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**DAC 20/04/21 – 79 UNIVERSITY DRIVE, WARATAH WEST –
DA2020/00903 – RESIDENTIAL ACCOMMODATION – MULTI
DWELLING HOUSING (76 DWELLINGS) – CONSTRUCTED IN
THREE STAGES**

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Part BÁ

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**DAC 20/04/21 – 79 UNIVERSITY DRIVE WARATAH WEST –
DA2020/00903 - RESIDENTIAL ACCOMMODATION – MULTI
DWELLING HOUSING (76 DWELLINGS) – CONSTRUCTED IN
THREE STAGES**

ITEM-7 **Attachment D:** General Terms of Approval – NSW Rural Fire
Service (RFS)

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NSW RURAL FIRE SERVICE

Newcastle City Council
PO Box 489
NEWCASTLE NSW 2300

Your reference: DA2020/00903 (CNR-11975)
Our reference: DA20201218004769-Original-1

ATTENTION: Ian Clark

Date: Tuesday 5 January 2021

Dear Sir/Madam,

Integrated Development Application
s100B – SFPP – Staff or Student Accommodation
79 University Drive Waratah West NSW 2298, (none)

I refer to your correspondence dated 15/12/2020 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions:

Asset Protection Zones

Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the proposed residential allotments site must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*. When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover; and
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

- leaves and vegetation debris should be removed

2. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the site must be maintained as an inner protection area (IPA) as shown in FIGURE 5: REQUIRED ASSET PROTECTION ZONE of the submitted bushfire report prepared by MJD Environment (Dated May 2020, Reference 16025). When establishing and maintaining an IPA the following requirements apply in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover; and
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed

Construction Standards

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

3. Construction of buildings D01-D12 and D23-D29 must comply with the following:

- Construction of the roof, western, northern and southern elevation(s) must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.
- Construction of the eastern elevation(s) must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.

4. Construction of buildings B01-B20 must comply with the following:

- Construction of the roof, southern, eastern and western elevation(s) must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.
- Construction of the northern elevation(s) must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.

5. Construction of buildings D13-D22 and E01-E10 must comply with the following:

- Construction must comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.

6. Construction of buildings B01-B20 must comply with the following:

- Construction of the roof, southern, eastern and western elevation(s) must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or

NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas* 2014 as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.

- Construction of the northern elevation(s) comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.

Access - Internal Roads

Intent of measures: to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

7. Access roads must comply with the following general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- subdivisions of three or more allotments have more than one access in and out of the development;
- traffic management devices are constructed to not prohibit access by emergency services vehicles;
- maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;
- all roads are through roads;
- dead end roads are not recommended, but if unavoidable, are not more than 200 metres in length, incorporate a minimum 12 metres outer radius turning circle, and are clearly sign posted as a dead end;
- where kerb and guttering is provided on perimeter roads, roll top kerbing should be used to the hazard side of the road;
where access/egress can only be achieved through forest, woodland and heath vegetation, secondary access shall be provided to an alternate point on the existing public road system;
- one way only public access roads are no less than 3.5 metres wide and have designated parking bays with hydrants located outside of these areas to ensure accessibility to reticulated water for fire suppression;
- the capacity of perimeter and non-perimeter road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges/causeways are to clearly indicate load rating;
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression;
- hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - *Fire hydrant installations System design, installation and commissioning*; and
- there is suitable access for a Category 1 fire appliance to within 4m of the static water supply where no reticulated supply is available.

8. Perimeter roads must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- are two-way sealed roads;
- minimum 8m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- are through roads, and these are linked to the internal road system at an interval of no greater than 500m;
- curves of roads have a minimum inner radius of 6m;
- the maximum grade road is 15 degrees and average grade of not more than 10 degrees;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.

9. Non-perimeter roads must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- minimum 5.5m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;

- hydrants are located clear of parking areas;
- roads are through roads, and these are linked to the internal road system at an interval of no greater than 500m;
- curves of roads have a minimum inner radius of 6m;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.

Water and Utility Services

Intent of measures: to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

10. The provision of water, electricity and gas must comply the following in accordance with Table 5.3c of *Planning for Bush Fire Protection 2019*:

- reticulated water is to be provided to the development where available;
- fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;
- hydrants are and not located within any road carriageway;
- reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;
- fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005;
- all above-ground water service pipes are metal, including and up to any taps;
- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are proposed as follows:
 - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
 - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in *ISSC3 Guideline for Managing Vegetation Near Power Lines*.
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 - *The storage and handling of LP Gas*, the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- connections to and from gas cylinders are metal; polymer-sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

Landscaping Assessment

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

11. Landscaping within the required asset protection zone must comply with Appendix 4 of *Planning for Bush Fire Protection 2019*. In this regard, the following principles are to be incorporated:

- A minimum 1 metre wide area, suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
- Planting is limited in the immediate vicinity of the building;
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
- Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do no touch or overhang buildings;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;

- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

For any queries regarding this correspondence, please contact Emma Jensen on 1300 NSW RFS.

Yours sincerely,

Kalpana Varghese
Manager Planning & Environment Services
Planning and Environment Services



NSW RURAL FIRE SERVICE

BUSH FIRE SAFETY AUTHORITY

SFPP – Staff or Student Accommodation
79 University Drive Waratah West NSW 2298, (none)
RFS Reference: DA20201218004769-Original-1
Your Reference: DA2020/00903 (CNR-11975)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

Kalpana Varghese

Manager Planning & Environment Services
Planning and Environment Services

Tuesday 5 January 2021



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DWELLING HOUSING (76 DWELLINGS) – CONSTRUCTED IN
THREE STAGES**

ITEM-7 **Attachment E:** Ausgrid Requirements

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10/03/2021

Ian Clark
Newcastle City Council
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NEWCASTLE
NSW 2300

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Wallsend NSW 2287
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Newcastle NSW 2300
T +61 2 131 525
www.ausgrid.com.au

Dear Ian

**Proposed Development at 79 University Drive, Waratah West
Development Application No. DA2020/00903**

I refer to your letter dated [redacted] concerning the above development. This letter is Ausgrid's response under clause 45(2) of the *State Environmental planning Policy (Infrastructure) 2007*.

As you would be aware, the assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the *Environmental Planning and Assessment Act 1979*. One of the obligations upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.

In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid's infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

Please note the following information in relation to the construction of the development:

Supply of Electricity

Large Developments/Subdivisions/Developments in or near Easements advice on connection options.

There are limitations that apply to the installation of electrical infrastructure. The developer must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid must be received before a Construction Certificate is issued.

It is recommended for the developer to engage an electrical consultant/contractor to complete an 'NECF-03 Form "Connection Application – Large, Multiple and Remote Connections" for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the information provided which may include whether or

not the existing network can support the expected electrical load of the development. For some developments, a substation may be required on-site.

If an upgrade to the electricity network is necessary, the timeframe between the submission of the connection application and availability to connect the development will vary and may be exposed to a lengthy design and construction period. The submission of the Connection Application will allow us to begin planning and processing the connection and hopefully minimise any delays.

Please direct the developer to Ausgrid's website, www.ausgrid.com.au for information regarding connecting to Ausgrid's network.

Proximity to Existing Network Assets

There are existing 11000V and Low Voltage overhead electricity network assets in the University Drive footpath, adjacent to the development.

Workcover Code of Practice 2006 – Work Near Overhead Powerlines outlines the minimum safety separation requirements between these mains / poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction.

It is recommended that Ausgrid is contacted on (02) 4910 1200 to discuss compliance issues regarding the relevant Workcover Code of Practice 2006 – Work Near Overhead Powerlines.

Clearance to 'As Constructed' Development assessed to be Compliant

Based on the design of the development provided, it was identified that the "as constructed" minimum clearances will not be encroached by the development.

The existing overhead mains may require relocating should the minimum safety clearances be compromised during construction, this relocation work is generally at the developers cost.

Underground Mains

The works described in your notification are also in the vicinity of underground electricity assets. In addition to DBYD searches I recommend that you to conduct a ground search to locate electricity assets immediately prior to commencing work to check for updates of installed utilities.

Please refer to Ausgrid's Network Standard 156 - Working near or around underground cables which can be found on Ausgrid's website at www.ausgrid.com.au and Workcover Document– 'Work Near Underground Assets'

Any alterations to Ausgrid's underground electricity mains will be Contestable Works and funded by Developer.

Existing Electricity Easements

A title search of the development site should be completed to check for existing electricity easements. If easements are present, Ausgrid must assess the proposed activity within the easement. Please direct the developer to Ausgrid's website, www.ausgrid.com.au to download our "Living with Electricity Easements" brochure.

Please do not hesitate to contact me if you require any further information or assistance.

Yours sincerely

Matthew Jones
Engineering Officer
Newcastle Design & Planning Portfolio

☎: 0417 018 095

✉: MPJones@ausgrid.com.au

☎ (02) 4951 9459

🌐 www.ausgrid.com.au

Ausgrid Reference: 1900105282



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DA2020/00903 - RESIDENTIAL ACCOMMODATION – MULTI
DWELLING HOUSING (76 DWELLINGS) – CONSTRUCTED IN
THREE STAGES**

ITEM-7 Attachment F: Clause 4.6 Report

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**BARR PROPERTY
& PLANNING**

Continual Progress

Clause 4.6 Report Multi-Dwelling Housing

79 University Drive,
Waratah West

Prepared by Barr Property and Planning
For North Lambton Holding Pty Ltd
June2020

Clause 4.6 Report – 79 University Drive, Waratah West

Document Control

Title: Clause 4.6 Report
 Address: 79 University Drive, Waratah West
 Job No: 19NEW0126
 Client: North Lambton Holding Pty Ltd

Document Issue:

Issue	Date	Prepared by	Reviewed by
Draft 1	25-06-20	Laura Robinson	Emily Allen
Client Review	19-08-20		Leonie Lewis
FINAL	19-08-20		Rebecca Johnston

For any enquires please contact the undersigned.

Signed



Laura Robinson
 Planner
 B.Dev Studies, PIA (Assoc)



Rebecca Johnston
 Associate Planning Manager
 B.TP(Hons) Grad Dip PM RPIA



For queries about this report please contact Laura Robinson on 0432 090 700
 E lrobinson@barrpandp.com.au

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1 Introduction

This Clause 4.6 Variation Report has been prepared to support a Development Application (DA) for a proposed multi-dwelling housing development located at 79 University Drive, Waratah West.

The proposed development contains 76 multi-dwelling houses of two and three storeys, earthworks, civil works including roads, infrastructure and utility services and landscaping. The dwellings are specifically designed to meet the accommodation needs of students which provide bedrooms, common living areas with smaller areas of low maintenance open space.

This Clause 4.6 Variation Report assesses the proposed non-compliance with Clause 4.3 Height of Buildings for the proposed development in accordance with the requirements of the Newcastle Local Environmental Plan 2012 (NLEP), which provides the following objectives:

- (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.*

The Height of Building shown on the relevant LEP Map HOB_002E is 8.5m. The proposed building height at the highest point is 11.9m this is a variation of 40% of 8.5m, though only 3.7% of the developments total roof area exceeds the height limit.

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant. The request must justify the contravention of the development standard by demonstrating under the LEP Clause 4.6(3) that:

- (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.*

This request has been prepared in accordance with the objectives contained within Clause 4.6 and the relevant development standards.



2 Site Description

The subject site is Lot 54 Strata Plan 101015, 79 University Drive, Waratah West. Figure 1 provides an aerial image of the site. The site has been partially developed on the east, including residential flat buildings and multi-dwelling housing. This residential flat buildings and multi-dwelling housing establishes a built form on the site. The existing built form on the site is 9.5m at the highest roof point University Drive frontage, providing a robust presence. An apartment typology defines the frontage to University Drive. The current built form creates a campus style environment, comprising of buildings with large bulk and scale.

Bounding the site to the north is University Drive, a four lane road. On the northern side of University Drive is the UoN Callaghan Campus considered a Catalyst Site in the Greater Newcastle Metropolitan Plan (GNMP) 2036. The lot adjacent east is de-attached two storey residential dwellings. To the south of the development is bushland and the North Lambton Hunter Water Reservoir. To the west of the site is a parcel of land containing dense vegetation.

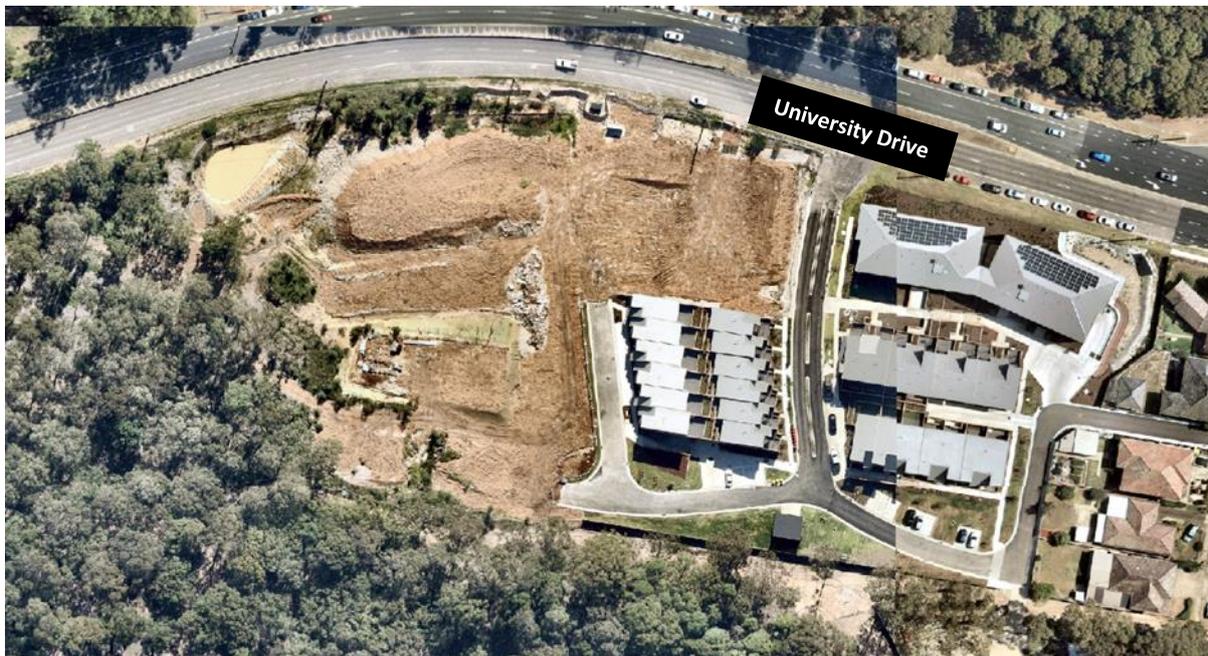


Figure 1 Ariel View of Site(Source Nearmap June 2020) .

The site is topographically difficult. There is a ridgeline which runs north - south through the centre of the site and a valley towards the western end of the lot. The site slopes towards this ridgeline from about 15.76 AHD in the north eastern corner to 0.89 AHD and falling, at the south western corner of the site. The valley in the western part of the site presents a steep topography that has slopes up to 18° the remainder of the site has slopes between 5-10°.

It is important to note on 16 August 2016 DA2015/0701 was approved on 83 University Drive, North Lambton. The DA was for 'Staged Development Comprising Erection of 145 dwellings in the Form of residential Flat Buildings and Multi Dwelling Housing in Six (6) Stages and Consolidation of Two Lots'. At present, Stages 1, 2 and 3 have been completed. Stage 1 contained a residential flat building and Stages 2 and 3 contained multi dwelling housing. The proposal replaces stages 4, 5 and 6 the currently approved buildings had a height up to 12.27m in the south – west and 12.2m along the frontage of University Drive.



Figure 2: Ariel View of Locality (Source: ePlanning Spatial Viewer, 2020)



3 Proposed Development

The DA is for the development of 76 multi-dwelling housing, earthworks, and civil works including roads, infrastructure and utility services and landscaping. The design of the development encapsulates a campus style like built form, emulating the existing development to the east.

3.1 LEP Provisions

3.1.1 Zoning

The subject site is zoned R2 Low Density Residential under the NLEP 2012. The objectives of R2 Low Density Residential are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

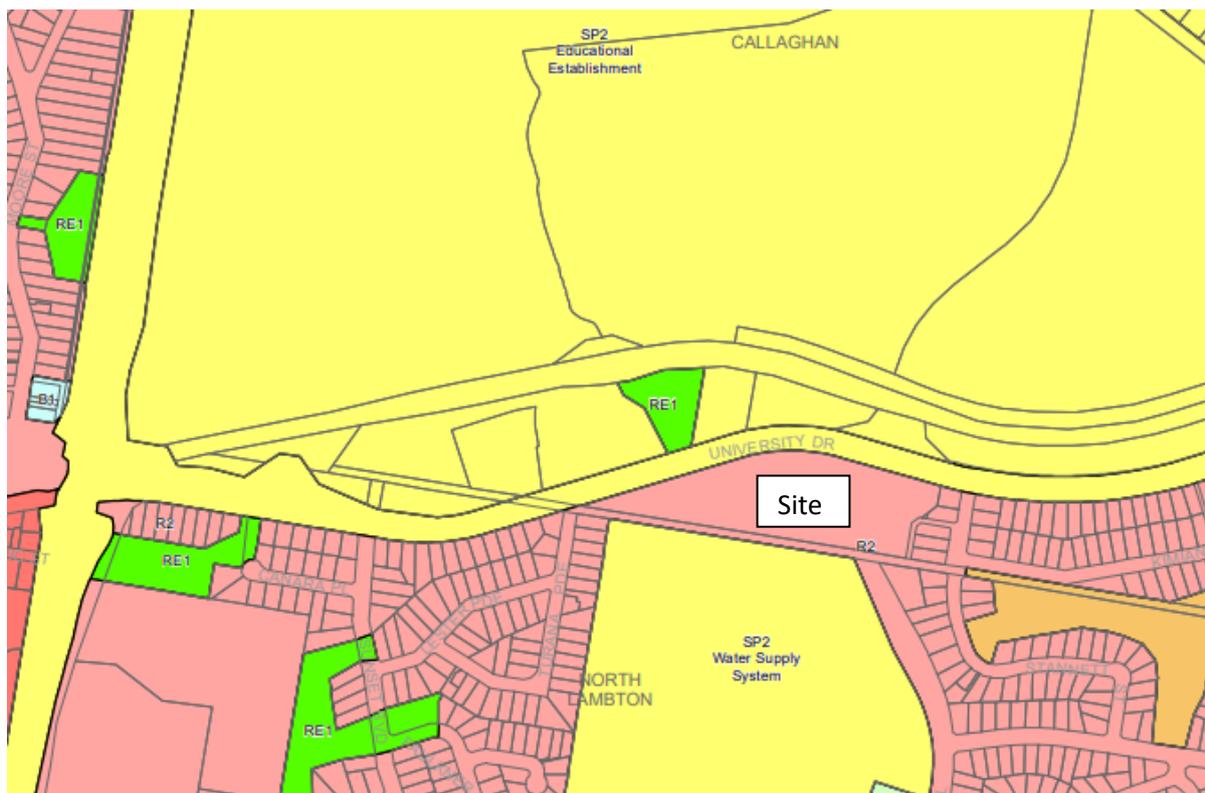


Figure 3: Extract Land zoning map, (NLEP Sheet LZN_002E, 2012).

The site is located in a land zoning which permits and encourages residential development and the proposed development is for residential multi-dwelling housing which is permissible R2 zoning.

3.1.2 Maximum Height

Clause 4.3 applies to development on the site as mapped in the NLEP 2012 maps. Clause 4.3 states that:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
 - (b) *to allow reasonable daylight access to all developments and the public domain.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

On the LEP Map HOB_002E (Figure 4) the building height applicable for this site is 8.5 metres (as shown in green).



Figure 4 Extract Building height map, green represents 8.5m NLEP 2012, Sheet Hob_002E, 2012)

Within the LEP, 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 proposed development exceeds the building height of Clause 4.3 of the NLEP 2012.

3.2 Description of Exceedance

Only 18 of the 76 units exceed the 8.5 metre limit this only occurs for 3.7% of the development. Table 1 shows all the units that exceed the height at a point. Table 2 shows the development area exceedance.

Unit	Height (metre)	Exceedance (metre)	Exceedance of 8.5m at Highest Point
B01	9.0	0.5	5.8%
D01	11.9	3.4	40%
D02	11.05	2.55	30%
D03	10.7	2.2	25%
D04	10.2	1.7	20%
D05	10.55	2.05	23.5%
D06	10.05	1.55	18.2%
D07	10.75	2.25	26.4%
D08	10.75	2.25	26.4%
D09	10	1.5	23.5%
D10	9.75	1.25	14.7%
D11	9.75	1.25	14.7%
D12	9.4	0.9	10.6%
E06	9.2	0.7	8.2%
E07	8.9	0.4	4.7%
E08	8.9	0.4	4.7%
E09	8.9	0.4	4.7%
E10	8.8	0.3	3.5%

Table 1 Height Exceedance Table

Figure 4 shows the amount of the development which exceeds the building height restrictions. The information in Table 1 is shown graphically below in Figures 4, 5 and 6.

Approximate Total Development Area	14910m ²
Approximate Area Exceedance	560m ²
Percent of Development Area Exceeding	3.7%

Table 2 Development Area

Table 2 is shown graphically below in Figure 8.

Clause 4.6 Report – 79 University Drive, Waratah West



Figure 5 Height Envelope Above Natural Ground Level (o'connell architecture and design, 2020)

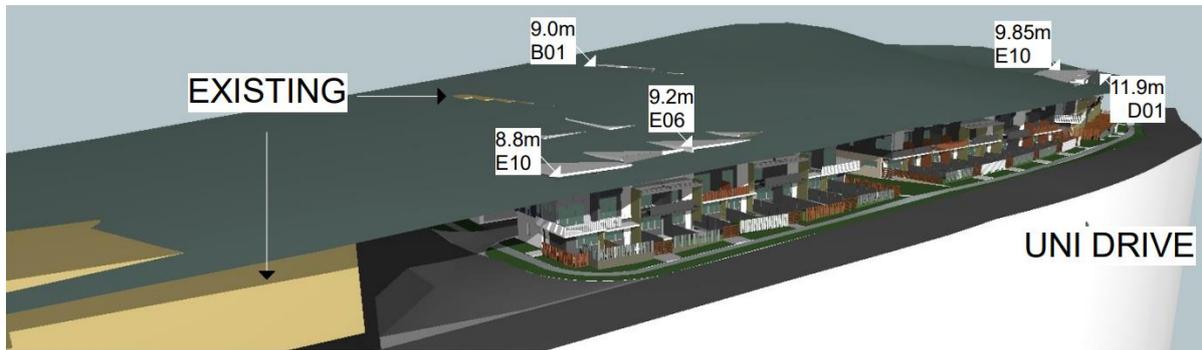


Figure 6 Height Envelope Above Natural Ground Level (o'Connell architecture and design, 2020)



Figure 7 Height Envelope Above Natural Ground Level (o'connell architecture and design, 2020)



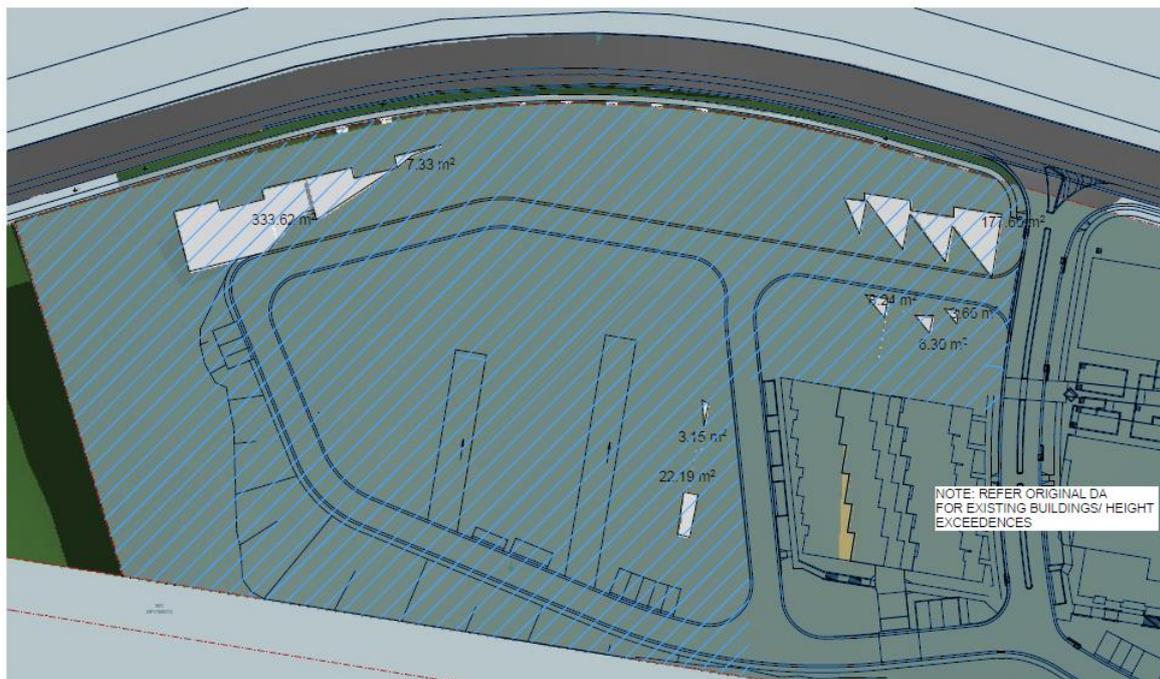


Figure 8 Development Area Exceedance (o'connell architecture and design, 2020)

As indicated in Figure 4, 5, 6 and 7 the majority of the dwellings with a height exceedance are located having frontage to University Drive. This height is similar to the existing buildings to the east and a derivative of the topography of the site. There is a small exceedance located at unit B01 in the south west corner again due to the topography of the site.

4 Objectives of the development standard

Under the Environmental Planning and Assessment Act, 1979 (the EPA Act) a development standard is defined as:

‘provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being the provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development’.

Consistency of the proposed development with the development standard and associated objectives of Clause 4.3 of the NLEP 2012 are key considerations in determining whether to grant consent to a variation of the development standard. The objectives of Clause 4.3 are outlined in sub clause (1):

- (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.*

The development is considered to be compliant with the objectives of Clause 4.3, notwithstanding the noncompliance with the building height mapped on the LEP Map HOB_002E. An assessment of this is in the following sections of this report.

5 Clause 4.6 - Exceptions to development standards

5.1 Objectives of clause 4.6

Clause 4.6 of the LEP states the following:

- (1) The objectives of this clause are as follows:*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.3 is the development standard that relates to the maximum height a development can be built to. Clause 4.6 provides flexibility in the application of this development standard, allowing for improved and consistent development outcomes.

5.2 Applicability of Clause 4.6

The development standard in Clause 4.3 is not expressly excluded from the operation of Clause 4.6. Clause 4.6(2), therefore, grants the consent authority the discretion to consent to the proposed development despite the contravention of this development standard.



5.3 Considerations under Clause 4.6

The consent authority's consideration in determining whether to grant consent for development that varies a development standard are outlined in Clause 4.6(3) and 4.6(4) of the LEP. These considerations are addressed below:

5.3.1 Clause 4.6(3)(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The objectives of Clause 4.3 Height of Buildings are listed below along with an assessment against the objective of the noncompliance.

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

The proposed height of the building is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The scale of development makes a positive contribution towards the desired built form created by the existing buildings on the site outlined in Section 2. Due to the size and location relative to other nearby development, the site creates its own context and character by establishing its own desired built form that capitalises on the proximity to the university and creates a campus style urban environment. The height reflects the existing height of the development to the east and continues this similar streetscape towards the west to create a cohesive presence to the street.

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

The development does not have an adverse impact on reasonable daylight access to the adjoining developments and the public domain. To the east is existing residential development and the shadow diagrams provided with this application show the development will not impact upon solar access for the existing residential development. There is no existing residential development on adjoining lots that will be impacted by overshadowing. The property to the south is zoned SP2 Infrastructure Water Supply and immediately adjoining the site contains remnant vegetation. These will not be negatively affected by any overshadowing that occurs. Immediately adjoining the site to the north is a four lane road and it is considered any overshadowing onto the road is acceptable. Adjacent to the west is remnant vegetation which will not be negatively impacted by any overshadowing.

The increased height has no adverse impacts that would warrant strict compliance with the development standard. Strict adherence to the height control is considered unnecessary as the development achieves the objective of Clause 4.3 Height of building in its current form and strict compliance would hinder the ability of the development to deliver the desired character and built form.

Adherence to the height control is considered unreasonable as the removal of the storey on the areas of exceedance would cause the loss of 2 bedrooms in each unit, making the development unviable. The loss of a storey in the areas of exceedance would negatively the impact the streetscape and desired built form created from the existing development to the east and the complying units along University Drive. The height control is considered unreasonable as the current approved development on the same building footprint is taller in places of proposed exceedance, the proposed development will have less of an impact then the current approved buildings. No greater benefit would be served



by modifying the development to adhere strictly to the prescribed numerical standard and because strict adherence will limit the ability of the development to deliver the housing variety.

5.3.2 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Relevant Strategic Plan

Newcastle City Council (NCC) is guided by *Hunter Regional Plan 2036* and the *Greater Newcastle Metropolitan Plan*. The Hunter Regional Plan (HRP) 2036 provides an overarching framework to guide the NSW Government's land use planning priorities and decisions over the next 20 years. The main vision of the plan is to be '*The leading regional economy in Australia with a vibrant new metropolitan city at its heart*'.

Goal 4 of the plan is '*Greater housing choice and jobs*. It is expected that 70,000 more homes will be required in the region by 2036. The plan expects that there will be a population increase from 732,400 in 2016 to 862,250 by 2036. The site is positioned to the south of the Callaghan Strategic Centre which is a large centre of activity and employment. The development will provide suitable, diverse housing to support the growth of this Strategic centre as it grows in the future.

GNMP 2036 helps to achieve the vision set out in the HRP 2036, which is for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart. The desired role of this Catalyst Area is to provide a tertiary education, research, and innovation cluster around UoN, a Student Accommodation Precinct and create a mixed use centre utilising Warabrook Station. The proposed development will be able to support the increase in student and staff numbers expected at the UoN as it expands and grows.

Strict adherence with the height control would reduce the yield, limiting the ability of this site to contribute to achieving housing targets in the HRP and GNMP. Strict adherence would also restrict the ability to create housing diversity and improve the availability of accommodation to meet the demands associated with the UoN which is directly adjacent to the site and a Catalyst Area in the GNMP.

Relevant Local Environmental Plan

Guided by Section 4.15 of the EPA Act, the development is subject to consent in accordance with NLEP. The aims of the NLEP include:

- (1) *This Plan aims to make local environmental planning provisions for land in the City of Newcastle in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a) *to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
 - (b) *to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*



- (c) to contribute to the economic wellbeing of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail, and commercial services,*
- (f) to facilitate the development of building design excellence appropriate to a regional city.*

The development is not inconsistent with the aims of the NLEP. The development in particular, fulfils the aims of objectives (c), (d), (e) and (f).

The development is consistent with (c) as the development caters for the housing demand generated by the UoN, which is a driver of economic growth and employment for the City of Newcastle. The development is consistent with (d) because it facilitates greater housing diversity in a location well serviced by public transport. The development is consistent with (e) because The housing typology will increase the variety of housing stock available to reinforce the University of Newcastle as an educational facility, an employment centre, and increasingly an urban centre that provides commercial, retail, and recreational needs to support the surrounding community. The development is consistent with (f) as the design is of building excellence designed by a nominated architect, the bulk and scale of the development is what is appropriate for a regional city.

5.3.3 Clause 4.6(4)(a)(i) and (ii)

Clause 4.6(4)(a) specifies that:

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*

The assessment contained within Section 5.3.1 of this report has demonstrated that the proposal is consistent with the objectives of the standard within Clause 4.3 of the NLEP. The proposed development is in the public interest because it is consistent with the objectives of R2 Low Density Residential as outlined in Section 3.2 of this report. The proposed development is consistent with the objectives because it is providing for the housing needs of the community.

5.3.4 Clause 4.6(4)(b) The concurrence of the Secretary has been obtained

Further to the considerations above, Clause 4.6(4)(b) states that the concurrence from the Secretary must be obtained for the contravention of this development standard.



In this case, concurrence from the Secretary is applicable according to the planning circular ‘Variations to development standards’ PS18-003 Issued 21st February 2018. The circular states that:

“All consent authorities may assume the Secretary’s concurrence under:

- *Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- *State Environmental Planning Policy No 1 – Development Standards.”*

The circular specifically states that:

The Secretary’s concurrence may not be assumed by a delegate of council if:

- *the development contravenes a numerical standard by greater than 10%; or*
- *the variation is to a non-numerical standard.*

The numerical standard at its highest point is 40% over. Variations of this nature (greater than 10%) are to be considered by the council or its Independent Hearing and Assessment Panel (IHAP). From this process proposals are subject to greater public scrutiny than decisions made by council staff under delegation. As Newcastle does not have an IHAP the development will be considered by the councillors in lieu of council delegation.

5.3.5 Clause 4.6(5)(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

There are no significant matters for State or regional environmental planning that will be affected by the contravention of this development standard for this development.

5.3.6 Clause 4.6(5)(a) The public benefit of maintaining the development standard

There is no greater public benefit to be gained by maintaining the building height on the site.

The intention of setting a maximum building height is to ensure the development of buildings is of an appropriate scale that contribute to the desired built form and prevent the loss of reasonable day light from the public domain. It is considered that the public would benefit from the development of the site, in a manner consistent with the objectives of the zone and the locality.



6 Conclusion

Strict adherence to the height control is considered unnecessary as the development achieves the objective of Clause 4.3 Height of building in its current form and strict compliance would hinder the ability of the development to deliver the desired character and built form on a site with difficult topography.

The relevant considerations of Clause 4.6 have been discussed above and support the variation of the development standard. This report has addressed the matters required to be demonstrated by Clause 4.6(3), and satisfied the considerations required to be made by Council under Clause 4.6(4)(a)(i). The variation from the maximum building height does not result in a development that is inconsistent with the zone objectives and the objectives of the development standard Clause 4.3(1). Accordingly, it is considered that the development is in the public interest, pursuant to Clause 4.6(4)(a)(ii).

In accordance with the requirements of Clause 4.6(4), it is considered that development consent may be granted for the proposed development.

