desired future character as follows:

##### *Existing character*

The Rail Edge precinct contains a mix of uses and building types and provides an interface to the emerging commercial core of Newcastle West.

##### *Future character*

The precinct is envisaged to support high density residential development that capitalises on its location adjacent to Newcastle Transport Interchange and provide ground level commercial uses, with neighbourhood level retail and services activating street corners. Building scale and form transitions down to integrate with the lower scale Village Hub precinct fronting Bishopsgate Street.

Figure 6.03-3 from the DCP shows a conceptual drawing of the future character within the area as extracted below:



The development includes a commercial unit at the ground floor with a street front to Station Street, meeting the street activation provisions under Section 6.03.

#### 6.03.02 – Building Envelopes

##### *A Setbacks to Streets*

The subject site has a 2.0 metre setback requirement to Station Street at the ground floor under Section 6.03. The proposal has a variable setback formed by the

combination of the proposed commercial unit and the driveway crossing arrangement. The inclusion of the commercial unit at the street front providing for increased street activation combined with the limited presentation of services within the streetscape is considered to be an acceptable variation in this instance to the DCP. It is further advised that UDCG were supportive of the final design.

### *Street Wall Setbacks*

The DCP requires a 6.0 metre setback at a street wall height of 12.0 metres within the Rail Edge precinct.

It is advised that the DCP indicates that the ADG also applies any inconsistency between the DCP and ADG in terms of minimum setbacks is to be resolved by the greater setbacks being applied to a development. In this respect it is advised that the ADG would require a 6.0 metre setback at a street wall height of 16.0 metres and it is noted that the DCP has the greater requirement.

The proposal does not meet the requirements of the DCP/ADG in terms of the street wall height. The proposal has a variable setback of approximately 1.5-2.0 metres at a street wall height of approximately 14.5 metres. The proposed street wall height setback, while somewhat of an average of the DCP and ADG in terms of height (i.e. 14.5 metres), does not meet the horizontal setback aspect (i.e. 6.0 metres).

The applicants, in their submitted plans (Dwg Sk-009 – attached within **Appendix B**), shows conceptual details showing how the street block might be developed with the reduced street wall height setbacks. An impact which is likely to occur from allowing proposed variation to the street wall height setback is that this control would largely be dispensed for the purpose of future development within the street block, at least along the Station Street frontage.

The proposal was considered by the UDCG who did not object to the setback in this respect. It is further advised that the developments at 7 Union Street and 11 Charles Street, which are much larger developments overall, provide for similar street wall height setbacks of approximately 2.0-3.0 metres.

Any development of the nature proposed (i.e. multi-storey apartments), if it was to comply with the various boundaries setbacks required under the combination of the DCP and ADG, could be not developed on the subject site due to the combination of the setbacks and size area. The applicant's submission and plans included at **Appendix B** (Dwgs SK-005, SK-007, SK-008, SK-010 & SK-011) notes that the site sizes and fragmentation within the street block makes it very difficult to develop proposals and the 'street block' unlikely to achieve the intended strategic outcomes.

It is considered that the applicant's submission likely overstates the difficulty regarding lot amalgamation. Notwithstanding this, the street block consists of over 20 allotments which are typically small. Additionally, the western end of the street block, and several allotments fronting Station Street, are owned by the NSW Land and Housing Corporation which impacts on the development potential.

The impact of the reduced street wall height setback along the northern side of Station Street is partly mitigated by the railway line corridor opposite. It is unlikely in the foreseeable future that development would occur above the railway line and, as such,

there is a degree of separation and openness achieved by 'borrowing' this open area in terms of urban form, visual appearance and streetscape (e.g. height, bulk, scale).

On balance, it can be considered acceptable to allow the street wall height setback variation given the overall urban design outcomes achieved and the public benefit gained by the provision of additional affordable housing within the inner city.

#### *B Setbacks to neighbouring sites*

The controls under the Apartment Design Guideline (ADG – SEPP 65) and SEPP(ARH) apply to the proposal and the development is considered to be acceptable in this regard.

### 6.03.03 – Urban Design

#### *A Interface to the Street & B Urban Activation Spaces*

The proposal has been assessed in respect to this aspect of the DCP and is considered to be acceptable in terms of the interface with the public domain and urban activation spaces. It is noted that the site is very small and, as such, has limited opportunities to address these aspects but within the area available is well designed.

#### *C Vehicle access to land*

The site provides access from Station Street and is acceptable.

### 6.03.05 – Constraints on Development

#### *A Flooding*

The site is affected by flooding and this addressed in detail by the Senior Development Engineer with Section 4.0 – Flood Management above.

#### *B Mine Subsidence*

The site is not affected by Mine Subsidence

Overall, the proposal is considered to be acceptable having regard to the provisions of Section 6.03 - Wickham.

### Landscape Open Space and Visual Amenity - Section 7.02

The proposal is considered to be acceptable in terms of its landscaping outcomes and the provisions of the Apartment Design Guide.

### Traffic, Parking and Access - Section 7.03

The combination of controls under Section 7.03 Traffic, Parking and Access and (i.e. commercial unit) SEPP(ARH) (i.e. affordable housing apartments) apply to the proposal.

SEPP (ARH) requires 7.1 spaces for the affordable housing apartments and Section 7.03 requires 0.44 spaces are required for a total of 8 spaces (i.e. 7.54). The development provides for a total of 7 parking spaces.

The applicant's have included a submission that Compass Housing will be able to manage the parking demand by monitoring and managing the nature of their tenants (see **Appendix B**). Additionally, the applicants have confirmed that the proposed commercial unit will have a dedicated parking space.

The dedicated parking space providing to the commercial unit is supported and a condition is recommended at **Appendix A** in this respect.

SEPP (ARH) provides for relatively low parking generation requirements based on a combination of the *affordable housing* type accommodation and the proximity to public transport. It is considered likely that the subject sites location close to several forms of public transport and proximity to the Newcastle Interchange (i.e. which will become a hub for trains, buses and light rail) will significantly negate the one space parking variation. Additionally, the amended proposal has incorporated 18 bicycle lockers at the roof top (i.e. 16 for residents and 2 for visitors) and one bicycle rack adjacent the driveway, all within a relatively small site which will assist to encourage cycling as a transport option.

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

***“Vehicular Access, Driveway Design and Crossing Location***

*A new driveway is proposed along Station St, which will separate the access from the adjoining property at 45 Station St. The existing driveway will need to be modified to construct the new driveway.*

*The proposed driveway will provide two-way access to the site and is supported.*

***Parking Demand***

*Off-Street parking is to be provided in accordance with SEPP requirements. A total of 7 off-street parking spaces is provided within the site. Furthermore, additional parking could be done within the site in the driveway if needed.*

*Although the use of the commercial area is not known, 1 parking space could be allocated compliance if required.*

*No bicycle parking has been indicated on the plans and it is recommended that 2 bicycle parking to be provided. This can be done within the car parking at the rear.*

*The proposed off-street generally comply with SEPP and City DCP.*

***Traffic Generation***

*The traffic flows generated by the proposed residential units will not impact on the surrounding road network.*

*It is noted that on-street parking or Stopping is not available and therefore the traffic generated from the construction process will impact on the traffic movement along Station St and nearby intersection.*

*The development will need to prepare a Traffic and Pedestrian management plans for City to review. A separate approval maybe required from NCTC.*

*Conditions are recommended for construction certificate stage."*

Accordingly, the proposal is considered to be acceptable in relation to traffic, parking and access subject to conditions of consent recommended at **Appendix A**.

#### Stormwater- Section 7.06 and Water Efficiency - Section 7.07

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*"Northrop Consulting Engineers have provided a revised concept stormwater management plan. Discussions have been done with City Officers regarding set up of the underground rainwater tank and drainage discharge to the street via kerb outlet. It is noted that there is no underground drainage pipe system near the site and the design has considered that flood planning as well.*

*A 6,500L underground rainwater tank is proposed. The tank will collect rainwater from the roofed areas for reuse within the site in toilets, landscaping and any washing.*

*The proposed car parking area has been designed with permeable pavement which will provide for stormwater treatment and run-off control. The other parts of the driveway areas are generally undercover.*

*The submitted stormwater plan generally complies with Council DCP and conditions are recommended."*

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

#### Waste Management - Section 7.08

A Waste Management Plan (WMP) has been provided with the application. The proposal provides for bulk storage bins for the residential component while standard wheelie bins for the commercial aspect of the development. The ratio and size of bins proposed is considered acceptable and has been assessed by the city of Newcastle's Waste Services Section.

Conditions has been recommended addressing waste, at **Appendix A**.

Based on the submitted information, the proposal is considered to be acceptable, subject to conditions of consent.

#### Public Participation - Section 8.0

The proposal was notified to neighbouring properties in accordance with the provisions of NDCP 2012. No submissions to the proposal were received.

#### Development Contributions

Section 7.12 of the Environmental Planning and Assessment Act 1979 enables CN to levy contributions for public amenities and services under the *Section 7.12 Newcastle*

*Local Infrastructure Contributions Plan 2019*. The proposed development does not attract any contributions as follows:

- i) *affordable housing* is excluded from the calculation of costs for the purpose of S7.12 contributions under Section 25J of the *Environmental Planning and Assessment Regulation, 2000*
- ii) The site is within the City Centre and is covered by Part B of the above contributions plan. Under Part B, the proposals under \$100,000 do not attract any contributions. The submitted proposal does not exceed the \$100,000 threshold as the majority of the development is excluded as *affordable housing* and the remaining construction costs for the commercial component is less than \$100,000.

#### **5.1.3.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.1.3.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act and Regulation 2000*. In addition, compliance with AS 2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

#### Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government's vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

To achieve this vision the Government has set four goals for the region:

- The leading regional economy in Australia
- A biodiversity-rich natural environment
- Thriving communities
- Greater housing choice and jobs

#### Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years.

The proposal will contribute to both provision of increased housing within the Newcastle City Centre and the availability of affordable housing within the inner city. It is considered that the proposal meets the planning outcomes envisioned within the Lower Hunter Regional Strategy.

#### **5.1.3.6 Coastal management plan**

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



### **5.1.3.7 *The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The following matters are considered to be relevant:

#### **Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale**

It is considered that the amended proposal is acceptable, having regard to the proposed height, external appearance, character, bulk and scale. The proposal has been assessed by CN's Urban Design Consultative Group and is considered to be acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide.

#### **Overshadowing, Privacy and Views**

The privacy, height, bulk and scale aspects of the proposed development have been assessed under Section 5.1.3.1 of this report, in the context of SEPP 65 and NLEP 2012.

The overshadowing impacts of the proposal are discussed in Section 5.1.3.1. of this report - *Siting the development (3.03.02)*.

#### **View Loss:**

The proposal does not have an adverse impact on the adjoining properties in terms of views. The subject site, relevant to the position of the surrounding sites, does not result in blocking of any significant views.

The development will alter the general outlook due to the proposed changes in the size and scale of development on the site, but this is considered to be reasonable and an expected outcome of the planning controls for the Rail Edge precinct under the Section 6.03 – Wickham of the Newcastle DCP 2012 and the Newcastle LEP 2012.

#### **Traffic and Parking**

As detailed above, under Section 5.1.3.1. of this report (*Traffic, Parking and Access - Section 7.03*), the proposal has been assessed by CN's Senior Development Officer (Engineering) and is considered to be acceptable.

#### **Acoustic Impacts**

As detailed above under Section 5.1.3.1 (SEPP 65) and *Amenity (3.03.03)* of this report, the proposal is considered to be acceptable in terms of acoustic impacts.

#### **Social Impact**

As detailed above under Section 5.1.3.1 (*Social Impact - Section 4.05*) of this report, the proposal is considered to be acceptable in terms of social impacts.

**5.1.3.8     *The suitability of the site for the development***

The constraints of the site have been considered in the proposed development, which includes flooding and acid sulfate soils.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

The application was notified in accordance to the Regulations and CN's NDCP 2012 and no submissions were received.

### **5.1.3.10 The public interest**

The development is in the public interest and will allow for the orderly and economic development of the site. The development is consistent with the strategic direction adopted by CN for the Wickham area (i.e. Section 6.03-Wickham NDCP 2012). Additionally, the development provides for the additional affordable housing within the inner city of Newcastle.

## **6. CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment A** are included in any consent issued.

## **7. RECOMMENDATION**

- A. That the Hunter and Central Coast Planning Panel notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and consistent with the aims and objectives of the relevant NLEP 2012 clauses; and
- B. THAT the Hunter and Central Coast Planning Panel, as the consent authority, approve development consent to DA for the mixed development - demolition of two dwellings and erection of an eight-storey mixed use commercial/residential flat building containing 16 dwellings and one commercial unit (SEPP Affordable Rental Housing) at 43 Station Street, Wickham, pursuant to Section 80 of the EP&A Act subject to the conditions in **Appendix A**.