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Our ref: 18227.2

27 January 2021

Chief Executive Officer
City of Newcastle
PO Box 489
Newcastle NSW 2300

Dear Sir/Madam,

RE: Proposed s4.55(2) Application for the Modification of DA2018/01197.01 at 10 Dangar Street, Wickham NSW 2293

1 INTRODUCTION

KDC Pty Ltd (KDC) have prepared this Statement of Environmental Effects (SEE) on behalf of Dangar St Wickham Pty Ltd, in support of a s4.55(2) modification to DA2018/01197.01 at 10 Dangar Street, Wickham NSW 2293 (the site). The purpose of this modification is to amend the approved plan set (Condition 1, 28, 98,99), Condition 7, 69 and 76 to reflect proposed changes made to the basement levels, office gross floor area, podium façade and car parking numbers.

This Statement of Environmental Effects (SEE) describes the site, its environments, the proposed modification and an assessment of the proposal in terms of the relevant matters for consideration of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979). The report should be read in conjunction with the supporting information appended to this letter.

1.1 BACKGROUND

Development Consent (DA2018/01197) was granted by the Joint Regional Planning Panel on 30 April 2019, for the *"Demolition of existing structure and erection of 14 storey mixed use development"*. This original approval comprises:

- + Two levels of basement parking with 122 car parking spaces and services;
- + Four-storey podium with ground floor retail, nine car parking spaces, loading bays, garbage room and retail amenities; three storeys of commercial floor spaces above the ground floor, with 67 car spaces across the three levels;
- + Nine-storey residential apartment tower comprising of 97 apartments with communal space above podium level and at the rooftop; and
- + Associated landscaping, services and site infrastructure.

In accordance with Section 4.5 of the EP&A Act and Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011, the Hunter and Central Coast Joint Regional Planning Panel (JRPP) was the determining authority for applications with a capital investment value (CIV) over \$30 million. The proposed development had a CIV of \$52.8m.



As of October 2nd 2020, **KDC has joined the SLR Consulting team**. To learn more about SLR, and the additional expertise that we can now provide our clients, [take a read here >](#)

The consent granted by Council included a deferred commencement condition relating to the requirement of Transport for NSW and Sydney Trains. On 26 November 2019 a s4.55(1a) modification was granted (DA2018/01197.01) for an additional 12-month timeframe for the deferred commencement conditions to be satisfied. On 22 September 2020 it was confirmed the deferred commencement conditions had been satisfied.

1.2 COUNCIL CONSULTATION

A Pre-Development Application (Pre-DA) meeting was held with the City of Newcastle (CN) to discuss the scope of proposed changes including appropriate approval pathway.

The scope of works discussed at the Pre-DA included:

- + An additional basement level (Basement 3) with car parking;
- + Remove the car parking areas on level 1- 3 and extend the office space;
- + Extend the basement marginally to the north to allow for servicing space;
- + Reconfiguration of the ground floor car parking area, ramp location and provision of End of Trip (EOT) facilities; and
- + Rotation of the residential lift core through 90 degrees in order to facilitate an improved lift and fire stair relationship.

A summary of items discussed at the Pre-DA is provided in Table 1:

Table 1 – Pre-DA Meeting Minutes

Council Comment	Applicant Response
<p>S4.55 Modification</p> <p>A Section 4.55(2) – Other Modification, could be considered if the application demonstrated that the development that the development, as modified, will remain substantially the same development as approved and is satisfactory in terms of the relevant requirements of Section 4.15(1).</p> <p>While the responsibility for deciding whether the application can be assessed as a Section 4.55(2) rest with consent authority, the onus is on the applicant to demonstrate that the development satisfactorily addresses S4.55 (2)(a).</p> <p>The NSW Land and Environment Court has established several precedents as to what may be considered as being 'substantially the same development', and what should be considered in the threshold test.</p> <p>Principles drawn from judgments include:</p> <ul style="list-style-type: none"> • The term 'substantially' means 'essentially or materially having the same essence'. • When a consent authority makes a determination as to whether a development is substantially the same it is a question of fact and degree. • The term to 'modify' means to 'alter without radical 	<p>The proposed modification is sought as a s4.55(2) – Other Modification. The proposal as modified is considered to remain substantially the same development as approved for reasons highlighted in the below sections. The proposal remains satisfactory with the relevant matters for considerations under S4.15(1).</p> <p>To support the proposed modifications as a s4.55(2) mod, justification of how the proposal remains 'substantially the same development' against the established NSW Land and Environment Court principles is provided in Section 5.1.</p> <p>Refer to Section 5.1.</p>

<p>transformation’.</p> <ul style="list-style-type: none"> • In comparing the approved development and the development as proposed to be modified it is necessary to undertake a qualitative assessment of the developments in their proper context, and • To undertake a numeric or qualitative assessment of the modification only in the absence of a qualitative assessment would be flawed. <p>These considerations apply to the modification of a development through design modifications as well as amendments to conditions that impact the nature of the proposal. The modified scheme as presented should be ‘essentially or materially’ the same as the originally approved development.</p> <p>As discussed, any proposed changes to the approved development that substantially alter the nature and scope of the development will require a new development application. The application will need to clearly identify the proposed modifications to the existing approved plans and existing conditions.</p>	
<p>Floor Space Ratio (FSR)</p> <p>Under the Newcastle Local Environmental Plan (NLEP) 2012 a Floor Space Ratio (FSR) of 5:1 applies to the land. The provided information identifies that the proposed changes to the approved development exceeds the floor space ratio provisions.</p> <p>Any variation to planning controls is to be clearly identified on the drawings and in the Statement of Environmental Effects of the application. In addition to this, the application is to be supported by a written request pursuant to clause 4.6 ‘Exceptions to development standards’ of the NLEP 2012.</p>	<p>A written request for variation is contained within this SEE. It is noted that Clause 4.6 does not strictly apply to Section 4.55 modifications.</p>
<p>Traffic, Car Parking, Access and Waste</p> <p>Any proposal to vary the parking rates under the Newcastle Development Control Plan (NDCP) 2012 would require a comprehensive parking assessment to support such a variation. This assessment should analyse parking for recent developments approved in Newcastle City Centre and consider recent changes to public transport with the implementation of the light rail and construction of the nearby rail interchange and bus terminus.</p> <p>In the event that CN is accepting of any future argument presented by the applicant for a reduction in parking based on the availability of alternative transport there is an expectation that this parking reduction would in turn be offset by an improvement (upgrade) and increase in end of trip facilities. It is noted that any proposed increase in residential apartments and/or retail and commercial floor space would naturally necessitate a requirement of</p>	<p>Noted. An updated Traffic Assessment has been prepared by MLP Transport Planning and is attached at Appendix D (which includes an Addendum letter dated 18 December 2020 addressing the matters raised in Council’s letter dated 25 November 2020).</p>

<p>additional parking.</p> <p>Basement car parks are to be designed in accordance with AS 2890.1 – Off Street Parking Facilities. Loading/Service docks are to be designed in accordance with AS 2890.2 – Off Street Commercial Vehicle Facilities.</p> <p>A Traffic Impact Assessment is to be submitted in support of any future application addressing the relevant heads of consideration detailed under Transport for NSW 'Guide to Traffic Generating Developments' Section 2 – Traffic Impact Studies. The proposed modifications would likely trigger Clause 104 Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 and therefore require a referral to Transport for NSW.</p> <p>The proposal would appear to necessitate the review of the garbage collection operations. In this regard, the expectation is that bins be services from within the site by an appropriately sized vehicle. Bins are not to be presented to the street for kerbside collection. The option of a possible on-street loading zone would require the 'in principle' approval of the Newcastle City Traffic Committee (NCTC). The approval of the NCTC should be obtained prior to any subsequent determination of the application.</p>	<p>A review of the waste generation and garbage collection operations has been undertaken. Refer to the updated Waste Management Plan at Appendix E.</p>
<p>DCP Considerations</p> <p>It is understood that since the original lodgement of DA2018/01197, the site has changed precincts from being within the Newcastle City Centre – West End Precinct to being within the Wickham Precinct. Both sections of the NDCP are to be addressed.</p>	<p>An assessment against both precincts has been undertaken. Refer to the detailed DCP assessment attached at Appendix B.</p>
<p>Contamination</p> <p>Given the significant amount of excavation proposed, contamination/remediation will require further consideration.</p>	<p>The RAP has been updated by the consultant to reflect the proposed changes including the additional basement level.</p>
<p>Waste Management</p> <p>Proper consideration in the early design stages should be given to construction and on-going waste management for the proposed development. It is recommended you consult with CN's Waste Management Services in this regard. Please contact Waste and Commercial Collections Manager, David Thomas on 49746046.</p> <p>A detailed Waste Management Plan is to be submitted with the development application which demonstrates how the collection service will be undertaken. The plan is to include details of frequency and the maximum size vehicle. Such collection will need to be achieved without unreasonable impacts on the amenity of the area and/or the traffic environment in the locality of the site.</p>	<p>Refer to the updated Waste Management Plan at Appendix E.</p>

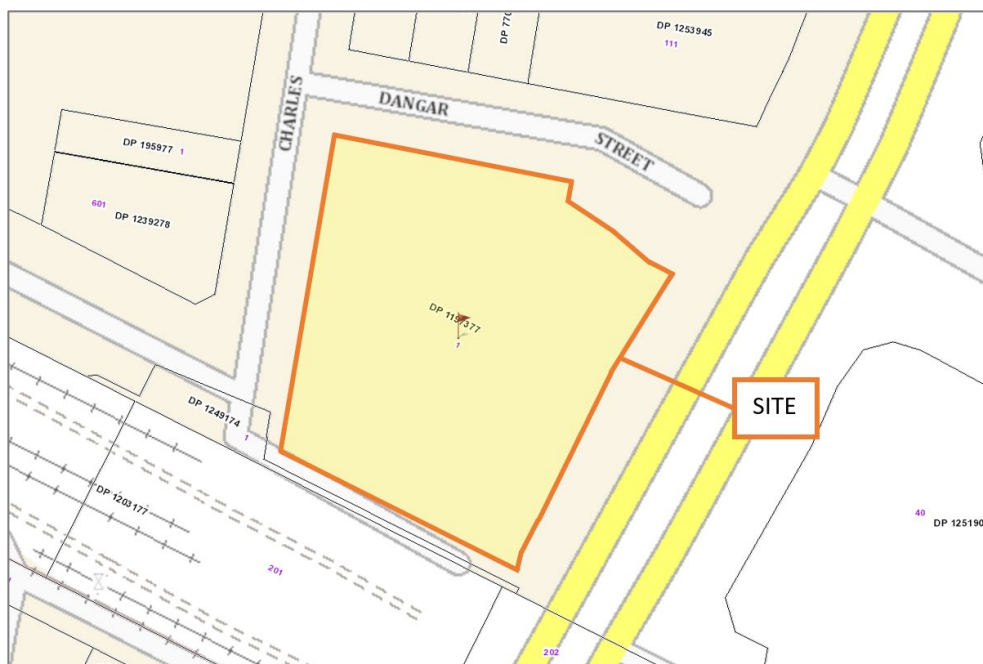
2 THE SITE AND SURROUNDS

The site is located at 10 Dangar Street, Wickham, within the Newcastle Local Government Area (LGA). The site comprises one (1) lot which is legally defined as Lot 1 in Deposited Plan (DP) 1197377. Refer to Figure 1 and Figure 2 for the site aerial and cadastral plan.

Figure 1 – Locality Plan (Source: SIX Maps)



Figure 2 – Cadastre Plan (Source: SIX Maps)



The site extends approximately 2,904m² and has frontage to Charles Street, Dangar Street, Hannell Street and the Newcastle City Interchange.

The site now falls within the Wickham Precinct, bordering with the Newcastle City Centre West End Precinct and the Honeysuckle Precinct. Refer to Figure 6.

Surrounding development largely contains similar developments to what was approved under DA2018/01197, being shop top housing. Notably to the north is Stella Apartments which are currently under construction, towards the east is a variety of Honeysuckle Doma Developments along the harbour, south of the subject site is Doma's 'The Store' which is also currently under construction and west is the west end apartments. Sharing the boundary to the south separating the subject site with 'The Store' is the Newcastle City Interchange.

Figure 3 – Precinct Map



3 PROPOSAL

A summary of the proposed modification to the approved development under DA2018/01197.01 includes:

- + An additional basement level is proposed, to relocate parking previously approved in the podium levels to a proposed 3rd basement level. This amendment has facilitated additional commercial space in these podium levels L1-L3 (previously 1462m² now 2222m²). Circulation areas, including stairs, lifts and ramps, as well as storage and service locations have been amended to suit this change, as well as the location of toilet facilities.

The proposed modification relocates car parking within levels 1-3 into a new 3rd basement level thus clearly delineating car parking & commercial/retail uses and will provide for additional high quality market demand 'A Grade' office floor space.

The total retail/commercial GFA across the ground floor to level 3 is proposed to be amended from 5707m² to 8,256m².

- + The overall spatial arrangement of the retail tenancies at the ground level remain essentially the same, however previously 2 larger tenancies (553m² + 552m²) were proposed however the modified design details 4 tenancies (200m², 331m², 359m² and 201m²).
- + The maximum RL of the building is modified from RL48.5 to RL49.45, reflective of the changes to the floor to ceiling heights proposed at Level 1-4.

- + Changes to floor to ceiling heights on commercial levels, to improve the amenity of these tenancies. As a result, the podium is now RL19.115 rather than the previously approved RL18.15. The specific changes per level are:
 - o Level 1 has been increased from 3.3m to 3.4m
 - o Level 2 has been increased from 3.3m to 3.4m
 - o Level 3 has been increased from 3.3m to 4.05m
- + The overall gross floor is proposed to be amended from 14, 520m² to 17,069m².
- + No change to the overall parking provision of 198 spaces is proposed, however bicycle and motorcycle space provision is increased.
- + No changes to the building setbacks are proposed.
- + Changes to façade treatments and materials, including:
 - o Façade amendments to reflect the additional commercial space, resulting in additional glazed areas to the western, eastern and southern podium façade. Continuous glazing is proposed to the full perimeter of office levels (other than mechanical louvres to plant), and accompanying metal horizontal shading has been extended along the entire east and west façade.
 - o Minor changes to the selected fibre cement panels. The grooved profile panels & metal screens are removed from the project.
 - o Previously selected UG grooved concrete spandrel panels replaced with horizontal metal cladding interlocking shale grey panels
 - o Screening to the podium level was previously identified as precast concrete panel, and is now proposed to be fibre cement panels.
 - o Additional screening is proposed to the Level 13 southern elevation, in response to the requirements of Sydney Trains & TfNSW. The proposal was conditioned to ensure that all south facing balconies limit opportunity for debris and waste onto the traditional rail to the south. As such, where there is any debris risk, the design is amended including the reduction of the spatial dimension of the vertical louvres in those specific areas in order to limit any debris being thrown between the louvres.
 - o Amendments to shading devices and screens to rationalise the façade appearance.
 - o In accordance with DA conditions, the level 1-4 south western podium corner has been rounded.
 - o Ground floor awning extended along the western façade as per requests made through the UDCG consultation process.
- + Minor changes to the common circulation areas of the residential apartments are indicated on the amended plans, including:
 - o The orientation of the residential lift core has been amended to improve the workability of the basement and ground floor plates. This change, as it relates to the residential levels is contained within the approved circulation areas and does not impact on the design of the residential apartments, with the exception of Level 13, where the external wall has been realigned as it relates to the adjoining private terrace.
 - o Additional detailing regarding servicing cupboards are noted on the plans.
- + Additional solar panels to the roof top
- + Inclusion of additional end of trip facilities at the ground floor, as the site is located in a highly accessible location likely to be accessed by cyclists as a mode of transport. Inclusion of EOT facilities will cater for this demand.

- + The basement shoring walls have been amended, including:
 - o Along the Dangar Street frontage has been realigned to facilitate additional space for services.
 - o An additional setback is provided adjacent to the NTI.
 - o The thickness of the shoring walls is also increased based on more detailed design having been completed.
- + Amendments to carparking layout to reflect changes to circulation relating to the relocation of the parking from the podium to the additional basement level.
- + A minor change to the ground level landscaping design has occurred adjacent to the NTI, to better accommodate the levels on the site.
- + Amendment to the Remedial Action Plan, to reflect the additional excavational associated with Basement Level 3.

4 MODIFICATION TO CONDITIONS OF CONSENT

The purpose of this s4.55(2) modification is to modify the approved plans, and to allow for this, amendments to the conditions of the consent (DA2018/01197.01) will be required. The proposed amendments are as follows:

Existing Condition:

1. Approved Documentation:

Plan No. / Supporting Document	Reference / Version	Prepared by	Dated
Basement 2 Plan	DA-100 Rev B	PBD Architects	27 January 2019
Basement 1 Plan	DA-101 Rev B	PBD Architects	27 January 2019
Ground Floor Plan	DA-102 Rev B	PBD Architects	27 January 2019
Levels 1-3 Plan	DA-103 Rev B	PBD Architects	27 January 2019
Level 4 Podium	DA-104 Rev B	PBD Architects	27 January 2019
Levels 5-12 Plan	DA-105 Rev B	PBD Architects	27 January 2019
Level 13 Plan	DA-106 Rev B	PBD Architects	27 January 2019
Level Roof	DA-107 Rev B	PBD Architects	27 January 2019
North Elevation	DA-200 Rev B	PBD Architects	27 January 2019
South Elevation	DA-201 Rev B	PBD Architects	27 January 2019
East Elevation	DA-202 Rev B	PBD Architects	27 January 2019
West Elevation	DA-203 Rev B	PBD Architects	27 January 2019
Section A	DA-300 Rev B	PBD Architects	27 January 2019
Section B	DA-301 Rev B	PBD Architects	27 January 2019
Material Schedule	DA-400 Rev B	PBD Architects	27 January 2019
GFA Diagram	DA-500 Rev B	PBD Architects	27 January 2019
Apartment Mix	DA-510 Rev B	PBD Architects	27 January 2019
Private and Communal Open Space	DA-520 Rev B	PBD Architects	27 January 2019
Storage Diagram	DA-530 Rev B	PBD Architects	27 January 2019
Cross Ventilation Diagram	DA-540 Rev B	PBD Architects	27 January 2019
45m Height Plane Diagram	DA-550 Rev B	PBD Architects	27 January 2019
Solar Study (21 st June 9am-12pm)	DA-600 Rev B	PBD Architects	27 January 2019
Solar Study (21 st June 1pm-3pm)	DA-601 Rev B	PBD Architects	27 January 2019
Shadow Diagram (21 st June 9am-12pm)	DA-610 Rev B	PBD Architects	27 January 2019

Plan No. / Supporting Document	Reference / Version	Prepared by	Dated
Shadow Diagram (21 st June 1pm-3pm)	DA-611 Rev B	PBD Architects	27 January 2019

Proposed Condition:

2. Approved Documentation:

Plan No. / Supporting Document	Reference / Version	Prepared by	Dated
Basement 3 Plan	DA-1000 Rev 7	Team2 Architects	19 January 2021
Basement 2 Plan	DA-100 DA-1001 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Basement 1 Plan	DA-101 DA-1002 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Ground Floor Plan	DA-102 DA-1003 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Levels 1-3 Plan	DA-103 DA-1004 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Level 4 Podium	DA-104	PBD Architects	27 January 2019
Levels 5-12 Plan	DA-105	PBD Architects	27 January 2019
Level 13 Plan	DA-106	PBD Architects	27 January 2019
Roof Plan	DA-107	PBD Architects	27 January 2019
North Elevation	DA-200 DA-2000 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
South Elevation	DA-201 DA-2002 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
East Elevation	DA-202 DA-2003 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
West Elevation	DA-203 DA-2001 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Section AA	DA-300 DA-3000 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Section BB	DA-301 DA-3001 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Material Schedule	DA-400 DA-4000 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Visual Impact Analysis 1	DA-401 DA-4001 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Visual Impact Analysis 2	DA-402 DA-4002 Rev 7	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Photomontage 1	DA-403	PBD Architects	27 January 2019
GFA Diagram	DA-500 DA-5000 Rev 6	PBD Architects Team2 Architects	27 January 2019 19 January 2021
Apartment Mix	DA-510	PBD Architects	27 January 2019
Private and Communal Open Space	DA-520	PBD Architects	27 January 2019
Storage Diagram	DA-530	PBD Architects	27 January 2019
Cross Ventilation Diagram	DA-540	PBD Architects	27 January 2019
45m Height Plane Diagram	DA-550	PBD Architects	27 January 2019
Solar Study (21 st June 9am-12pm)	DA-600	PBD Architects	27 January 2019
Solar Study (21 st June 1pm-3pm)	DA-601	PBD Architects	27 January 2019

Plan No. / Supporting Document	Reference / Version	Prepared by	Dated
Shadow Diagram (21 st June 9am-12pm)	DA-610	PBD Architects	27 January 2019
Shadow Diagram (21 st June 1pm-3pm)	DA-611	PBD Architects	27 January 2019

Existing Condition 7

On-site parking accommodation is to be provided for a maximum of 197 car spaces(106 spaces for residential including a minimum of 20 spaces are to be for visitor parking, 18 spaces for retail and 73 spaces for commercial spaces), 10 motorbikes and 134 secured bicycle spaces (Class 2) and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle DCP 2012. The parking spaces are to be allocated as indicated in the approved architectural plans DA100 - DA103. The applicant's traffic and parking consultant shall provide written verification that the disabled parking spaces meet the requirements associated with any required adaptable housing and also to meet the Building Code of Australia for commercial/retail use. Full details are to be included in documentation for a Construction Certificate application.

Proposed Condition 7

*On-site parking accommodation is to be provided for a maximum of ~~197 car spaces~~(~~106 spaces for residential including a minimum of 20 spaces are to be for visitor parking, 18 spaces for retail and 73 spaces for commercial spaces~~), ~~10 motorbikes and 134 secured bicycle spaces (Class 2)~~, **198 car parking spaces, 19 motorbikes, and 179 secured bicycle spaces (Class 2)** and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle DCP 2012. The parking spaces are to be allocated as indicated in the approved architectural plans ~~DA100—DA103~~ **DA-1000, DA-1001, DA-1002**. The applicant's traffic and parking consultant shall provide written verification that the disabled parking spaces meet the requirements associated with any required adaptable housing and also to meet the Building Code of Australia for commercial/retail use. Full details are to be included in documentation for a Construction Certificate application.*

Existing Condition 28

All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 'Stormwater' of Newcastle Development Control Plan, as indicated on the stormwater management concept plans and stormwater management report prepared by ACOR Consulting Engineers Project No. CC180306 Dwg No's. C1 - C10 Issue D dated 17/01/2019. Stormwater from the proposed underground water reuse tank are to be reticulated there from to new toilets cisterns and cold water washing machine taps for Ground Level and Levels 1 & 4 and landscaped areas on Ground Level and Podium Level 4. Full details are to be included in documentation for any Construction Certificate application.

Proposed Condition 28

*All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 'Stormwater' of Newcastle Development Control Plan, as indicated on the stormwater management concept plans and stormwater management report prepared by ACOR Consulting Engineers Project No. CC180306 Dwg No's. ~~C1—C10 Issue D dated 17/01/2019~~ **C01-C15 Issue E dated 11/12/2020**. Stormwater from the proposed underground water reuse tank are to be reticulated there from to new toilets cisterns and cold water washing machine taps for Ground Level and Levels 1 & 4 and landscaped areas on Ground Level and Podium Level 4. Full details are to be included in documentation for any Construction Certificate application.*

Existing Condition 69

69. The visitor parking spaces are to be allocated as indicated in the approved architectural plans DA100 - DA103 are to be clearly indicated by means of signs and/or pavement markings. The visitor spaces (20) shall remain as common property under any future strata scheme.

Proposed Condition 69

69. The visitor parking spaces are to be allocated as indicated in the approved architectural plans DA100 - DA103 are to be clearly indicated by means of signs and/or pavement markings. The visitor spaces ~~(20)~~ (10 residential visitor spaces) shall remain as common property under any future strata scheme. An additional 10 car parking spaces shall be shared with the commercial/retail tenancies.

Existing Condition 76

On-site car parking accommodation is to be provided for a minimum of 197 vehicles and such being set out generally in accordance with the details indicated on the submitted plans except as otherwise provided by the conditions of consent

Proposed Condition 76

On-site car parking accommodation is to be provided for a minimum of ~~197~~ 198 vehicles and such being set out generally in accordance with the details indicated on the submitted plans except as otherwise provided by the conditions of consent

Existing Condition 98

Remediation of contamination being carried out in accordance with the submitted Remediation Action Plan (RAP) prepared by Douglas Partners Pty Ltd dated December 2018.

Proposed Condition 98

Remediation of contamination being carried out in accordance with the submitted Remediation Action Plan (RAP) prepared by Douglas Partners Pty Ltd dated ~~December 2018~~ November 2020.

Existing Condition 99

~~Prior to the issuing of the Occupation Certificate or occupation of the premises, a Validation Report confirming the site achieves the contamination remediation goals given in the report Remediation Action Plan prepared by Douglas Partners and dated December 2018 is to be submitted to the Principal Certifying Authority and Council.~~

Proposed Condition 76

Prior to the issuing of the Occupation Certificate or occupation of the premises, a Validation Report confirming the site achieves the contamination remediation goals given in the report Remediation Action Plan prepared by Douglas Partners and dated ~~December 2018~~ November 2020 is to be submitted to the Principal Certifying Authority and Council.

5 LEGISLATION

Compliance with all requirements under various legislation, Environmental Planning Instruments (EPI's) and Council policies remains unaffected by the proposed modifications. The proposed amendment does not change the overall design, function or off-site impacts of the development (as approved).

The following legislation, Environmental Planning Instrument (EPI) and Development Control Plan (DCP) are relevant to the modified development:

- + Environmental Planning and Assessment Act 1979;
- + State Environmental Planning Policy (SEPP) Infrastructure 2007;
- + State Environmental Planning Policy (SEPP) No.55 - Remediation of Land;
- + State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development;
- + State Environmental Planning Policy (SEPP) Coastal Management 2018;
- + Newcastle Local Environmental Plan 2012 (NLEP 2012); and
- + Newcastle Development Control Plan 2012 (DCP 2012).

5.1 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A ACT 1979)

It is considered that the modification of the development consent proposed is substantially the same development as that for which the original consent was granted. Accordingly, the approval path for the proposed modification is *s4.55(2) Other Modifications* under the EP&A Act 1979:

Section 4.55 Modification of consents - generally

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

As noted by Council during the Pre-DA, the onus is on the applicant to demonstrate that the development satisfactorily addresses S4.55 (2)(a).

The traditional 'test' as to whether or not a development as modified will be "substantially the same" development as that originally approved was applied by Justice Stein and the Court of Appeal in *Vacik Pty Limited v Penrith City Council* (1992, NSWLEC 8) (Vacik), and endorsed by Justice Bignold in *Moto Projects (No. 2) Pty. Limited v North Sydney Council* (1999) 106 LGERA 298 (Moto).

Justice Stein stated in the Vacik case: *"In my opinion 'substantially' when used in the section [s102, the predecessor of s96, now s4.55] means essentially or materially having the same essence".*

Justice Bignold expressed in the Moto case: *"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified ... not merely a comparison of the physical features or components of the development ... rather ... involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."*

The matter of "substantially the same" appeared again in *Tipalea Watson Pty. Limited v Kurringai Council* (2003) 129 LGRA 351. From this Judgement, a list of matters or 'tests' to consider, being whether the modification involves the following:

- (a) significant change to the nature or the intensity of the use;
- (b) significant change to the relationship to adjoining properties;
- (c) adverse amenity impacts on neighbours from the changes;
- (d) significant change to the streetscape; and
- (e) change to the scale or character of the development, or the character of the locality

A comparison of the approved development versus the development as proposed under this modification application is provided in Figures 4 and 5, and is detailed in Table 1 below.

Figure 4 – Approved Perspectives

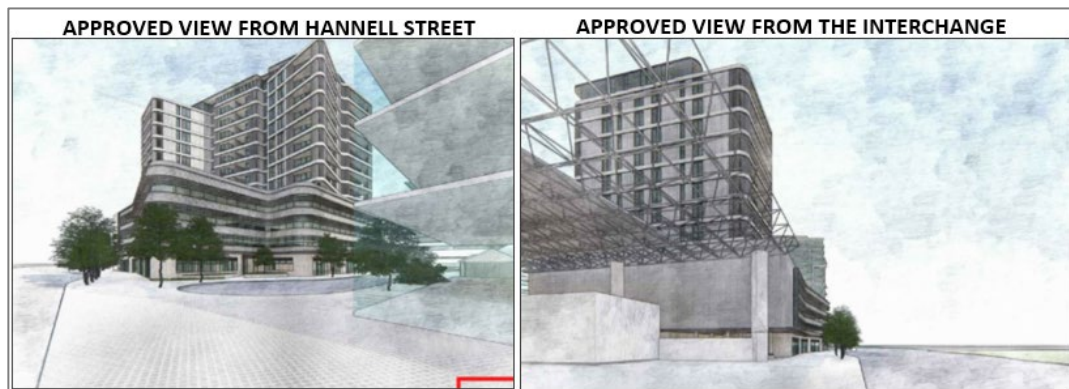


Figure 5 – Modified Perspectives

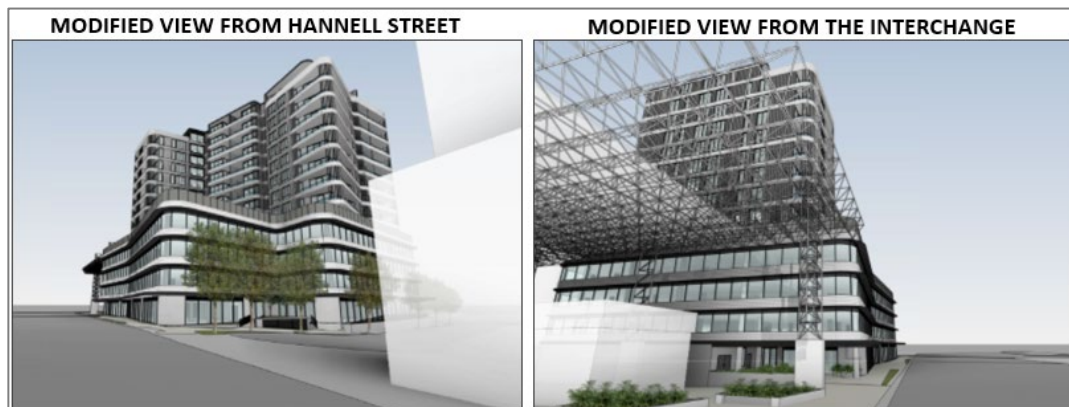


Table 1 – Quantitative comparison of original approval and proposed modification plans

	Original Consent	Modification Proposal
Apartments total	97 units	97 units
1 bed units	19 units	19 units
2 bed units	68 units	68 units
3 bed units	10 units	10 units
Total beds	185	185
Maximum RL	48.5m	49.45m
Maximum height	46.7m	47.64m
Height Variation	1.7m (3.7%)	2.64 m (5.8%)
Total GFA	14,520 m ²	17,069 m ²
Floor space ratio (FSR)	5	5.87:1
FSR variation	-	17.4%
Number of storeys	14	14
Basement	2 levels	3 levels
Car spaces	198	198
Bicycle spaces	134	179
Motorcycle spaces	17	19
Retail/Commercial area	5,707m ²	8,256m ²

Street setbacks – street level		
Hannell Street	3m	No change, except as required by condition of consent requiring amendment to south western corner.
Dangar Street	2.5m	
Charles Street	2.5	
Street setback above 12		
Hannell Street	6m	No change
Charles Street	6m	
Dangar Street	5m	
Station st	4m	
Street wall height	RL18.15 Ranging from 15.3m-16.61m (due to street level variation)	RL19.115 (+0.965m) Ranging from 16.265m-17.575m (due to street level variation)

A floor by floor summary is detailed below in Table 2, and annotated in the architectural plans prepared by Team2 Architects at Appendix A of this report.

Table 2: Proposed modifications detailed by individual plan

Floor level	Modification Sought
DA-1000 Basement 3 Level	<ul style="list-style-type: none"> New basement level, containing: <ul style="list-style-type: none"> 68 car spaces (including 1 accessible space) 7 motorcycle spaces 52 bicycle spaces New basement level contains spaces previously provided in the podium levels (was total 67 car spaces, 6 motorcycle space and 27 bicycle spaces across 3 levels)
DA-1001 Basement 2 Level	<ul style="list-style-type: none"> Amendments to carparking layout to reflect changes to circulation relating to the relocation of the parking from the podium to the additional basement level. The basement shoring walls have been amended, including: <ul style="list-style-type: none"> Along the Dangar Street frontage has been realigned to facilitate additional space for services. An additional setback is provided adjacent to the NTI. The thickness of the shoring walls is also increased based on more detailed design having been completed. Basement level 2, contains: <ul style="list-style-type: none"> 61 car spaces (including 4 accessible spaces) – <i>previously 63 spaces</i> 5 motorcycle spaces – <i>previously 2 spaces</i> 38 bicycle spaces – <i>previously 60 spaces</i>

DA-1002 Basement 1 Level	<ul style="list-style-type: none"> • Amendments to carparking layout to reflect changes to circulation relating to the relocation of the parking from the podium to the additional basement level. • The basement shoring walls have been amended, including: <ul style="list-style-type: none"> ○ Along the Dangar Street frontage has been realigned to facilitate additional space for services. ○ An additional setback is provided adjacent to the NTI. ○ The thickness of the shoring walls is also increased based on more detailed design having been completed. • Basement level 1, contains: <ul style="list-style-type: none"> ○ 63 car spaces (including 2 accessible spaces) – <i>previously 58 spaces</i> ○ 7 motorcycle spaces – <i>previously 2 spaces</i> ○ 68 bicycle spaces – <i>previously 47 spaces</i>
DA-1003 Ground Floor	<ul style="list-style-type: none"> • The overall design of the retail tenancies at the ground level remain as approved, however previously 2 larger tenancies (553m² + 552m²) were proposed however the modified design details 4 tenancies (200m², 331m², 359m² and 201m²) to better reflect the future marketability of the spaces. • Inclusion of additional end of trip facilities at the ground floor. • A minor change to the ground level landscaping design has occurred adjacent to the NTI, to better accommodate the levels on the site. • The ground level, contains: <ul style="list-style-type: none"> ○ 6 car spaces – <i>previously 8 spaces</i> ○ 21 bicycle spaces – <i>previously no spaces</i> • Two loading bays, a SRV loading bay and a car wash is proposed – <i>no change other than the car wash bay.</i>
DA-1004 Level 1-3 Typical	<ul style="list-style-type: none"> • Additional commercial space in these podium levels (previously 1462m² now 2222m²). • Circulation areas, including stairs, lifts and ramps, as well as storage and service locations have been amended to suit this change, as well as the location of toilet facilities. • Changes to floor to ceiling heights on commercial levels, to improve the amenity of these tenancies. The specific changes per level are: <ul style="list-style-type: none"> ○ Level 1 has been increased from 3.3m to 3.4m ○ Level 2 has been increased from 3.3m to 3.4m ○ Level 3 has been increased from 3.3m to 4.05m
DA-1005 Level 4 Podium	<ul style="list-style-type: none"> • Changes to floor to ceiling heights on the commercial levels below, to improve the amenity of these tenancies results in the podium height now sitting at RL19.115 rather than the previously approved RL18.15. • Minor changes to the common circulation areas of the residential apartments are indicated on the amended plans, including: <ul style="list-style-type: none"> ○ The orientation of the residential lift core has been amended to improve the workability of the basement and ground floor plates. This change, as it relates to the residential levels is contained within the approved circulation areas and does not impact on the design of the residential apartments.
DA-1006 Level 5-12 Typical	<ul style="list-style-type: none"> • Minor changes to the common circulation areas of the residential apartments are indicated on the amended plans, including: <ul style="list-style-type: none"> ○ The orientation of the residential lift core has been amended to improve the workability of the basement and ground floor plates. This change, as it relates to the residential levels is contained within the approved circulation areas and does not impact on the design of the residential apartments. ○ Additional detailing regarding servicing cupboards are noted on the plans.

DA-1007 Level 13	<ul style="list-style-type: none"> Minor changes to the common circulation areas of the residential apartments are indicated on the amended plans, including: <ul style="list-style-type: none"> The orientation of the residential lift core has been amended to improve the workability of the basement and ground floor plates. This change, as it relates to the residential levels is contained within the approved circulation areas but does the external wall being realigned as it relates to the adjoining private terrace.
DA-1008 Roof	<ul style="list-style-type: none"> The residential lift overrun is reorientated to reflect the changes made to the design. Additional solar panels to the roof top
DA-2000 North Elevation	<ul style="list-style-type: none"> Changes to floor to ceiling heights on commercial levels, to improve the amenity of these tenancies. As a result, the podium is now RL19.115 rather than the previously approved RL18.15. Screening to the podium level was previously identified as precast concrete panel, and is now proposed to be fibre cement panels. Amendments to shading devices and screens to rationalise the façade appearance.
DA-2001 West Elevation	<ul style="list-style-type: none"> Changes to floor to ceiling heights on commercial levels, to improve the amenity of these tenancies. As a result, the podium is now RL19.115 rather than the previously approved RL18.15. Façade amendments to reflect the additional commercial space, resulting in additional glazed areas to the western podium façade. Continuous glazing is proposed to the full perimeter of office levels (other than mechanical louvres to plant), and accompanying metal horizontal shading has been extended along the entire west façade. Screening to the podium level was previously identified as precast concrete panel, and is now proposed to be fibre cement panels. Amendments to shading devices and screens to rationalise the façade appearance. In accordance with DA conditions, the level 1-4 south western podium corner has been rounded. Ground floor awning extended along the western façade. Art work at ground level is notated, as required by DA condition 4b.
DA-2002 South Elevation	<ul style="list-style-type: none"> Changes to floor to ceiling heights on commercial levels, to improve the amenity of these tenancies. As a result, the podium is now RL19.115 rather than the previously approved RL18.15. Façade amendments to reflect the additional commercial space, resulting in additional glazed areas to the southern podium façade Screening to the podium level was previously identified as precast concrete panel, and is now proposed to be fibre cement panels. Additional screening is proposed to the Level 13 southern elevation, in response to the requirements of Sydney trains & TfNSW. The proposal was conditioned to ensure that all south facing balconies limit opportunity for debris and waste onto the traditional rail to the south. As such, where there is any debris risk, the design is amended including the reduction the spatial dimension of the vertical louvres in those specific areas in order to limit any debris being thrown between the louvres. Amendments to shading devices and screens to rationalise the façade appearance. In accordance with DA conditions, the level 1-4 south western podium corner has been rounded. Art work at ground level is notated, as required by DA condition 4.

DA-2003 East Elevation	<ul style="list-style-type: none"> • Changes to floor to ceiling heights on commercial levels, to improve the amenity of these tenancies. As a result, the podium is now RL19.115 rather than the previously approved RL18.15. • Façade amendments to reflect the additional commercial space, resulting in additional glazed areas to the eastern podium façade. Continuous glazing is proposed to the full perimeter of office levels (other than mechanical louvres to plant), and accompanying metal horizontal shading has been extended along the entire east façade. • Screening to the podium level was previously identified as precast concrete panel, and is now proposed to be fibre cement panels. • Amendments to shading devices and screens to rationalise the façade appearance.
DA-4000 Materials Schedule	<ul style="list-style-type: none"> • Minor changes to the selected fibre cement panels. The grooved profile panels & metal screens are removed from the project. • Previously selected UG grooved concrete spandrel panels replaced with horizontal metal cladding interlocking shale grey panels

This application is made pursuant to section 4.55(2) of the EP&A Act 1979 and the proposed modification is 'substantially the same' as the approved development, for the following reasons:

- + The proposal retains the approved use, being a 'mixed use development';
- + The proposal does not involve changes to the residential aspect of the building;
- + The proposal contributes to the future desired character of the area, specifically with the additional commercial space;
- + The proposal results in negligible environmental impacts in addition to those considered and assessed under the original application;
- + The proposal does not result in adverse amenity impacts on surrounding residential properties in terms of privacy impacts or overshadowing impacts;
- + The proposal retains the built form as originally approved and is not considered to change the streetscape (example provided in Figures 4 and 5); and
- + The proposal maintains the scale and character of the development as approved, which is considered to continue to positively enhance the current and future vision for the character of the locality.

As detailed in Table 1 and 2, the numerical and design changes to the proposal are not significant to the extent that the proposal would not comprise substantially the same development.

5.2 STATE ENVIRONMENTAL PLANNING POLICY (SEPP) INFRASTRUCTURE 2007

85 Development adjacent to rail corridors

(1) *This clause applies to development on land that is in or adjacent to a rail corridor, if the development—*

- (a) is likely to have an adverse effect on rail safety, or*
- (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
- (c) involves the use of a crane in air space above any rail corridor, or*
- (d) is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

The site is located adjacent to a rail corridor, as part of the original application was referred to the rail authorities in accordance with this Clause. In this regard the consent granted by Council included a deferred commencement condition relating to the requirement of Transport for NSW and Sydney Trains.

The deferred commencement conditions relate to the provision of additional information to TfNSW for review and approval, as follows:

- + Final geo-technical and structural report/drawings
- + Details of the vibration and movement monitoring system that will be in place before excavation commences
- + Final construction methodology with construction details pertaining to structural support during excavation or ground penetration
- + Final cross-sectional drawings showing ground surface, rail tracks and interchange facilities, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor
- + Detailed survey plan

On 22 September 2020 it was confirmed the deferred commencement conditions had been satisfied. The proposed modification is not expected to trigger further requirements in this regard.

Additional screening is proposed to the Level 13 southern elevation, in response the to requirements of Sydney trains & TfNSW. The proposal was conditioned to ensure that all south facing balconies limit opportunity for debris and waste onto the traditional rail to the south. As such, where there is any debris risk, the design is amended including the reduction the spatial dimension of the vertical louvres in those specific areas in order to limit any debris being thrown between the louvres.

86 Excavation in, above, below or adjacent to rail corridors

(1) This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land—

- (a) within, below or above a rail corridor, or*
- (b) within 25m (measured horizontally) of a rail corridor, or*
- (b1) within 25m (measured horizontally) of the ground directly below a rail corridor, or*
- (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*

The proposed modification works require additional excavation works within 25m of a rail corridor, therefore Clause 86 applies.

In deciding whether to provide concurrence, the rail authority must take into account:

- (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on—*
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

The site is located adjacent to a rail corridor, as part of the original application was referred to the rail authorities in accordance with this Clause. As noted in the discussion above relating to Clause 85, the consent granted by Council included a deferred commencement condition relating to the requirement of Transport for NSW and Sydney Trains. On 22 September 2020 it was confirmed the deferred commencement conditions had been satisfied. The proposed modification is not expected to trigger further requirements in this regard.

87 Impact of rail noise or vibration on non-rail development

(1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—

- (a) residential accommodation,*
- (b) a place of public worship,*
- (c) a hospital,*
- (d) an educational establishment or centre-based child care facility.*

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The proposed modification does not seek to change the already approved residential accommodation, therefore, the previously assessed impact of rail noise or vibration remains unchanged and continues to be acceptable.

101 Development with frontage to classified road

The development site has frontage to Hannell Street, which is a State classified road. Clause 101 of this SEPP outlines the requirements for development with frontage to a classified road. The objectives of this clause are:

(1) The objectives of this clause are—

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*

- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposed modification seeks to increase office floor space and therefore increase traffic demand for the site. The results of the traffic and parking review that was undertaken showed the additional office spaces would result in an added 30 vehicles per house (vph). This is considered a minor increase with no impact on the intersection efficiencies. An updated Traffic Assessment has been prepared and attached at Appendix D.

104 Traffic-generating development

(1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves—

- (a) new premises of the relevant size or capacity, or*
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

In accordance with schedule 3 of the SEPP, the trigger for the proposed modifications to be considered traffic generating development is to either compromise 10,000m² in GFA or comprise 2500² in GFA with direct access/access within 90m of a state classified road.

The development does not contain direct access or access within 90m of Hannell Street, therefore is not considered traffic generating development.

5.3 STATE ENVIRONMENTAL PLANNING POLICY (SEPP) NO. 55 – REMEDIATION OF LAND

Clause 7 Contamination and remediation to be considered in determining development application

SEPP55 Remediation of Land requires the consent authority to consider the potential contamination status of the land prior to approving a development. The original application was supported by contamination studies and resulted in a Remedial Action Plan (RAP) that is referenced in the existing consent. Due to the additional excavation associated with the basement in the modified proposal, the RAP has been updated (refer Appendix F). As demonstrated in the RAP, the proposal continues to meet the requirements of SEPP 55.

5.4 SEPP 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component if the development consists of any of the following:

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) the building concerned contains at least 4 or more dwellings.*

The proposed development involves the erection of a building which exceed three storeys above ground level and contains more than four dwellings.

However, the proposed modification does not seek to amend the design of the residential apartments, and in this regard, the proposal continues to address the requirements of SEPP65 and the associated Apartment Design Guide.

5.5 STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

The State Environmental Planning Policy (Coastal Management) 2018 came into effect on 3 April 2018, replacing SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

In accordance with the Coastal Management interactive map published by the state government, the site has been identified within a *coastal use area* and *coastal environment area* as shown in Figure 6 below.

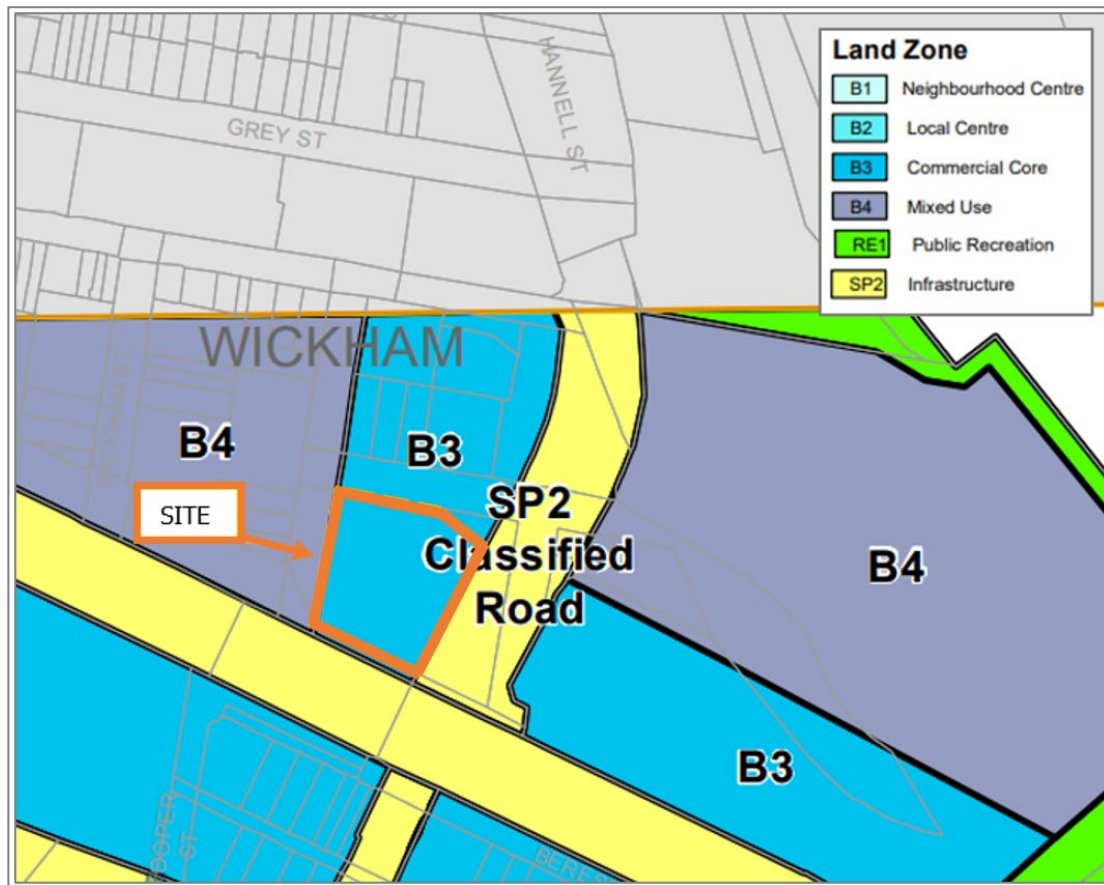
As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore. The proposed development is sufficiently setback from Throsby Creek/Hunter River that it will not result in any adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design. The proposed modification will not impact access to the foreshore, result in overshadowing over the foreshore, nor will it result in impacts to the visual amenity of the locality. The modification maintains organic architecture in the form of curves which is considered complementary to the foreshore locality.

5.6 NEWCASTLE LOCAL ENVIRONMENTAL PLAN 2012

The Newcastle Local Environmental Plan 2012 (NLEP 2012) indicates that the site is within the B3 Commercial Core Zone, as shown in Figure 6.

Figure 6 – Land Zoning Map Extract from NLEP 2012 (LZN_004G)



The objectives of the zone are:

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

The relocation of the car parking spaces to the additional basement level, as proposed in the modified application, enables additional commercial floor space, in a larger floor plate configuration. This enables these spaces to be highly attractive to future commercial tenants and will facilitate the revitalisation of the commercial core area of the CBD.

In this regard, it is considered that the amendments to the proposal are facilitating the highest and best use of the site, with no unreasonable impacts. Due to the proximity to public transport, the additional commercial space will maximise the opportunities to increase use of public transport.

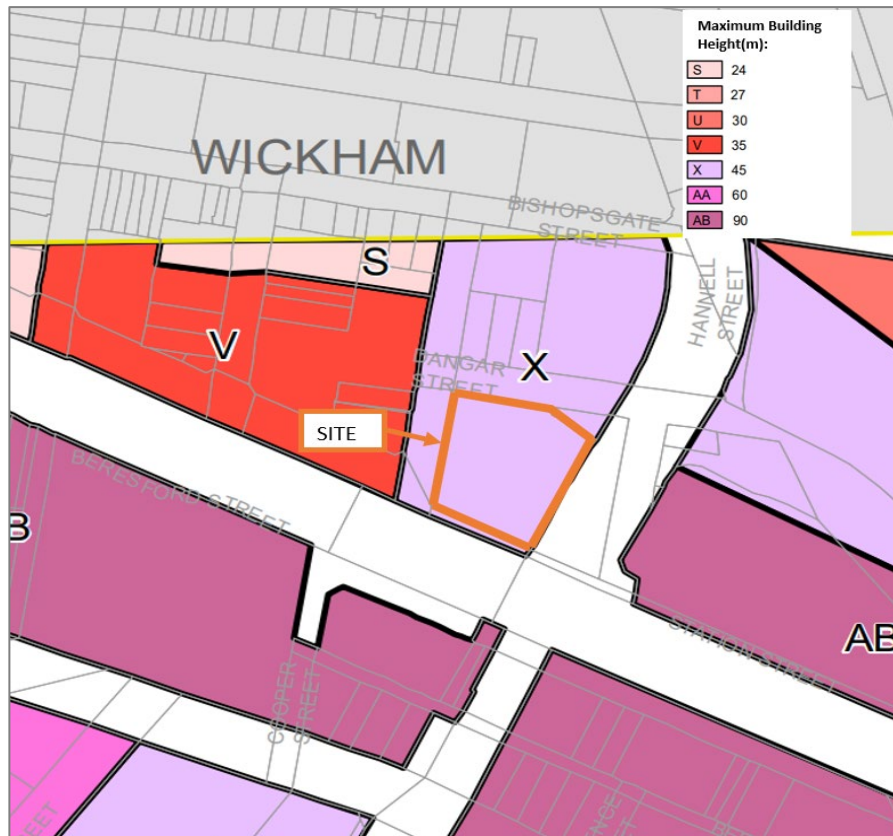
The proposed amendments will continue to support the future mixed-use development proposed for the site, and therefore will remain consistent with the zone objectives as approved under DA2018/01197.01.

Clause 4.3 – Height of Buildings

The subject site has a maximum height of buildings of 45 metres (refer to Figure 7).

The proposed modification seeks to alter the overall building height from RL 48.50 to RL 49.450 to the top of the vertical service louvre. The additional height stems from modifications sought to the floor to ceiling heights of the levels 1-3 office space. Table 2 below indicates the proposed height increase.

Figure 7 – Height of Buildings Map Extract from NLEP 2012 (HOB_004G)



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

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
- (b) to allow reasonable daylight access to all developments and the public domain

Newcastle LEP 2012 defines height as the following:

Building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The building extends to RL 48.60m at its highest point, with the proposed lift overrun further exceeding the height by 850mm, resulting in an overall height exceedance of 2.64m (as measured from the existing ground level detailed on the survey plan). The proposed 5.8% variation is considered to be minor, particularly in the context of the existing approved variation (3.7% variation). The Architectural Plans attached at Appendix A identifies the proposed maximum ridgeline height.

It is noted that Clause 4.6 does not strictly apply to Clause 4.55 modification applications, however notwithstanding the framework of the clause is considered below in relation to the proposed variation to height:

Compliance is unreasonable or unnecessary

In accordance with the Land and Environment Court principles relating to LEP variations, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the numerical standard.

The proposed development achieves the objectives of Clause 4.3 as detailed below:

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

The overall built form as approved remains substantially the same to the original consent. The modification results in an overall 5.8% variation (noting the original development was approved with a 3.7% variation). The built form, as modified, will continue to reflect the emerging contemporary character of the locality and positively upgrade the existing streetscape. It is noted that Wickham is undergoing rapid development with building density increasing as new developments proceed. The site's key location abutting the Newcastle Interchange and bordering with the West End Precinct drives the demand for greater high end office space.

The purpose of the proposed height increase is to provide for services between the levels and responds to the market demand for high quality A grade contemporary office space. The proposed height exceedance is contained to a portion of the top level apartments, the rooftop and lift overrun. The exceedance is minor, particularly in comparison to the approved built form, and will not result in any detrimental impact to the streetscape and adjoining land uses.

The bulk and scale of the overall approved development changes little, with the visual of the built form being softened with the use of varying materials, stepped facades and varying rooflines to create interest. Details of the façade and articulation are provided in the Architectural Plans submitted with the DA.

It is further noted that the height limits for land within close proximity to the site permits buildings to 90 metres. In this regard, the proposed variation would not result in any perceivable impacts to the locality or streetscape, and will sit comfortably in the context and the established centres hierarchy.

It is also noted that the building approved at 38 Hannell Street was approved an additional 1.6m (RL49.6) above the LEP height limit to the roof of the building and the lift overrun of the building sits another 2.6m above the roof (to RL52.2), being a 9.3% variation. The modified proposal will sit comfortably within this context.

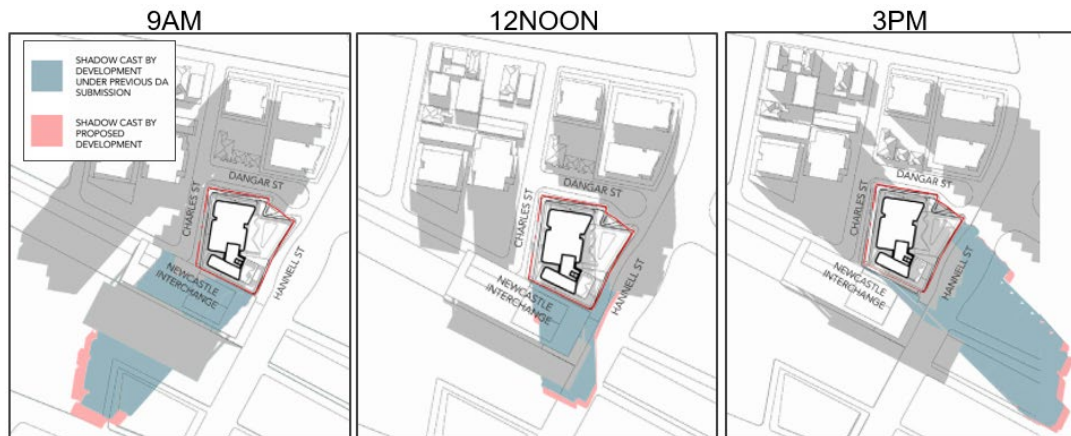
Given the high-quality design outcome proposed and the lack of any unreasonable impacts as a result of the variation sought; the variation is considered to be well justified in this instance.

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

As demonstrated by the amended shadow diagram (see Figure 8), solar access to surrounding development and the public domain is not unreasonably impacted by the proposed development. The shadow diagrams demonstrate that the adjoining properties will still achieve, or be capable of achieving adequate sunlight and that the minor shadow increase will only go over the roofed area of the Newcastle interchange and over the adjacent Light Rail Depot for a small window of time.

This will have no detrimental impacts to neighbouring residential properties. Hourly shadow diagrams are provided within Appendix A.

Figure 8 – Approved Plan (DA610) – Shadow Diagrams



Overall, it is submitted that compliance is unreasonable or unnecessary on the basis that:

- + The proposed built form will reflect the emerging contemporary character of the locality and positively upgrade the existing streetscape;
- + The proposed development meets the underlying intent of the controls and is a compatible form of development that does not result in unreasonable environmental amenity impacts;
- + The greatest extent of the height exceedance is the lift overrun and services area, however given the setback it is not expected to be visible from the public domain, therefore will not contribute to any sense of an unacceptable building scale;
- + The increase in height resulting from non-compliance will not result in any undue impacts on adjoining properties particularly with respect to overshadowing, loss of privacy nor loss of views;
- + The application continues to satisfy the requirements SEPP 65 Design Quality of Residential Apartment Development and Council's DCP ensuring a high-quality development;
- + Strict compliance with the standards would not achieve a greater planning or urban design outcome;
- + The proposed development satisfies the objectives of the B3 Commercial Core zone and the objectives of Clause 4.3 Height of Buildings;
- + Height exceedance is partially attributed to necessary occupiable floor levels in flood areas, requiring the ground floor levels to be raised to 2.68m AHD for safety reasons. It is noted that if flood levels were not required to be raised for flooding purposes, the extent of compliance with Clause 4.3 would be numerically reduced;
- + The proposed development has been architecturally designed with the use of varying materials, stepped facades and varying rooflines to create interest in the façade;

- + The proposal represents an efficient use of land within the site and reasonable economic development of the land; and
- + The requested modification to the approved building height will allow for a marginally increased slab to slab height through the commercial podium & floors which will in turn allow the development to achieve true 'A grade' commercial space as per defined by the Property Council of Australia.

Taking into account the above, the strict application of the development standard for maximum height is unreasonable and unnecessary as it would not achieve a greater planning or urban design outcome. The proposed height will facilitate a quality mixed-use development with a high level of amenity without resulting in additional environmental impacts. The overall development presents a highly functional, contemporary building which offers design excellence and contributing land uses to the locality.

Therefore, the proposed development within this context demonstrates the numerical height non-compliance is acceptable.

Sufficient Environmental Planning Grounds to Justify Contravention

Significantly, the modified proposal will facilitate additional commercial space in the commercial core of the Newcastle CBD, when compared to the existing approval. This is facilitated by locating car parking from the podium levels to an additional basement level. Accordingly, the modified proposal is highly desirable having regard to the objectives of the zone.

The proposal is consistent with the objectives of the B3 Commercial Core zone, notably that it is facilitating a range of permissible uses, including commercial floor space in an accessible location close to public transport options. The proposal will strengthen the role of the Newcastle City Centre/ Wickham Precinct as the regional business, retail and cultural centre of the Hunter region and has no unreasonable impacts on identified view corridors.

This assessment demonstrates that the resultant environmental impacts of the proposal are considered to be satisfactory. If made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape, neighbouring properties and the local area. The variation will enable a high quality, architecturally designed development in the Wickham area. The proposal seeks to provide new mixed-use development in an existing urban area and will maximise reliance on existing infrastructure in a location that is in proximity to a range of employment, recreation, education and transport services. The objectives of Clause 4.3 have been met within the proposed development. In light of this, there is sufficient environmental planning grounds to justify contravening the development standard.

Public Interest

The development is in the public interest as it is consistent with the objectives of Clause 4.3 of NLEP 2012 (height of buildings) and further aligns with B3 zone objectives as the proposed modification will generated greater employment opportunities in an accessible location. The development is considered to be a land use that is compatible and consistent with the surrounding area in this central location. The proposed modification results in a better planning outcome for the site, and in the circumstances of this case, the proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant zone objectives.

The proposed design changes to the façade of the building has resulted in added glazing to the South West, South and South East elevations of the building. These design changes are in public interest due to the enhanced appearance of the building. The design changes also make a positive contribution to the desired future urban character of the area.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.4 Floor Space Ratio

The objectives of Clause 4.4 – Floor Space Ratio (FSR) are as follows:

- (a) to provide an appropriate density of development consistent with the established centres hierarchy,*
- (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

Newcastle LEP 2012 defines floor space ratio as:

the floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

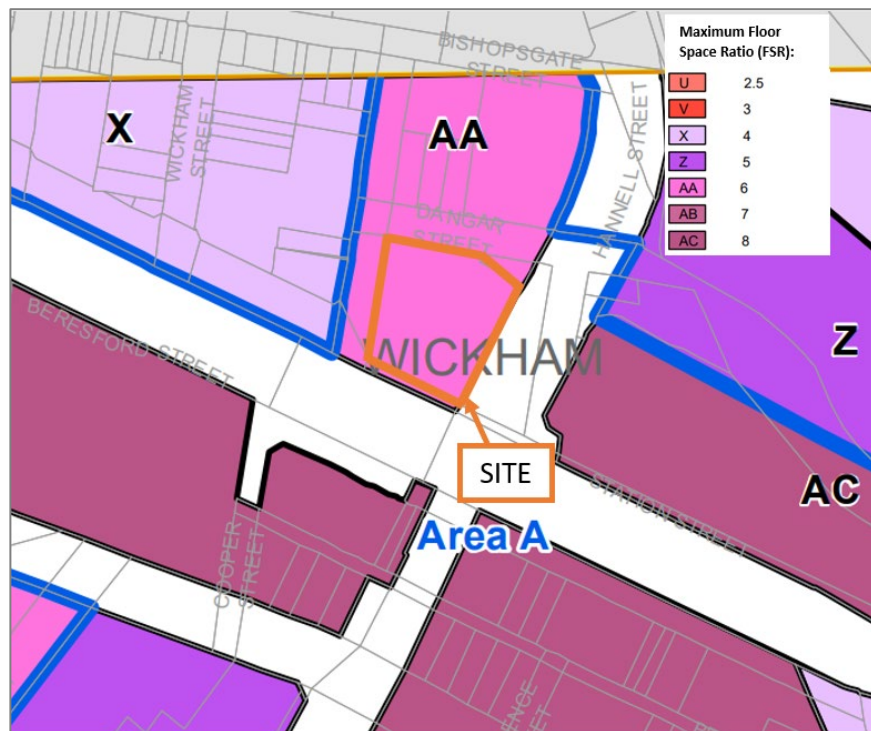
Newcastle LEP 2012 defines gross floor area as the following:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
but excludes—
 - (d) any area for common vertical circulation, such as lifts and stairs, and*
 - (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above.*

The maximum FSR under the LEP 2012 is 6:1, as illustrated in Figure 9. However, the application of clause 7.10 affects the FSR as the site is within the FSR “Area A”. Clause 7.10 reduces the allowable FSR for the overall site to 5:1, unless the overall development is defined as a ‘commercial building’.

Figure 9 – Floor Space Ratio Map Extract from NLEP 2012 (FSR_004G)



As the proposal is not wholly a commercial use, it is acknowledged that Clause 7.10 of the LEP the applicable FSR control for the proposal is 5:1. However, it is highlighted that there are no further increases to the GFA of the residential levels of the building. The increase to GFA and thus FSR wholly relates to the commercial use aspect of the development.

The current approved plans under DA2018/01197.01 provides a total GFA of 14,520m² on a site with a total area of 2,904m². The approved FSR therefore equates to 5:1.

The proposed modification seeks to amend the GFA of Levels 1-3 by removing the car parking areas and extend the office space so that the floor plates on Levels 1-3 are entirely purposed for the office space. See Table 3 below for the proposed GFA changes:

Table 3 – GFA Comparison

Approved Under DA2018/01197	Modification Proposed
Ground Floor = 1,321m ²	Ground Floor = 1,362m ²
Level 1 = 1,378m ²	Level 1 = 2,298m ²
Level 2 = 1,378m ²	Level 2 = 2,298m ²
Level 3 = 1,378m ²	Level 3 = 2,298m ²
	Total = 8256m²

The total proposed GFA increase is 2,549m², with no proposed changes to the residential GFA (8,813m² approved in DA2018/01197). Overall the total GFA inclusive of the residential GFA is 17,069m².

Based on the modifications sought, the changes will result in an FSR of 5.87:1, resulting in a 17.4% variation.

It is noted that Clause 4.6 does not strictly apply to Clause 4.55 modification applications, however notwithstanding the framework of the clause is considered below in relation to the proposed variation to FSR:

Compliance is unreasonable or unnecessary

In accordance with the Land and Environment Court principles relating to LEP variations, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the numerical standard.

The proposed development achieves the objectives of Clause 4.4 as detailed below:

(a) to provide an appropriate density of development consistent with the established centres hierarchy,

The subject site is within a B3 Commercial Core Zone and will be situated on a site previously used for motor vehicle sales use ('McCarrolls'). The site is at the boundary of three precincts, being the Wickham Precinct, West End Precinct and the Honeysuckle Precinct. The site is within an area showing sustained growth and change and borders the West End Precinct which is strategically identified as the future CBD of Newcastle.

Recognising the future vision for the locality, and the site's strategic location adjacent to the Newcastle Interchange, the proposal seeks to increase the amount of available high quality office space within such an accessible location of the precinct. It is relevant to note that the proposal does not seek to increase the density of the residential component, rather the increase is solely within the office space within the existing approved built form. The increase to GFA and thus FSR wholly relates to the commercial use aspect of the development and therefore considered the proposed additional office space as an appropriate density of development.

It is further noted that the FSR limits for land within close proximity to the site permits buildings to 8:1. In this regard, the proposed variation would not result in any perceivable impacts to the locality or streetscape, and will sit comfortably in the context and the established centres hierarchy.

Taking into account the above, the strict application of the development standard for maximum floor space ratio is considered unreasonable and unnecessary, noting that no built form changes as a result of the office GFA increase. Strict compliance would not achieve a greater planning or urban design outcome.

(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

The building bulk and scale will not be altered as a result of the proposed FSR variation. The modification seeks to extend the availability of office space within the existing approved building footprint. The only changes will apply to the building density, strictly the office space, which market research shows is ideal in this strategic location. The modification to the development will have no major impact on the streetscape of the area, as indicated in the comparison shown by Figure 10 and 11 below.

The only notable design changes as a result of the modification includes a significantly improved elevational treatments to the podium, particularly to the southern façade, including glazing on the podium levels, which is desirable from a visual aesthetic and passive/natural surveillance view point. The overall proposed increase to the building density results in increased commercial use, which importantly for the Wickham precinct creates greater employment opportunities in an easily accessible location. The returning of previously approved 'sleeve' car parking to commercial office space also results in a far more desirable architectural outcome from a floorplate perspective; revised floorplates are now >2,000sqm GFA which is aligned to the Property Council of Australia's guidelines for achieving true 'A grade' commercial space within the building. This will help to attract desirable national & international tenants to the building, which is a positive for the local & regional economy.

Figure 10 – Approved Plans – Visual Impact Analysis 2 (DA402)



Figure 11 – Proposed Plans – Visual Impact Analysis 2 (DA4002)



Overall, it is submitted that the development is reasonable on the basis that:

- + The proposed development meets the underlying intent of the controls and is a compatible form of development that does not result in unreasonable environmental amenity impacts;
- + The exceedance of the floor space ratio will not result in an overbearing visual impact, maintaining the additional GFA within the approved built form;
- + The proposed modification will not impact the residential aspect of the development, with increase to GFA only impacting the commercial aspect of the building;
- + The proposed modification will contribute to the desired future character of the area;
- + The proposed development has been architecturally designed with the use of varying materials, artwork and modulated design to create interest in the façade;
- + The proposed modification will increase commercial space in the building, creating greater employment opportunities;
- + The additional floor space resulting from non-compliance will not result in any undue impacts on adjoining properties particularly with respect to built form, streetscape and visual amenity;
- + The proposal represents an efficient use of land within the site, providing much needed urban infill and a variety of retail, commercial and residential space in a good location;

- + The proposed development will result in an architectural design that will contribute to the emerging character of the surrounding area;
- + The proposed development will assist in delivering true 'A grade' commercial office space in the City of Newcastle that will in turn attract high profile tenants & jobs to the Wickham precinct;
- + The proposed modification has also enabled an improved elevational & facade design outcome to the south east corner of the building that holds prominence as a visual meeting point between Hannell St & the light rail interchange; and
- + Under the Wickham DCP, a density outcome of 6:1 is anticipated for 100% commercial development proposals. Given this modification application proposes to amend only commercial GFA & built form, is thought to be an appropriate departure from the planning controls in this regard.

Taking into account the above, the strict application of the development standard for maximum FSR is unreasonable and unnecessary as it would not achieve a greater planning or urban design outcome. The proposed FSR will facilitate a quality mixed-use development with a high level of amenity without resulting in additional environmental impacts. The overall development presents a highly functional, contemporary building which offers design excellence and contributing land uses to the locality.

Therefore, the proposed development within this context demonstrates the FSR non-compliance is acceptable.

Sufficient Environmental Planning Grounds to Justify Contravention

Significantly, the modified proposal will facilitate additional commercial space in the commercial core of the Newcastle CBD, when compared to the existing approval. This is facilitated by locating car parking from the podium levels to an additional basement level. Accordingly, the modified proposal is highly desirable having regard to the objectives of the zone.

The proposal is consistent with the objectives of the B3 Commercial Core zone, notably that it is facilitating a range of permissible uses, including commercial floor space in an accessible location close to public transport options. The proposal will strengthen the role of the Newcastle City Centre/ Wickham Precinct as the regional business, retail and cultural centre of the Hunter region and has no unreasonable impacts on identified view corridors.

This assessment demonstrates that the resultant environmental impacts of the proposal are considered to be satisfactory. If made to strictly comply with Clause 4.4, there would be no additional benefit to the streetscape, neighbouring properties and the local area. The variation will enable a high quality, architecturally designed development in the Wickham area. The proposal seeks to provide new mixed-use development in an existing urban area and will maximise reliance on existing infrastructure in a location that is in proximity to a range of employment, recreation, education and transport services. The objectives of Clause 4.3 have been met within the proposed development. In light of this, there is sufficient environmental planning grounds to justify contravening the development standard.

Public Interest

The development is in the public interest as it is consistent with the objectives of Clause 4.4 of NLEP 2012 (floor space ratio) and further aligns with B3 zone objectives as the proposed modification will generated greater employment opportunities in an accessible location. The development is considered to be a land use that is compatible and consistent with the surrounding area in this central location.

The proposed modification results in a better planning outcome for the site, and in the circumstances of this case, the proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant zone objectives.

The proposed design changes to the façade of the building has resulted in added glazing to the South West, South and South East elevations of the building. These design changes are in public interest due to the enhanced appearance of the building. The design changes also make a positive contribute to the desired future urban character of the area.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and is in the public interest.

Clause 4.6 Exceptions to development standards

This clause states:

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

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

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

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

It is noted that Clause 4.6 does not strictly apply to Clause 4.55 modification applications, however notwithstanding the framework of the clause is considered below in relation to the proposed variation to the LEP controls.

Clause 5.10 Heritage Conservation

The site has not been identified as a heritage item nor is it mapped as being within a heritage conservation area. The site is situated on the boundary of a heritage conservation area and there are heritage listed items within close proximity, refer to Figure 9.

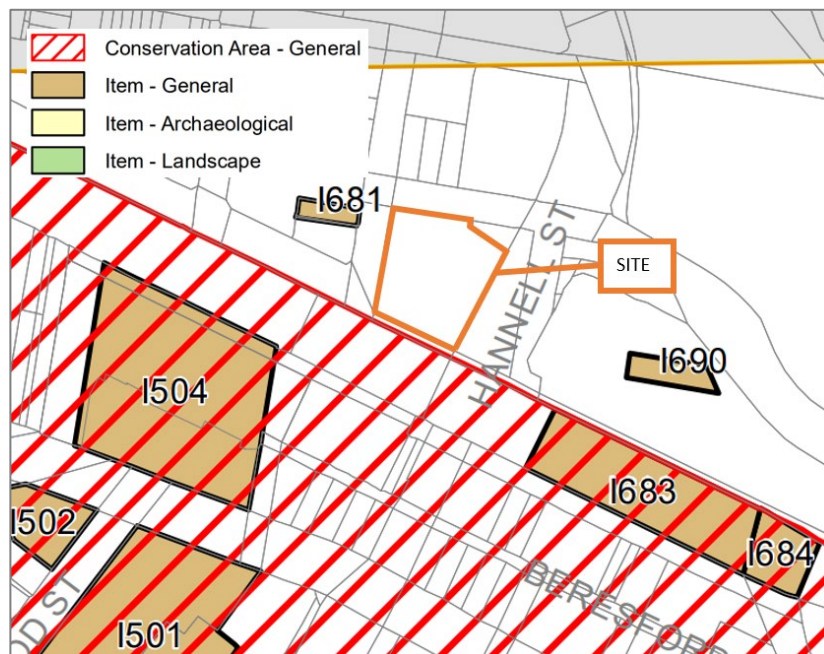
As detailed in Figure 12, the surrounding heritage items include:

- + I681 – 15 Charles Street – Residence (Local);
- + I683 & I684 – Wickham Railway Station & Wickham Signal Box (Local);
- + I690 – 80 Honeysuckle Drive – Former School of Arts (Local); and
- + I504 – 854 Hunter Street – Former Newcastle Co-operative Store (Local).

Given the site context, and distance to the heritage items it is considered that the proposed modifications will not affect the significance of those listed heritage buildings, nor detract from their setting or obstruct any view of these items from public places.

It is noted that the site has not been identified as containing archaeological significance however appropriate measures will be in place during the demolition/construction phase (as already conditioned) in the case of items being recovered.

Figure 12 – Heritage Map (Sheet HER_004G)



Clause 6.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The site has been identified as containing potential Class 3 Acid Sulfate Soils (see Figure 13).

The proposed modification will include works more than 1 metres below the nature ground surface with the addition of Basement Level 3, therefore requires development consent. Accordingly an Acid Sulfate Management Plan has been prepared, refer Appendix G.

Figure 13 – Acid Sulfate Soils Map Extract from LEP 2012 (ASS_004)



Clause 6.2 Earthworks

The proposed works require additional earthworks to those granted by DA2018/01197. The proposed works involve a Level 3 Basement.

(3) Before granting development consent for earthworks, the consent authority must consider the following matters:

- a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,
- b) the effect of the proposed development on the likely future use or redevelopment of the land,
- c) the quality of the fill or the soil to be excavated, or both,
- d) the effect of the development on the existing and likely amenity of adjoining properties,
- e) the source of any fill material and the destination of any excavated material,
- f) the likelihood of disturbing relics,
- g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.
- h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Earthworks are proposed as part of this modification. The majority of the earthworks have been previously approved however, an additional Basement Level 3 has been proposed. The same controls associated with the earthworks for approved Basement Levels 1 and 2 will be applied to the proposed Basement Level 3.

Following further detailed design, the basement shoring walls have been amended to address any potential impacts of the excavation, including:

- + Along the Dangar Street frontage has been realigned to facilitate additional space for services.

- + An additional setback is provided adjacent to the NTI.
- + The thickness of the shoring walls is also increased based on more detailed design having been completed.

Further, an amended RAP has been prepared to address the additional basement level.

It is envisioned that the earthworks proposed will not have any detrimental impacts on the immediate site or the adjoining properties.

Part 7 – Additional Local Provisions – Newcastle City Centre

Clause 7.3 Minimum building street frontage

Under this clause, buildings erected within the B3 Commercial Core zone must have a minimum street frontage of 20m. The proposed site contains street frontage to Hannell Street, Dangar Street and Charles Street, all of which exceed 20m. The proposed works will not alter the building frontage granted by DA2018/01197.

Clause 7.4 Building Separation

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

- (1) A building on land to which this Part applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.*
- (2) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*

The objectives of Part 7 Additional Local Provisions - Newcastle City Centre of the LEP are as follows:

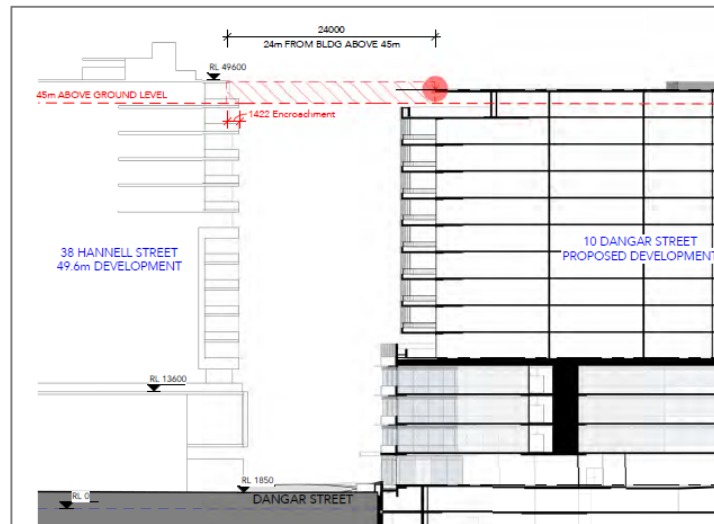
- (a) to promote the economic revitalisation of Newcastle City Centre,*
- (b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the positive characteristics, vitality,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

The proposed building is generally 45m in height (excluding a minor 5.8% exceedance). The extent of the building proposed higher than 45m has been demonstrated on the Architectural Plans (refer Appendix A) and is considered in accordance with this clause.

Figures 14 below demonstrate a small non-compliance between the proposed building and the adjoining building at 38 Hannell Street.

The modified proposal complies to other adjoining buildings, including 3-13 Charles Street and the Newcastle Transport Interchange, due to the height differences to these existing adjoining buildings.

Figure 14 – Building Separation Distances (Source: Team2 Architects)



As demonstrated, a small non-compliance is proposed at the roof line of the building, encroaching 1.4 metres into the 24 metre setback requirement is proposed. However, it is noted that the apartment walls comply with the 24m separation requirement. The balustrade and deck level are proposed less than 45m, and accordingly are not applicable in relation to the Clause.

It is noted that Clause 4.6 does not strictly apply to Clause 4.55 modification applications, however notwithstanding the framework of the clause is considered below in relation to the proposed variation to building separation:

Compliance is unreasonable or unnecessary

In accordance with the Land and Environment Court principles relating to LEP variations, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the numerical standard.

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

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

The modified proposal, which will increase the commercial office space provision within the commercial core of the Newcastle CBD will directly support the transformation of the West End of Newcastle providing high-quality commercial floor space. The commercial aspects will attract further public and private sector users into the revitalised and Newcastle City Centre.

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

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

encourages employment and economic growth,

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

The additional office floor space will encourage employment and economic growth consistent with Outcome 4 Improve connections to jobs, services and recreation of the Metro Plan. The proposal will continue to support Newcastle remaining a great place to live and work with fast, efficient and reliable transport options. The modified proposal represents an integrated land use and transport planning approach; integrating Newcastle Interchange with walking, cycling and bus routes.

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

The proposed development will improve the vitality, identity and diversity of Newcastle City Centre. The modified proposal improves the façade design, further enhancing the proposal within the context of the existing streetscape and future vision for the West End/Wickham.

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

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

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

The requested modification to the approved building height will allow for a marginally increased floor to ceiling height through the commercial podium & floors which will in turn allow the development to achieve true 'A grade' commercial space as per defined by the Property Council of Australia.

Significantly, the modified proposal will facilitate additional commercial space in the commercial core of the Newcastle CBD, when compared to the existing approval. This is facilitated by locating car parking from the podium levels to an additional basement level. The proposed modification has also enabled an improved elevational & facade design outcome to the south east corner of the building that holds prominence as a visual meeting point between Hannell St & the light rail interchange. Accordingly, the modified proposal is highly desirable having regard to the objectives of the zone.

It is acknowledged that the intent of the building separation development standard is to ensure adequate distance is provided between developments to improve amenity, increase solar access, reduce noise issues and limit overlooking, between residential and non-residential uses and with boundaries to neighbours. It is noted that the extent of the non-compliance relates only to a small portion of the roof overhang. In this regard, the interrelationship between the two buildings is not anticipated to have any ongoing amenity issues, given the small area of the non-compliance. The non-compliance relates only to the roof line of Level 13, which is south the adjoining building (38 Hannell Street). In this regard, non-compliance with the building separation requirements is not considered to create any significant privacy or overshadowing implications.

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

The proposal remains consistent with these objectives through incorporation of suitable water management practices, minimising erosion and sedimentation associated with the site works; maintaining water quality; maintaining view corridors

to the foreshore; and contributing to pedestrian connectivity and amenity in and around the NTI and NBI, which are within walking distance of the harbour foreshore.

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

The site is not identified as being located within an environmental sensitive area.

The site has not been identified as a heritage item nor is it mapped as being within a heritage conservation area. The site is situated on the boundary of a heritage conservation area and there are heritage listed items within close proximity. Given the site context, and distance to the heritage items it is considered that the proposed modifications will not affect the significance of those listed heritage buildings, nor detract from their setting or obstruct any view of these items from public places.

It is noted that the site has not been identified as containing archaeological significance however appropriate measures will be in place during the demolition/construction phase (as already conditioned) in the case of items being recovered.

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

The additional commercial floor space proposed as part of the modification provides further diversity to the land uses on the site, supporting the revitalisation of the locality, which in the close proximity to the NTI ensures the efficient use of existing public transport facilities. The improvements to the façade, through the proposed additional car parking level ensures the efficient and effective use of the site.

The design incorporates the principles of the 'Crime Prevention through Environmental Design' guidelines, ensuring that the proposal contributes to a safe, attractive and inclusive Newcastle City Centre.

Sufficient Environmental Planning Grounds to Justify Contravention

This submission demonstrates that the resultant environmental impacts of the proposal are considered to be satisfactory. If made to strictly comply with Clause 7.4 there would be no additional benefit to adjoining properties, the streetscape or public domain in the local area. The non-compliance with the building separation clause is the result of the inclusion of additional commercial floor space, including the associated provision of additional floor to ceiling heights to ensure an A grade commercial product. This additional commercial floor space, in the commercial core zoning of the Newcastle CBD will enable additional revitalisation of the CBD, optimising the use of the site and it's ideal commercial location in terms of public transport. The non-compliance relates only to the roof line of Level 13, which is south the adjoining building (38 Hannell Street).

The extent of the roof line that creates the non-compliance is a minimal area of the overall roof, and plays an important role in maintaining the original architectural form of the building. The weather protection afforded to the associated residential apartment and its open space area is also noted. Should the proposal be amended to comply with the 24m separation requirement, there would be no additional benefits to the adjoining site.

In light of this, there is considered to be sufficient environmental planning grounds to justify varying these two development standards in this instance.

Public interest

As demonstrated in this assessment, the proposed development will be in the public interest as it is consistent with the objectives of the Newcastle City Centre and the objectives of the B3 Commercial Core Zone in NLEP 2012.

The intent of the Commercial Core zone is to provide a wide range of retail, business, office, entertainment, community, and other suitable and compatible land uses within a mixed-use development. The proposal is a mixed-use development which incorporates residential retail and office components. These uses are compatible with the objectives of the zone and will complement surrounding land uses and strengthen the Newcastle City Centre, particularly in the vicinity of the active West End and Honeysuckle Foreshore Precincts.

The modified development will provide a number of significant public benefits, by directly facilitating the additional A grade commercial office space close to public transport. The proposed development represents a high-quality urban design, which seeks to continue to redevelop and enhance the West End Precinct of Newcastle City Centre. The building separation non-compliance does not outweigh the merits of the proposal and its contribution to the social fabric and built form of Wickham/West End.

The variations allow for the orderly and economic use of the land in an appropriate manner, whilst allowing for a better outcome based on planning merits and public benefit. Further, the proposal will not result in any unreasonable impact on amenity or any significant adverse environmental impacts as a result of the variations, which have been arrived at after a design excellence process that involved testing and amending the design to achieve the most appropriate massing of development for the site.

Council can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

Clause 7.5 Design Excellence

In accordance with this clause, development consent cannot be granted unless the consent authority is satisfied that the proposed building achieves design excellence. In consideration whether the proposed development achieves design excellence, the consent authority must consider architectural design and materials, whether the external appearance will improve the amenity of the public domain, whether the proposal will impact detrimental view corridors as identified within the Newcastle DCP 2012 and how development addressed heritage, streetscape, separation, setbacks, bulk and scale, environmental impacts, ESD, vehicle/pedestrian/cyclist circulation and the impact on the public domain.

The following discussion outlines the proposal's compliance with the relevant requirements of the clause.

(1) This clause applies to the following development on land to which this clause applies.

(a) the erection of a new building, or

(b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant.

This clause applies to the proposal.

(2) Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

Noted.

(3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,*
- (d) how the development addresses the following matters—*
 - (i) heritage issues and streetscape constraints,*
 - (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (iii) bulk, massing and modulation of buildings,*
 - (iv) street frontage heights,*
 - (v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (vi) the achievement of the principles of ecologically sustainable development,*
 - (vii) pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (viii) the impact on, and any proposed improvements to, the public domain.*

The proposal remains generally consistent with the original approved design, which has been considered by the Council's Urban Design Consultative Group on a number of occasions.

The proposed modifications sought include minor alterations to the visual appearance of the approved built form, namely by means of additional glazing along the western, southern and eastern podium levels. The inclusion of additional glazing on the podium levels is considered a positive outcome for the development, resulting in greater street activation and visual connectivity between the site and the Newcastle Interchange. Ultimately, the proposal provides for a far improved urban design outcome and will only enhance the immediate location and street presence of this development within the Wickham precinct.

The proposed modification seeks to alter the approved floor to ceiling heights on the office levels 1-3. As a result, the podium level is proposed to be modified from RL18.15 to RL19.115, which is an increase of 0.965m. Due to the variable street level, the original street wall height ranged from 15.3m-16.61m, and is now proposed to be 16.265-17.575m. The primary frontage to Hannell Street is generally compliant with the 16m requirement, ranging from 16.265-16.515m. The added street wall height is marginal the context of the overall approved development. This is evidenced in Figures 10 and 11 where a visual comparison is provided. Further, the removal of blank walls will provide a significant improvement to the design of this visually prominent site. Therefore the proposed modification is considered to generally maintain a numerical compliance and will result in a suitable built form context for the locality.

The bulk and scale of the overall approved development changes little, with the visual of the built form being softened with the use of varying materials, stepped facades and varying rooflines to create interest. Details of the façade and articulation are provided in the Architectural Plans submitted with the DA. It is further noted that the height limits for land within close proximity to the site permits buildings to 90 metres. In this regard, the proposed variation would not result in any perceivable impacts to the locality or streetscape, and will sit comfortably in the context. It is also noted that the building approved at 38 Hannell Street was approved an additional 1.6m (RL49.6) above the LEP height limit to the roof of the building and the lift overrun of the building sits another 2.6m above the roof (to RL52.2), being a 9.3% variation.

The overshadowing diagrams as presented in the architectural plans demonstrates that the amended proposal remains substantially the same, and reflects the minor nature of the impacts associated with the amendments. The modified design does not create any significant issues in regard to matters including heritage, wind and reflectivity, the public domain or the achievement of the principles of ecologically sustainable development. The modification in relation to

pedestrian, cycle, vehicular and service access, circulation and requirements is discussed in the traffic report at Appendix D.

Given the high-quality design outcome proposed and the lack of any unreasonable impacts as a result of the variation sought; the variation is considered to be well justified in this instance.

(4) Development consent must not be granted to the following development to which this Plan applies unless an architectural design competition has been held in relation to the proposed development—

- (a) development for which an architectural design competition is required as part of a concept plan approved by the Minister for a transitional Part 3A project,*
- (b) development in respect of a building that is, or will be, higher than 48 metres in height,*
- (c) development having a capital value of more than \$5,000,000 on a site identified as a "Key Site" and shown edged heavy black and distinctively coloured on the [Key Sites Map](#),*
- (d) development for which the applicant has chosen to have such a competition.*

The proposal does not meet the criteria identified, and accordingly a design competition is not required.

Clause 7.6 Active Street Frontages in the B3 Commercial Core

The objective of this clause is to promote uses that attract pedestrian traffic. Given the site's location adjacent to the Newcastle Transport Interchange, the proposed ground floor has been designed to integrate footpaths design and pedestrians flows generated by the Interchange to enable pedestrian traffic to flow onto the site. The ground floor contains retail space along the Hannell Street frontage and Dangar Street frontage and directs pedestrian traffics toward the pedestrian crossing towards the Honeysuckle Precinct. It is considered the proposed modification will not alter the previously approved retail space.

Clause 7.10 Floor Space Ratio for Certain Development in Area A

The site has been mapped within the boundaries of 'Area A' on the Floor Space Ratio Map, see Figure 9. In accordance with this clause, for a building other than a commercial building, where the Floor Space Ratio Map identifies the site as containing an FSR of 6:1 or greater, the FSR provision is 5:1. As such, the site contains an FSR provisions of 5:1. As discussed in this report, the proposed modifications results in changes to the FSR of 5.87:1, which is not compliant with this clause. However, the proposed modifications will not seek to alter the previously approved GFA of the residential levels of the building, instead, only requesting an increase in GFA to that of the proposed commercial space that will provide for increased employment space in this highly sustainable location within the Wickham precinct.

5.7 NEWCASTLE DEVELOPMENT CONTROL PLAN 2012

It is recognised that since the original lodgement of DA2018/01197, the site has changed precincts from being within the Newcastle City Centre – West End Precinct to being within the Wickham Precinct.

The proposal has been assessed against the relevant provisions of the Newcastle Development Control Plan 2012 (DCP) (refer to Appendix B) and is considered to remain acceptable having regard to the relevant controls and objectives outlined by Council. The site is at the boundary of three precincts, being the West End Precinct, the Wickham Precinct and the Honeysuckle Precinct therefore development controls are relevant from these three precincts.

6 PLANNING ASSESSMENT

The following is an assessment of the environmental effects of the proposed modification as described in the preceding sections of this SEE. The assessment considers only those matters under Section 4.15(1) of the EP&A Act 1979 that are relevant to the proposal.

6.1 TRAFFIC, PARKING AND ACCESS

Having regard for the requirements of the RMS Guide to Traffic Generating Developments, the proposed modification will not have any unreasonable impact in terms of traffic, parking and access. The development is generally consistent with the requirements of DCP 2012 in relation to traffic, access, and car parking.

Traffic

The proposed modification does not will not significantly alter the traffic generation rate for the development. The development will continue to have a satisfactory impact on the local network during the peak AM and PM period, refer to the Traffic Report at Appendix D.

Access

The proposal will not alter the existing arrangement for the proposal.

Parking

MLA Transport Planning have been engaged to review the required car parking spaces and undertake an assessment on likely demand for car parking given the strategic location being easily accessible via public transport and/or cycling.

The Traffic Assessment at Appendix D (including the Addendum Report dated 18 December 2020) provides an assessment indicating that the required parking for the proposed development (as modified) is 244 car parking spaces made up of:

- + 86 resident car parking spaces
- + 20 residential visitor car parking spaces
- + 23 retail tenant car parking spaces, and
- + 115 commercial tenant car parking spaces

The proposal provides 198 car parking spaces, 179 bicycle spaces and 19 motorbike spaces, which does not strictly comply with the DCP requirements. The number of parking spaces for the development has remained as approved, however, due to the increase in commercial spaces there is less than the required spaces available. Due to the central location and the availability of public transport in the area, the number of proposed parking spaces are justified and are not expected to result in any significant impacts.

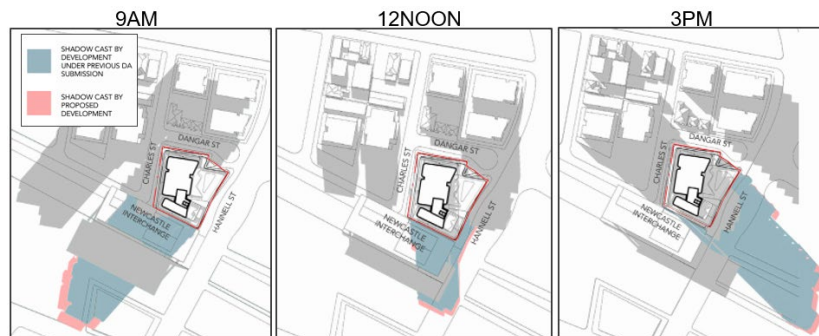
Refer to the Traffic Assessment at Appendix D (including the Addendum Report dated 18 December 2020) for the full car parking assessment and parking shortfall justification.

All parking will be contained within the site, with no impact on the surrounding road network. The carpark design and layout are compliant with the relevant Australian Standards.

6.2 AMENITY IMPACTS

The proposed modification seeks to slightly increase the building height by an additional 971mm. With the site's location, overshadowing occurs over the adjoining Newcastle Interchange and adjacent light rail depot. The overshadowing diagrams as presented in Figure 15 remains substantially the same, and reflects the minor nature of the impacts associated with the amendments.

Figure 10 – Approved vs Proposed Shadow Diagram



6.3 BUILT FORM

Height and FSR have been discussed in detail in accordance with the LEP provisions, and in summary, the additional floor space and height resulting from the modification will not result in any undue impacts on adjoining properties particularly with respect to built form, streetscape and visual amenity. The proposed modification will assist in delivering true 'A grade' commercial office space in the City of Newcastle that will in turn attract high profile tenants & jobs to the Wickham precinct. The proposed modification has also enabled an improved elevational & facade design outcome to the south east corner of the building that holds prominence as a visual meeting point between Hannell St & the light rail interchange; and

The proposed modification seeks to alter the approved floor to ceiling heights on the office levels 1-3. As a result, the podium level is proposed to be modified from RL18.15 to RL19.115, which is an increase of 0.965m. Due to the variable street level, the original street wall height ranged from 15.3m-16.61m, and is now proposed to be 16.265-17.575m. The primary frontage to Hannell Street is generally compliant with the 16m requirement, ranging from 16.265-16.515m. The added street wall height is marginal the context of the overall approved development. This is evidenced in Figures 10 and 11 where a visual comparison is provided. Further, the removal of blank walls will provide a significant improvement to the design of this visually prominent site. Therefore the proposed modification is considered to generally maintain a numerical compliance and will result in a suitable built form context for the locality.

An updated landscaping plan to reflect the amended architectural design is provided at Appendix C.

6.4 VISUAL IMPACT

The proposed modifications sought include minor alterations to the visual appearance of the approved built form, namely by means of additional glazing along the western, southern and eastern podium levels. The inclusion of additional glazing on the podium levels is considered a positive outcome for the development, resulting in greater street activation and visual connectivity between the site and the Newcastle Interchange. Ultimately, the proposal provides for a far improved urban design outcome and will only enhance the immediate location and street presence of this development within the Wickham precinct.

6.5 SOCIAL AND ECONOMIC IMPACTS

The proposal as modified, will maintain having a positive impact within the community as it will provide additional, well-designed and varied housing, retail and employment opportunities within Newcastle.

The modification to increase the amount of office floor space will result in greater positive economic impacts for the Newcastle LGA in the sense that the large office floor plates aims to attract tier 1 tenants and create additional employment opportunities for the region.

It is also anticipated that the increased contributions payable will have further secondary benefit to the local area in terms of public infrastructure spend & general amenity improvement.

6.6 WASTE MANAGEMENT

As the modification seeks to increase the amount of office space, the Waste Management Plan for the site has been revised by Elephants Foot. An updated Waste Management Plan is provided at Appendix E.

6.7 STORMWATER AND FLOODING

The approved stormwater concept will remain consistent with the approved scheme. The access to the site will remain above the flood levels as originally approved. An updated stormwater management plan to reflect the amended architectural design is provided at Appendix I

6.8 PUBLIC INTEREST

The proposed modifications are considered to be in the Public's Interest as the proposed results in substantially the same development as approved with added office floor area for increased attraction of tier 1 commercial tenants and subsequent added employment opportunities. The proposed modifications do not result in added environmental or amenity impacts.

7 CONCLUSION

The proposed modification to DA2018/01197.01 at 10 Dangar Street, Wickham, is for the purposes of changes to the conditions of consent and proposed minor design change. The proposed modifications sought maintain the high-quality outcome for the site as previously approved, particularly given the sites unique location on the boundary of the West End Precinct, the Honeysuckle Precinct and the Wickham Precinct.

Potential impacts have been carefully considered in the evolution of the design for the site. The design is generally compliant with applicable planning controls and instruments, including LEP 2012 and DCP 2012. Minor variations are sought in relation to height, floor space ratio and building separation under this DA and these have been adequately justified through this SEE. The modification and subsequent variations sought does not hinder the achievement of a high-quality design outcome that is appropriate for the site and does not result in any significant adverse environmental or amenity impacts. The proposed modifications to the development are ultimately substantially the same as the approved built form and therefore the proposal maintains achieving the desired planning outcomes for the precinct.

Given the added economic benefits to the locality, high-quality design outcome for the site and its positive land use and design contributions the locality, the modifications sought under this application are considered to be in the public interest and worthy of approval.

Yours sincerely



Melissa Thomas
Associate – Planning
KDC Pty Ltd

Appendices:

Appendix A – Amended Architectural Plans

Appendix B – DCP Compliance Tables

Appendix C – Updated Landscape Plan

Appendix D – Traffic Assessment, including Addendum letter dated 18 December 2020

Appendix E – Waste Management Plan

Appendix F – Updated Remedial Action Plan

Appendix G – Acid Sulfate Soils Management Plan

Appendix H – Updated Stormwater Plan

APPENDIX A - ARCHITECTURAL DRAWINGS

Team2 Architects

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APPENDIX B – DCP COMPLIANCE TABLE

KDC Pty Ltd

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APPENDIX C – UPDATED LANDSCAPE PLAN

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APPENDIX D – TRAFFIC ASSESSMENT

MLA Transport Planning

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APPENDIX E – WASTE MANAGEMENT PLAN

Elephants Foot

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APPENDIX F – UPDATED REMEDIAL ACTION PLAN

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APPENDIX G – ACID SULFATE SOILS MANAGEMENT PLAN

Douglas Partners

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APPENDIX H – UPDATED STORMWATER PLAN

Acor Consultants

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