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**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**CCL 28/07/2020- SUPPLEMENTARY REPORT - 41 AND 47  
THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

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# Ordinary Council Meeting

28 July 2020



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THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

**ITEM 42**      **Attachment A:**      Item 28 of CCL 16/04/19 - 41 and 47 Throsby Street, Wickham - Endorsement of Amendment to Newcastle LEP 2012 and Proposed Planning Agreement

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**SUBJECT: CCL 16/04/19 - 41 AND 47 THROSBY STREET, WICKHAM -  
ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP  
2012 AND PROPOSED PLANNING AGREEMENT**

**REPORT BY: GOVERNANCE  
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

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## **PURPOSE**

To seek Council's endorsement of a Planning Proposal to commence the process for amending Newcastle Local Environmental Plan 2012 (NLEP 2012), to allow an increase in the maximum height of building (HOB) and floor space ratio (FSR) on land at 41 and 47 Throsby Street, Wickham and to commence preparation of a Planning Agreement for the construction and dedication of a laneway and public domain works.

## **RECOMMENDATION**

That Council:

- 1 Endorses the Planning Proposal (**Attachment A**) prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- 2 Forwards the Planning Proposal to the Department of Planning and Environment (DPE) seeking Gateway Determination pursuant to Section 3.34 of the EP&A Act.
- 3 Prepares a draft Planning Agreement, as per section 7.4 of the EP&A Act, consistent with the terms outlined in the attached Letter of Offer from Fidem Property Group (proponent) (**Attachment B**).
- 4 Exhibits the draft Planning Agreement for a period of 28 days, subject to Gateway approval of the aforementioned Planning Proposal.
- 5 Receives a report back on the outcomes of the public exhibition of both the Planning Proposal and draft Planning Agreement.

## **KEY ISSUES**

### **Summary of proposal**

- 6 City of Newcastle (CN) received a request to amend NLEP 2012 with a Letter of Offer from the proponent to enter into a Planning Agreement with CN with respect to land at 41 Throsby Street, Wickham (described as Lot 63 DP 579890, Lots 1 and 2 DP 112816, and Lot200 DP 534787) and 47 Throsby Street, Wickham (described as Lot 62 DP 579890) currently owned by FPG Wickham Pty Ltd.

- 7 The Letter of Offer seeks to include the following aspects within a Planning Agreement as per section 7.4 of the EP&A Act 1979:
  - i) Proponent dedicates land to accommodate a laneway and pedestrian linkage between Furlong Lane and Throsby Street.
  - ii) Proponent designs and constructs the proposed laneway and associated public domain to CN specifications.
  - iii) Proponent adheres to maintenance period (for a minimum of 12 months) of assets transferred to CN.
  
- 8 The Letter of Offer also seeks to amend NLEP 2012 as follows:
  - i) An increase in FSR from 1.5:1 to 3.5:1 (excluding the area to be dedicated as laneway); and
  - ii) An increase in HOB from 10m to 28m (with a maximum of eight storeys).
  
- 9 The Letter of Offer resulted after initial discussions with CN regarding the public interest with respect to:
  - i) The suitability of the amendments to NLEP 2012 sought by proponent with respect to matters outlined in the Planning Proposal:
    - a) Consistency with the broader strategic framework of State and CN strategies and / or plans, including the Wickham Master Plan (WMP).
    - b) Ensuring resultant development is compliant with State Environmental Planning Policies and Ministerial Directions.
    - c) Addressing potential impacts on adjoining area and ensuring potential development is compliant with Newcastle Development Control Plan 2012 (NDCP 2012) and the NSW Residential Apartment Design Guidelines.
  - ii) The proposed community benefit from the proponent delivering a new laneway connection between Furlong Lane and Throsby Street in Wickham:
    - a) Cost saving to CN of the proponent delivering the identified laneway.
    - b) Further savings from bringing forward delivery of the laneway with respect to reducing inflation on land and construction cost.
    - c) Improved access enabling redevelopment of adjoining land.

### **Letter of Offer / Proposed Planning Agreement**

- 10 The amendments to NLEP 2012 sought by the proponent's Letter of Offer are based on the principles of 'Value Capture Sharing' detailed in the Background of this report and as explored in relation to the WMP.
- 11 Essentially, with value capture, the increase in potential development is only applied to the land where part of the land value uplift is shared between the landowner / developer and the community / Council. To implement this, a developer enters into agreement with the Council to share in the value uplift by means of a cash contribution, land and / or works in kind.
- 12 The proponent proposes to share the land value uplift (resulting from the potential increase in Gross Floor Area (GFA) if the amendments to FSR and HOB in the NLEP 2012 are made) by:
  - i) Dedicating land (laneway) to CN.
  - ii) Constructing a new laneway and associated public domain works to CN's standards.
- 13 To calculate this the proponent has:
  - i) Identified the total cost of delivering the benefit.
  - ii) Determined the land value uplift needed (ie. twice the cost of delivering the benefit assuming a 50/50 share).
  - iii) Established the GFA required to increase the land value above the current (base) land value.
  - iv) Converted the GFA into FSR based on the reduction of land area due to area of the laneway.
- 14 The proponent is willing to offer a bond / guarantee on consent of a future DA to safeguard delivery of the constructed laneway and public domain works to CN. The timeframe for the delivery of the laneway will also be included in the Planning Agreement.

### **Planning Proposal**

- 15 CN has reviewed the appropriateness of the amendments to NLEP 2012 for land at 41 and 47 Throsby Street, Wickham, requested by the proponent in their Letter of Offer.
- 16 In considering the appropriateness of the proposed amendments, CN considered the following:
  - i) Consistency with the strategic intent of WMP for the land.

- ii) The appropriateness of the proposed 'value capture sharing' arrangement.
  - iii) The ability of the land to accommodate the potential additional GFA.
  - iv) Potential impact on the character and amenity of the surrounding area based on compliance with NDCP 2012 and the NSW Residential Apartment Design Guidelines.
  - v) The public good.
- 17 The WMP envisaged 'value capture sharing' arrangements would be delivered through an amendment to the NLEP 2012 (see Background) to enable CN to consent to a variation of development standards (on certain land) where CN is satisfied that the variation is:
- i) Justifiable of planning grounds; and
  - ii) Necessary to achieve an identified and quantifiable public benefit.
- 18 A Planning Proposal has been prepared by CN that will result in the following:
- i) Amendment to the HOB map to reflect an increase from 10m to 28m on the land.
  - ii) Amendment to the FSR map to reflect an increase from 1.5:1 to 3.5:1 on the land. The increase in FSR will not apply to the proposed laneway.

#### **Variation from Wickham Master Plan**

- 19 The subject land spans across two character precincts outlined in the WMP. The Eastern portion (41 Throsby Street) is within the Village Hub and the Western portion (47 Throsby Street) being within the Emerging Industry Quarter. However, the potential redevelopment density identified by the WMP for both sites is of a lower scale (4 storeys) in comparison to adjoining land to the south (11 storeys) and to the west (8 Storeys).
- 20 47 Throsby Street was nominated at a lower scale than adjoining land within the Emerging Industry Quarter Precinct due to the lack of a nominated public benefit (which could be delivered through a development incentive), such as the proposed laneway at 55 Throsby Street. The WMP nominated the North-South connection at 55 Throsby Street due to its location at the end of the laneway and as a larger land parcel, the site could accommodate both a laneway and still achieve a large development floorplate.
- 21 However, discussion with the owners of 55 Throsby Street has confirmed that this site contains a viable business that is not seeking to relocate in the

foreseeable future and therefore, the laneway is unlikely to be developed in that location.

- 22 In addition the proponent has demonstrated that a North-South connection linking the end of Furlong Lane through to Throsby Street is also achievable at 47 Throsby Street. The WMP nominated an FSR for 55 Throsby Street of 2.1:1. However, due to the smaller land area of 47 Throsby Street a greater FSR of 3.5:1 is required to achieve a similar uplift in GFA as nominated in the WMP.
- 23 Design analysis of 47 Throsby Street prepared by EJE Architects has demonstrated that despite a greater FSR, redevelopment of 47 Throsby Street could still produce a development that complies with CN's planning controls and the SEPP65 Residential Apartment design guidelines.

### **FINANCIAL IMPACT**

- 24 The Letter of Offer from the proponent, identifies that the cost of preparing a draft Planning Agreement will be funded by the proponent. CN will incur cost of staff negotiating with the proponent, exhibiting the Planning Agreement (together with the Planning Proposal) and reporting the outcomes to Council.
- 25 The cost saving to CN from the proponent delivering the identified laneway will enable CN to spend future section 7.12 contributions received from this development on the delivery of other infrastructure projects in the City Centre.
- 26 Without the proposed agreement the cost to CN for delivering a new laneway is estimated at \$1.87M at current rates.
- 27 This amount is based on the following:
- i) The cost to acquire the land required for the laneway is equal to the land value rate of \$1,385/sqm (identified by AEC - Value Capture Land Economic Study, dated 20/11/2018) being applied to the area of land required for the laneway (260sqm), which equates to \$360,000. However, the AEC study identified that additional compensatory costs are likely to be applied under the Land Acquisitions (Just Terms Compensation) Act 1991 to address severance and disturbance, especially if applied to 55 Throsby Street as nominated within the Wickham Master Plan. The additional cost of compensation is difficult to approximate without a detailed assessment of the existing structures and business on the land, but AEC asserted that the total compensation for the land is more realistically in the order of \$500,000.
  - ii) The cost for designing and constructing the laneway and public domain works, based on Cost Plan prepared by Quantity Surveyors Napier and Blakely (dated 22/10/2018) would equate to \$1.37M.

### **COMMUNITY STRATEGIC PLAN ALIGNMENT**

- 28 The Planning Proposal aligns with the following Community Strategic Plan Directions:

### **Liveable Built Environment**

- 5.4b Plan, provide and manage infrastructure that continues to meet community needs.

### **Open and Collaborative Leadership**

- 7.1a Encourage and support long term planning for Newcastle, including implementation, resourcing, monitoring and reporting.
- 7.2a Conduct CN business in an open, transparent and accountable manner.
- 7.3a Provide opportunities for genuine engagement with the community to inform CN's decision-making.

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 29 Implementation of the recommendations of this report is consistent with the intent of the WMP and will realise a new public laneway which would otherwise not likely be delivered.

### **RISK ASSESSMENT AND MITIGATION**

- 30 Implementation of the recommendations will be carried out in accordance with the requirements of the EP&A Act and CN's Voluntary Planning Agreements Policy, <http://intranet/Service-Units/Strategy-and-Engagement/Corporate-and-Community-Planning/Resources/Policies/Voluntary-Planning-Agreements-Policy>, hence mitigating any risk to CN supporting the amendment to NLEP 2012 or the proposed Planning Agreement.
- 31 The DPE's Gateway process will identify any requirements to consult with state agencies, hence providing further opportunity for any outstanding risks being identified and addressed.
- 32 Were the proposal not to proceed, CN may risk the timely provision of a new laneway connection. While this may be addressed by maintaining a reservation acquisition (in NLEP 2012) across 55 Throsby Street Wickham, until such time as the land is redeveloped, this is likely to be at a cost to CN considerably higher than under the current proposal.

### **RELATED PREVIOUS DECISIONS**

- 33 At the Ordinary Council Meeting held on 28 November 2017, Council adopted the WMP which outlined the potential development opportunities within Wickham based on the future vision for change in the area over the next 25 years and beyond.
- 34 At the Ordinary Council Meeting held on 22 May 2018, Council endorsed a Planning Proposal to enable several amendments to the NLEP 2012, as identified within the WMP. The Planning Proposal included introduction of a

land reservation acquisition on the map over land at 55 Throsby Street Wickham. This report does not seek to make any changes to the ongoing processing of that Planning Proposal.

## **CONSULTATION**

- 35 The WMP was publicly exhibited prior to its adoption, which included CN's intention to provide a new laneway between Throsby Street and Furlong Laneway.
- 36 Subject to Gateway support and the preparation of a Planning Agreement, both the Planning Proposal and the draft Planning Agreement will be publicly exhibited simultaneously and subsequently reported to Council for consideration and appropriate action.

## **BACKGROUND**

### **Wickham Master Plan (WMP)**

- 37 The WMP adopted by Council at the Ordinary Council Meeting held in November 2017 identified:
  - i) Vision and redevelopment opportunities for the next 25 years and beyond.
  - ii) Infrastructure and other public benefits that may be achieved through developer incentives (increased HOB and FSR).
  - iii) Identified indicative densities based on the above, which would be implemented by a formalised mechanism within the NLEP 2012.
- 38 The vision identified six interconnecting precincts that identify the envisaged character, built form, land use mix, and preferred public domain outcomes for redevelopment.
- 39 The WMP included a number of strategies and actions for achieving benefits to the community through provision of developer incentives. The approach put forward recommended that CN maintain the existing development standards (ie HOB and FSR) but introduce a mechanism to enable these to be increased where development results in a quantifiable public benefit. Public benefits would include provision of items either not able to be funded by developer contributions (due to statutory limitations) or as a means of bringing forward the delivery of items for which contributions are being collected. Items identified in the master plan include:
  - i) 'Urban activation areas' including additional land and embellishment within the public domain.
  - ii) Public car parking.

- iii) Affordable rental accommodation administered by a registered service provider.
- iv) Infrastructure and / or community facilities.
- v) Crucial vehicle and / or pedestrian connections.

### **Value Capture Sharing Approach**

40 An economic assessment prepared by AEC group, in preparation of the WMP recommended the mechanism being based on 'value capture', as explained below:

- i) Land value is largely influenced by the redevelopment potential of the land.
- ii) Amending development standards can substantially increase land values, which only benefits the current landowner.
- iii) With value capture, the increase in potential development is only applied to the land where part of the land value uplift is shared between the landowner / developer and the community / Council.
- iv) To implement this, a developer enters into agreement with the Council to share in the value uplift (from an LEP amendment) by means of a cash contribution, land, and / or works in kind.
- v) The developer benefits in that (despite having a greater risk and construction cost) can achieve a greater GFA which equals greater return on investment (as the land cost was equal to the original value plus half of the uplift, within their feasibility calculations).
- vi) Council and the community benefit by:
  - a) Sharing in the uplift gained through a public policy decision.
  - b) Receiving additional funding and / or infrastructure delivered ahead of schedule compared to Council funding this through general revenue or standard s7.12 contributions (hence also saving Council the higher cost of inflation if delivered in the future).
  - c) Increased s7.12 Local Infrastructure Contributions from the redevelopment of 41- 47 Throsby Street to account for the increase in HOB and FSR.

- d) Being in a position where the potential impact of development may be weighed up against the benefit to be delivered.

41 The mechanism envisaged within the WMP proposes an amendment to the NLEP 2012 which enables CN to consent to a variation of development standards (on certain land) where CN is satisfied that the variation is:

- i) Justifiable on planning grounds; and
- ii) Necessary to achieve an identified and quantifiable public benefit.

42 This will also require an amendment to the NDCP 2012 that identifies:

- i) Nominated land.
- ii) Potential public benefits.
- iii) Means of determining variation to development standards including:
  - a) Standards that may be varied (eg. HOB, FSR).
  - b) Planning principals for determining maximum variation:
    - Strategic intent (eg. Wickham Master Plan)
    - Compliance with residential apartment design guidelines
    - Compliance with the NDCP 2012
    - Acceptable level of impact (overshadowing, traffic, capacity of infrastructure).
- iv) Calculations required for justifying variations:
  - a) Increase in GFA.
  - b) Land value uplift from increased development standard (documented by a suitably qualified professional ie. land valuer / property economist).
  - c) Cost to developer of delivering public benefit to CN (documented and verified by a suitably qualified professional ie. land valuer, economist and / or QS report) or monetary contribution to CN to administer or deliver an identified public benefit in the vicinity of the development site.

- v) Implementation:

- a) Planning Agreement.
- b) Conditions of consent.
- c) Bank guarantee / bond.

43 To identify and clarify how this approach may work in reality, and to expedite CN implementing such a mechanism, the proponent funded a further report also prepared by AEC group that demonstrates how this method applied to the proponent's land at 41 and 47 Throsby Street, Wickham.

## **OPTIONS**

### **Option 1**

44 The recommendation as at Paragraph 1 – 5. This is the recommended option.

### **Option 2**

45 Council does not support the Planning Proposal and / or the Letter of Offer. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Planning Proposal - 41 and 47 Throsby Street, Wickham

**Attachment B:** Letter of Offer from Fidem Property Group

**Attachment A**

**[Attachment A - CCL160419 - 41 and 47 Throsby ...](#)**

**Attachment B**

**[Attachment B - CCL160419 - 41 and 47 Throsby ...](#)**

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THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

**ITEM 42    Attachment B:**    Council resolution to Item 28 of 16/04/19 - 41 and  
47 Throsby Street, Wickham

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**Agenda Report**

**SUBJECT: CCL 16/04/19 - 41 AND 47 THROSBY STREET, WICKHAM -  
ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP  
2012 AND PROPOSED PLANNING AGREEMENT**

**RESOLVED:** (Councillors White/Church)

That Item 28 lays on the table until a public briefing is held on the proposal, the public benefit and principles of value capture.

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THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

**ITEM 42    Attachment C:**    Planning Proposal - 41 and 47 Throsby Street,  
Wickham

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# Planning Proposal

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Proposed Amendment to Newcastle Local Environmental Plan 2012

41 and 47 Throsby Street, Wickham



Version	Description	Date
1.	Council endorsement	28/07/2020
2.	DPE requested changes	
3.	Public exhibition	
4.	Final adoption	

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## Summary

Proposed amendment to Newcastle LEP 2012	Amend mapping with respect to the land: <ul style="list-style-type: none"> <li>– Increase Height of building (HOB)</li> <li>– Increase Floor space ratio (FSR)</li> </ul>
Land application	41 Throsby Street, Wickham <ul style="list-style-type: none"> <li>– Lot 63 DP 579890</li> <li>– Lots 1 and 2 DP 112816</li> <li>– Lot 200 DP 534787</li> </ul> 47 Throsby Street, Wickham <ul style="list-style-type: none"> <li>– Lot 62 DP 579890</li> </ul>
Initiated by	Fidem Property Group on behalf of the current landowner FPG Wickham Pty Ltd

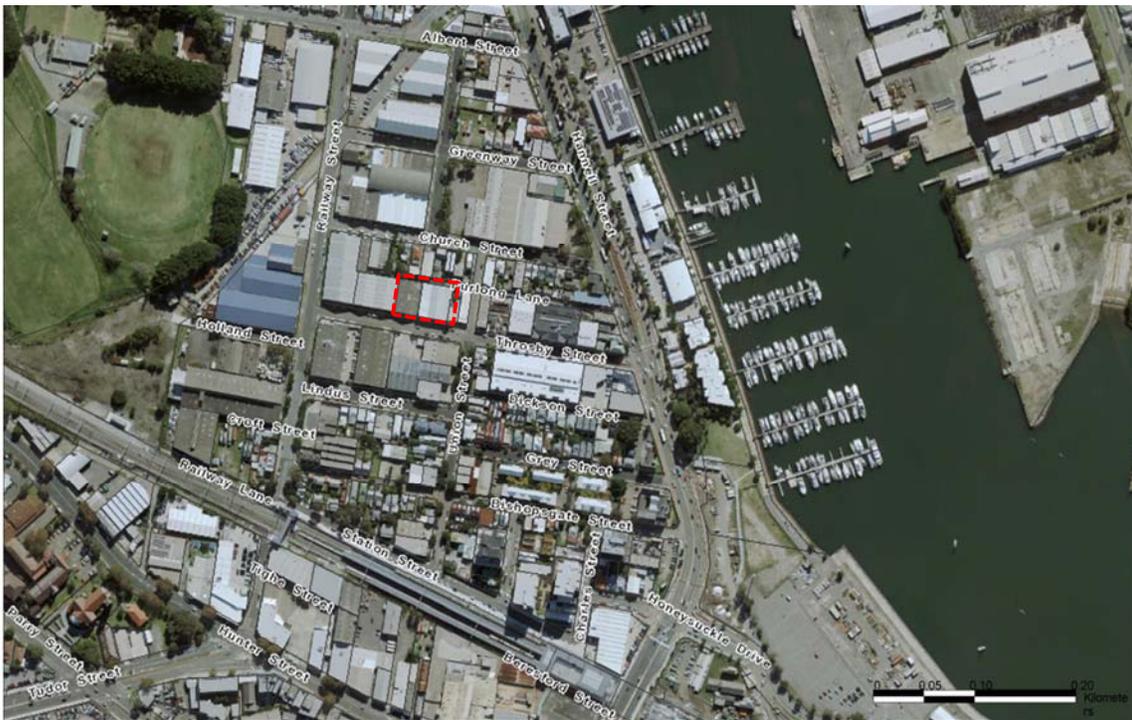
## Context

This Planning Proposal (PP) was prepared in response to a request received by City of Newcastle (Council) from Fidem Property Group (the proponent) to amend Newcastle Local Environmental Plan 2012 (NLEP 2012) with respect to land owned by FPG Wickham Pty Ltd at 41 Throsby Street, Wickham (described as Lot 63 DP 579890, Lots 1 and 2 DP 112816, and Lot 200 DP 534787) and 47 Throsby Street, Wickham (described as Lot 62 DP 579890).

The site is identified in Figure 1 *Subject land at 41 and 47 Throsby Street Wickham* and Figure 2 *Local context for 41 and 47 Throsby Street Wickham*.



**Figure 1** *Subject land at 41 and 47 Throsby Street Wickham*



**Figure 2** Local context for 41 and 47 Throsby Street Wickham

The proponents request sought to amend NLEP 2012 to enable an increase in the potential gross floor area (GFA) realisable over the land (41 and 47 Throsby Street, Wickham).

The request was also accompanied by a 'letter of offer' to enter into a planning agreement (with Council) as per section 7.4 of the Environmental Planning and Assessment Act 1979 (Act), in which the proponent proposes to dedicate part of the land (i.e. part of 47 Throsby Street, Wickham) for 'public purpose' and construct a new laneway and associated public domain works.

Both the proposed LEP amendments and the letter of offer were assessed having regard for the following matters:

- Section 3.33 of the Act
- The Department of Planning and Environment's guidelines, '*A guide to preparing Planning Proposals*'.
- Council's current Planning Agreement Policy.
- The merit of the proposed amendments to Newcastle LEP 2012 on strategic planning grounds.
- Consistency with the intent of the adopted Wickham Master Plan (WMP).
- The public interest with respect to provision of additional GFA within the B4 Mixed Use Zone that will enable additional housing and/or employment uses within this part of the Newcastle City Centre, and the delivery of a new laneway connection between Furlong Lane and Throsby Street in Wickham.

PP's are not intended as a static document hence further changes and updates will be made at various stages of the amendment process.

## **Part 1 - Objectives or intended outcomes**

The intent of this PP is to amend NLEP 2012 to enable an increase in the potential gross floor area on land at 41 and part of 47 Throsby Street, Wickham.

## **Part 2 - Explanation of provisions**

The intended outcome will be achieved by the following amendments to NLEP 2012:

### **Floor space ratio**

Amend the Floor Space Ratio (FSR) map with respect to the land as follows:

1. Increase the maximum FSR on 41 and 47 Throsby Street from S (1.5:1) to V (3:1)

Note: Part of 47 Throsby Street, Wickham is anticipated to be dedicated as a laneway (through a planning agreement offered by the proponent in relation to this proposal), hence the GFA generate by this area will be transferred to the development prior subdivision but the used FSR will remain across the entire site, to be consistent with mapping protocol within NLEP 2012.

The proposed amendment to FSR are shown through **Figure 3 Existing FSR on the land** and **Figure 4 Proposed FSR on the land**, below.



**Figure 3** Existing FSR on the land – 1.5:1



**Figure 4** Proposed FSR on the land – 3:1

## Height of buildings

Amend the Height of Building (HOB) map respect to the land as follows:

1. Increase the maximum HOB on part of 41 Throsby Street from K 10 (meters) to R 22 (meters)
2. Increase the maximum HOB on part of 41 Throsby Street, and all of 47 Throsby Street from K 10 (meters) to T 28 (meters)

The proposed amendment to HOB are shown through **Figure 5 Existing HOB on the land** and **Figure 6 Proposed HOB on the land**, below.



**Figure 5** Existing HOB on the land – 10m



**Figure 6** Proposed HOB on the land – 28m and 22m

## Part 3 - Justification

### Section A - Need for the Planning Proposal

#### 1. *Is the Planning Proposal a result of any strategic study or report?*

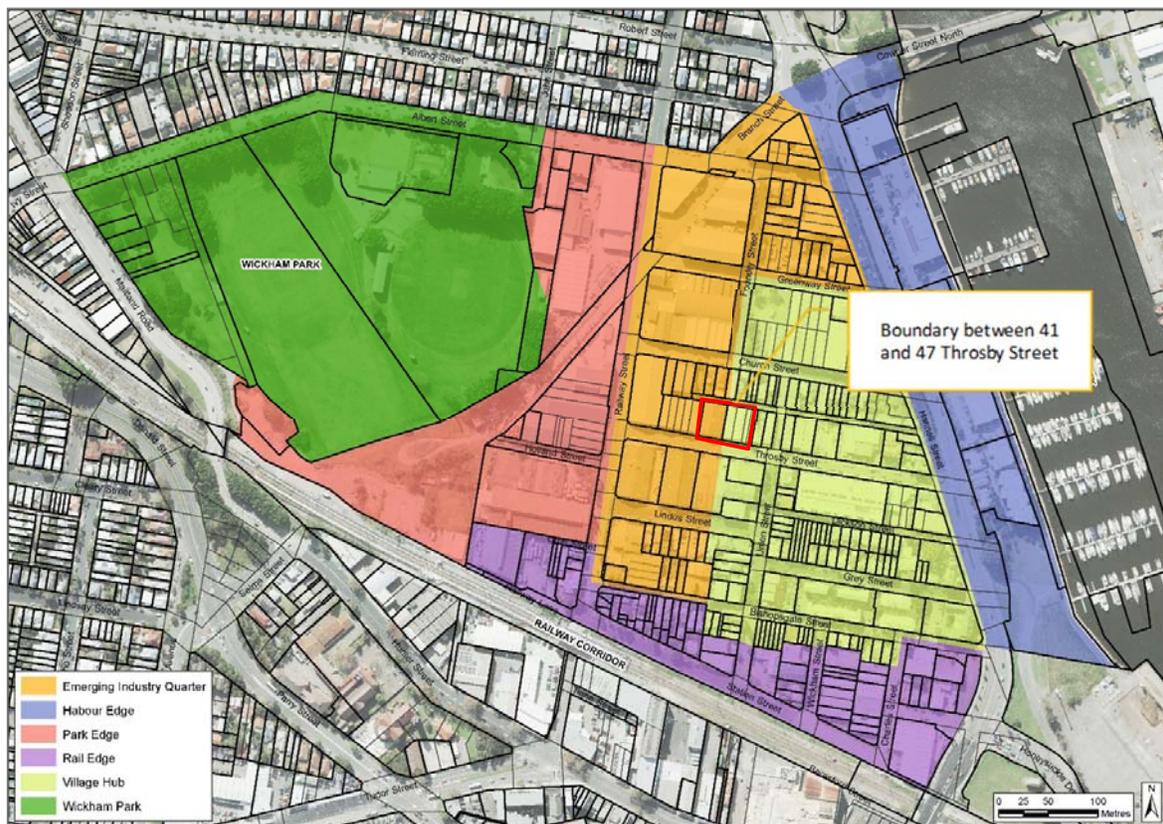
##### Wickham Master Plan

The proposal was initiated by the proponent as a result of WMP being adopted by Council in November 2017.

The WMP encompasses part of the Newcastle City Centre Urban Renewal Area identified by the State as being an area requiring further planning to inform future planning decisions. The WMP identifies Strategies and Actions to implement the key objectives:

1. Improve accessibility and connectivity within Wickham and to adjoining areas
2. Create safe, attractive and inclusive public places
3. Ensure built environment is functional, responsive and resilient

Consistency of the PP with WMP was considered by Council and is outlined below.



**Figure 7– Wickham Character Precincts**

The WMP vision identified six interconnecting character precincts. The intent of the precincts is to determine the envisaged character for different parts of Wickham based on redevelopment opportunity, land use and density, and consideration of likely impacts on amenity of the public domain and private land.

The PP area, as shown in red on **Figure 7 Wickham Character Precincts**, spans across the hypothetical boundary of two precincts:

- The eastern portion (41 Throsby Street) is within the Village Hub where re-development is envisaged to include a mix of residential apartment buildings and shop top housing (mixed-use development) and terrace style housing. The scale in this precinct is limited by a consistent street wall height similar to existing development in Throsby Street.
- The western portion (47 Throsby Street) being within the Emerging Industry Quarter, which generally has larger development sites allowing redevelopment of a much larger scale than the 'village hub' precinct but maintaining a consistent street wall height and setback through the provision in the Newcastle Development Control Plan 2012 (NDCP 2012).

However, the boundary of adjoining precincts is not a definitive line but rather a transition, particularly as the separation of precincts, for the most part, run along the middle of streets and through land parcels. Therefore, alignment of the division of precincts with the boundary of 41 and 47 Throsby Street is coincidental rather than deliberate.

The WMP also includes several strategies and actions for achieving benefits for the community through provision of developer incentives (such as an increase in development standards identified in NLEP 2012) where development includes the provision of a material public benefit to the community. The provision of infrastructure and improved connectivity is nominated as a community benefit by the WMP. The PP proposes to provide a laneway along the western boundary of 47 Throsby Street through a VPA as part of the amendment request for NLEP 2012, as outlined in this PP.

CN notes that the WMP had identified the proposed laneway to be aligned within the adjoining land at 55 Throsby Street. The proposal for this occurring on 47 Throsby Street enables this to be delivered sooner but still enables the opportunity to widen the laneway, if 55 Throsby Street redevelops in the future thereby providing opportunity for an additional parking lane and public domain fronting the side of 55 Throsby Street. CN believes that this proposal will enable a much better outcome for the community and improve amenity by also providing greater separation of development fronting the laneway.

Despite the proposed densities for the land not having been identified at the time of preparing the WMP, **Figure 8 Proposed transition of redevelopment densities**, demonstrates that the stepping in HOB across 41 and 47 Throsby Street, Wickham will result in better transition of scale at the upper levels set back from the street wall, between precincts.



**Figure 8 - Proposed transition of redevelopment densities**

The increase in density and scale is suitably justified on planning grounds having regard to potential impacts and envisaged future character. The proponent previously provided an initial design analysis prepared by EJE Architects, based on the HOB of 28m being applied across the entire PP area, which demonstrated that the PP could result in a development compliant to:

- Council's DCP
- SEPP 65 Residential Apartment Design Guidelines
- WMP by achieving the transition in character and scale, as nominated, through provision of development setbacks and suitable design treatment along Throsby Street.

However, the HOB for the most part of 41 Throsby Street has since been reduced to 22m, which will further reduce potential impacts on character and amenity along Throsby Street particularly to the neighbouring land east of the site.

In conclusion the PP varies in detail from the WMP with respect to nominated location of the new laneway and increase in HOB and FSR. However, these variations are justified having regard to the intent of the WMP, the envisaged local character, and consideration of potential impacts.

## ***2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?***

Yes, amending the NLEP 2012 is considered the best means of achieving the objectives of the PP in this case.

Council has considered an alternate means by implementing a new local clause relating specifically to the land in order to enable a variation to the current controls, as an incentive, for achieving outcomes that deliver a material public benefit.

While this alternate option is also considered valid, it would not provide the same level of certainty of the outcomes (public benefit to be delivered on the site) as a negotiated VPA tied to this amendment.

The approach taken within this PP is considered appropriate in this case due to the following reasons:

- It enables Council to consider the appropriateness of the proposal in achieving the intentions of the WMP despite being a variation from the original location of the sought-after laneway.
- The variation in location of the laneway and land to which the development incentive will apply was initiated by the proponent, hence the PP provides an open and transparent process including a formal public exhibition period for Council's consideration.
- The implementation of this PP has enabled Council to test and refine the process for assessing public benefit in relation to delivery of community infrastructure.

## Section B - Relationship to strategic planning framework

### 3. *Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?*

#### **Hunter Regional Plan 2036**

The Hunter Regional Plan 2036 is the NSW Government's plan to guide land use planning and infrastructure priorities and decisions over the next 20 years.

The plan identifies regionally important natural resources, transport networks and social infrastructure and provides a framework to guide more detailed land use plans, development proposals and infrastructure funding decisions. The plan includes overarching directions, goals and actions as well as specific priorities for each Local Government Area in the Hunter Region.

The PP is consistent with the Directions of this plan, particularly Direction 3 - Revitalise Newcastle City Centre. This direction applies to the PP area which is identified as part of the Newcastle City Centre area.

#### **Greater Newcastle Metropolitan Plan 2036**

The Hunter Regional Plan 2036 set the vision for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart. The plan sets out four outcomes to be achieved and identifies catalyst areas, including Newcastle City Centre. The Plan also provides specific directions for the 'Wickham Precinct', which aligns with the PP area and sets out the following.

*"Newcastle City Council will align local plans to:*

- *facilitate the long-term expansion of the City Centre towards Wickham*
- *increase opportunities for transit-oriented development around Newcastle Interchange*
- *provide floor space for emerging new economy industries and businesses."*

The PP is consistent with this plan in that it:

- *seeks to facilitate redevelopment to support and compliment the emerging city centre*
- *increases density of mixed-use development around the Newcastle interchange*
- *ensures sufficient FSR to achieve feasibility of mixed-use development.*

### 4. *Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?*

#### **Newcastle 2030 Community Strategic Plan**

The Newcastle Community Strategic Plan (2017 updated) identifies the community's vision for the city, outlines actions and strategies for Council to achieve, as well as indicators for monitoring implementation.

Compliance with the LEP amendment process, ensures consistency with the strategic direction 'Open and Collaborative Leadership' and the strategic objective to "Consider decision-making based on collaborative, transparent and accountable leadership"

Furthermore, the PP is consistent with the remaining strategic directions and objectives, or at a minimum does not result in any inconsistencies with the following:

- Connected city
- Vibrant and activated public places
- Protected and enhanced environments
- Caring and inclusive community
- Liveable and distinctive built environment
- Smart and innovative city.

### **Newcastle Local Strategic Planning Statement**

The Local Strategic Planning Statement (LSPS) adopted by Council in 2020 and endorsed by the Secretary of the Department of Planning, Industry and Environment (DPIE) provides a comprehensive guide for the future growth and development of Newcastle consistent with the Greater Newcastle Metropolitan Plan (GNMP).

The LSPS advocates redevelopment in Wickham, as part of the Newcastle City Centre Catalyst Area. This PP supports an increase in provision of housing and jobs close to public transport and supporting urban renewal.

### **Wickham Master Plan**

The WMP was adopted by Council in November 2017.

This plan identified potential future development densities based on both envisaged character precincts and potential developer incentives to deliver critical infrastructure, land for improvement of the public domain and critical connections for traffic management and ease of pedestrian movement.

This PP is consistent with the intent of the plan in that it will enable the provision of a laneway being dedicated to Council between the end of Furlong Lane through to Throsby Street.

The proposed HOB and FSR is generally consistent with the envisaged density of the character precincts and will result in an increased gross floor area calculated to result in enabling a feasible development outcome.

### ***5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?***

The table below provides an assessment of the proposed amendment against each State Environmental Planning Policy (SEPP) applying at the time of preparing this PP.

The assessment undertaken firstly identified which SEPP applies to the proposal, determined by the SEPP applying to both:

- a. the land; and
- b. the preparation of environmental planning Instruments.

Where applicable, the table identifies how the PP addresses the requirements of the SEPP.

**Table 1 - Relevant State Environmental Planning Policies**

State Environmental Planning Policies	Applicable	Consistency and Implications
SEPP No 1—Development Standards	No	
SEPP No 14—Coastal Wetlands	No	
SEPP No 19—Bushland in Urban Areas	No	
SEPP No 21—Caravan Parks	No	
SEPP No 26—Littoral Rainforests	No	
SEPP No 30—Intensive Agriculture	No	
SEPP No 33—Hazardous and Offensive Development	No	
SEPP No 36—Manufactured Home Estates	No	
SEPP No 44—Koala Habitat Protection	Yes	Whilst this policy applies to the land, there is no potential Koala habitat within the vicinity of the PP area hence the requirements of this SEPP are not applicable.
SEPP No 47—Moore Park Showground	No	
SEPP No 50—Canal Estate Development	No	
SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	No	
SEPP No 55—Remediation of Land	Yes	<p>Clause 6 requires Council to consider potential land contamination when preparing an Environmental Planning Instrument (e.g. LEP amendment).</p> <p>Subclause (2), requires Council to obtain and consider a report on the findings of a preliminary investigation of the land (carried out in accordance with the contaminated land planning guidelines) where the amendment will permit certain land uses, as specified in subclause (4)(c), to be permitted.</p> <p>This PP does not result in a change of zoning from the current zone B4 Mixed Use, which already permits the uses specified by subclause (4)(c).</p>
SEPP No 62—Sustainable Aquaculture	No	
SEPP No 64—Advertising and Signage	No	
SEPP No 65—Design Quality of Residential Apartment Development	Yes	<p>The land is already zoned B4 Mixed Use which permits the land to be developed for uses to which this policy applies (residential apartment development). Council is satisfied that the proposed amendments in HOB and FSR will enable development that is compliant with this policy and associated apartment design guidelines.</p> <p>Council has a design review panel under this SEPP but has not sought advice under clause 27 (c) at this stage. Any subsequent development proposal will be</p>

State Environmental Planning Policies	Applicable	Consistency and Implications
		referred to this panel as a matter of due course.
SEPP No 70—Affordable Housing (Revised Schemes)	No	
SEPP No 71—Coastal Protection	Yes	The PP area is located wholly within the Coastal Zone. Hence in accordance with Clause 7(a) Council is required to take into account matters for consideration within Clause 8. The proposed LEP amendments are considered consistent with the aims of this policy as set out in Clause 2 and do not raise any conflicts with respect to the matters listed under clause 8.
SEPP (Affordable Rental Housing) 2009	No	
SEPP (Building Sustainability Index: BASIX) 2004	No	
SEPP (Educational Establishments and Child Care Facilities) 2017	No	
SEPP (Exempt and Complying Development Codes) 2008	No	
SEPP (Housing for Seniors or People with a Disability) 2004	No	
SEPP (Infrastructure) 2007	No	
SEPP (Integration and Repeals) 2016	No	
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	No	
SEPP (Kurnell Peninsula) 1989	No	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	No	
SEPP (Miscellaneous Consent Provisions) 2007	No	
SEPP (Penrith Lakes Scheme) 1989	No	
SEPP (Rural Lands) 2008	No	
SEPP (State and Regional Development) 2011	No	
SEPP (State Significant Precincts) 2005	No	
SEPP (Sydney Drinking Water Catchment) 2011	No	
SEPP (Sydney Region Growth Centres) 2006	No	
SEPP (Three Ports) 2013	No	
SEPP (Urban Renewal) 2010	Yes	The area subject to this PP is wholly within land to which Newcastle Potential Precinct Map applies. The requirements of Clause 9 <i>Proposals for potential precincts</i> were satisfied by the preparation of the Newcastle Urban Renewal Strategy (NURS). The NURS identified the need for further planning to be undertaken in relation to the renewal of the Wickham area; hence the WMP

State Environmental Planning Policies	Applicable	Consistency and Implications
		was prepared and adopted by Council. This PP is consistent with the WMP.
SEPP (Vegetation in Non-Rural Areas) 2017	No	
SEPP (Western Sydney Employment Area) 2009	No	
SEPP (Western Sydney Parklands) 2009	No	

## 6. *Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?*

The table below documents Council's assessment of the PP against the relevant Ministerial Directions made under Section 9.1 of the EP&A Act 1979 (formerly known as Section 117 Directions).

**Table 2 - Relevant Ministerial Directions**

Relevant Section 9.1 Directions	Applicable	Consistency and implications
<b>1. Employment and Resources</b>		
1.1 Business and Industrial Zones	Yes	The PP not only retains the existing opportunities for business uses within the B4 Mixed Use zone but seeks to expand this by an increase in FSR thereby allowing a greater potential GFA for permitted uses including business uses.
1.2 Rural Zones	No	
1.3 Mining, Petroleum Production and Extractive Industries	No	
1.4 Oyster Aquaculture	No	
1.5 Rural Lands	No	
<b>2. Environment and Heritage</b>		
2.1 Environment Protection Zones	Yes	Whilst the Direction applies, the PP will have no effect on, or be affected by areas of environmental sensitivity. Hence the proposal is of minor significance.
2.2 Coastal Protection	Yes	The PP area is within the coastal zone however, the proposed amendments are considered to be of minor significance with respect to their potential impact or consequence on the NSW coast line.
2.3 Heritage Conservation	No	
2.4 Recreation Vehicle Areas	No	
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	No	

Relevant Section 9.1 Directions	Applicable	Consistency and implications
<b>3. Housing, Infrastructure and Urban Development</b>		
3.1 Residential Zones	Yes	This direction applies to the PP as the B4 Mixed Use zone permits significant residential development. The PP will not reduce the permissibility of residential uses but rather increase their feasibility due to an increase in FSR and HOB.
3.2 Caravan Parks and Manufactured Home Estates	No	
3.3 Home Occupations	Yes	The B4 zone within Newcastle LEP 2012 already permits Home Occupation as a use permitted without consent, hence is consistent with this direction.
3.4 Integrating Land Use and Transport	Yes	The PP includes provision of additional land zoned for business and residential through the rezoning of land to B4 Mixed Use. The land subject to rezoning is within the Newcastle City Centre Area boundary and hence is consistent with the aims, objectives and principles of:  (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and  (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).
3.5 Development Near Licensed Aerodromes	No	
<b>4. Hazard and Risk</b>		
4.1 Acid Sulfate Soils	Yes	The land is located within categories 3 of the ASS map in NLEP 2012. However, the PP does not include provisions or amendments that will increase the risk or hazard from the current potential, hence it is considered to be of minor significance and does not require any further study.

Relevant Section 9.1 Directions	Applicable	Consistency and implications
4.2 Mine Subsidence and Unstable Land	Yes	The Land is in a proclaimed Mine Subsidence District: Newcastle. Furthermore the land is subject to Subsidence Advisory NSW Guidelines 2. This guideline places general restrictions on development, which would suggest a much lesser scale of development than currently permitted under the LEP standards. The scale of development that may result from the proposed amendment will exceed that of the guidelines. Hence Council proposes to consult further with Mines Advisory NSW on this PP to determine further investigation and/or remediation works required for the development standards proposed to be realised.
4.3 Flood Prone Land	Yes	The PP applies to land identified as being within a flood planning area according to the Newcastle City-wide Floodplain Risk Management Study and Plan 2012 maps. However the land is not a floodway but is in the flood fringe. Hence future development may require an elevated floor height at ground level but is otherwise considered to be of minor significance.
4.4 Planning for Bushfire Protection	No	
<b>5. Regional Planning</b>		
5.1 Implementation of Regional Strategies	No	
5.2 Sydney Drinking Water Catchments	No	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	No	
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.8 Second Sydney Airport: Badgerys Creek	No	

Relevant Section 9.1 Directions	Applicable	Consistency and implications
5.9 North West Rail Link Corridor Strategy	No	
5.10 Implementation of Regional Plans	Yes	The PP applies to land within the Hunter Regional Plan. The PP is consistent with the regional plan, as outlined in Section B 3 above.
<b>6. Local Plan Making</b>		
6.1 Approval and Referral Requirements	Yes	The PP does not include any provisions that will require development application to seek approval or referral from any other public authority. Council will consult with public authorities prior to public exhibition in accordance with any conditions imposed on the PP during Gateway determination.
6.2 Reserving Land for Public Purposes	No	
6.3 Site Specific Provisions	No	
<b>7. Metropolitan Planning</b>		
7.1 Implementation of A Plan for Growing Sydney	No	Note: The land is located within an identified Catalyst area within the Greater Newcastle Metropolitan plan, as located within the Newcastle City Centre area. The PP is consistent with this plan.

## Section C - Environmental, social and economic impact

### ***7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?***

The land subject to the proposal does not contain critical habitat or threatened species, populations or ecological community, or their habitats.

### ***8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?***

The PP will not result in any other environmental effects not already considered above.

### ***9. Has the Planning Proposal adequately addressed any social and economic effects?***

The PP will enable the provision of a new laneway, which is identified as having a public benefit in that it will increase accessibility and deliver improved development outcomes in the vicinity as it will reduce the need for vehicle access across primary street frontages.

Furthermore, the proposal will facilitate an increase in residential density in vicinity to public transport and the emerging commercial centre of the city.

## Section D - State and Commonwealth interests

### ***10. Is there adequate public infrastructure for the Planning Proposal?***

Existing infrastructure within the City Centre is adequate to meet the needs of development potentially resulting from the Planning Proposal.

### ***11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?***

The following State and Commonwealth public authorities should be consulted with prior to public exhibition:

1. Mines Advisory NSW regarding the increase to the HOB on land within a proclaimed mine subsidence district.

## Part 4 - Mapping

The PP seeks to amend the following map sheets within Newcastle LEP 2012:

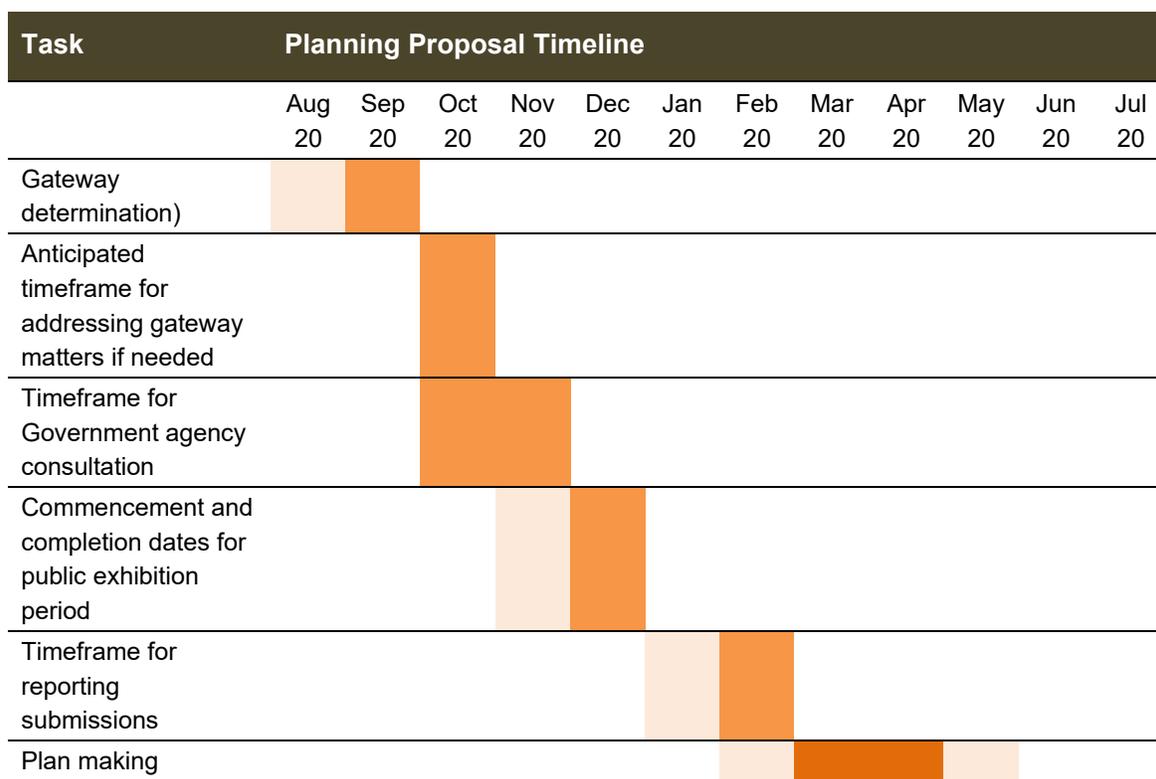
- ✓ Height of Buildings Map – HOB\_004FA
- ✓ Floor Space Ratio Map – FSR\_004FA

## Part 5 - Community consultation

The PP is considered as low impact in accordance with the Department of Planning and Environment's guidelines, *A guide to preparing local environmental plans*. However, it is envisaged that the PP will be publicly exhibited simultaneously to a Planning Agreement over the land for a minimum 28-day period.

## Part 6 - Project timeline

The plan making process is anticipated to take 9 months as shown in the timeline below. It will be undertaken in accordance with the Gateway determination.



\*RPA Relevant Planning Authority

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**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**CCL 28/07/2020- SUPPLEMENTARY REPORT - 41 AND 47  
THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

**ITEM 42    Attachment D:**    Letter of Offer from Fidem Property Group

**DISTRIBUTED UNDER SEPARATE COVER**



**Chief Executive Officer**

Jeremy Bath

**City of Newcastle****28 King Street****Newcastle NSW 2300**26<sup>th</sup> May 2020

Dear Mr David Clarke,

**PROPOSED PLANNING AGREEMENT - PROPOSED AMENDMENT TO  
NEWCASTLE LEP 2012 – 41 & 47 Throsby Street, Wickham NSW 2293**

We refer to your letter dated the 14<sup>th</sup> April 2020 and subsequent email correspondence, to which CN requested we amend our original letter of offer dated 26<sup>th</sup> March 2019 to reflect the outcomes of an economic review of the proposal and our negotiation. After careful consideration and consultation with our external advisors we wish to provide an amended offer, detailed herein.

**1. Introduction**

Fidem Property Group acting as development manager confirms FPG Wickham Pty Ltd is willing to enter into a Planning Agreement with an amendment to the Newcastle LEP 2012 effecting land at 41 and 47 Throsby Street, Wickham, pursuant to Section 7.4 (3) of the Environmental Planning and Assessment Act 1979, post Gateway determination.

In this regard, Fidem Property Group, as applicant, wishes to deal directly with Council in relation to any Planning Agreement over that part of the Land, which is currently owned by FPG Wickham Pty Ltd being:

41 Throsby Street, Wickham

- Lot 63 DP 579890
- Lot 1 DP 112816
- Lot 2 DP 112816
- Lot 200 DP 534787

47 Throsby Street, Wickham

- Lot 62 DP 579890

**2. Planning Agreement**

Fidem Property Group is seeking to enter into a Planning Agreement with the City of Newcastle in connection with an amendment to the Newcastle LEP 2012 effecting land at 41 and 47 Throsby Street, Wickham, pursuant to Section 7.4 (3) of the Environmental Planning and Assessment Act 1979.

We wish to enter into discussions post Council's endorsement of our offer, amendment to the Planning Proposal and Gateway determination which introduce a:

- FSR of 3:1 and the following heights of building:

- HOB 28m – 8 Storey
  - 47 Throsby Street Lot 62 DP 579890
  - 41 Throsby Street Lot 63 DP 579890
  
- HOB 22m – 6 Storey
  - 41 Throsby Street Lot 1 DP 112816
  - 41 Throsby Street Lot 2 DP 112816
  - 41 Throsby Street Lot 200 DP 534787

Based on the Planning Proposal to be submitted, we believe that the proposed Planning Agreement will include, but not be limited to, the following aspects:

- Design and Construction of the proposed laneway being no less and no more than 6.5m wide along the western portion of 47 Throsby Street linking between Throsby Street and Furlong Lane, Wickham. Through the Planning Agreement, the quantum and value of this cost contribution should be recognised.
  
- Dedication of the land proposed for the laneway and pedestrian linkage purposes to Council. Through the Planning Agreement, the quantum and value of this land should be recognised.
  
- The maintenance period of assets being transferred to Council

Fidem Property Group is committed to working with Council on the planning and design of the laneway.

#### **Application of s7.11 and s7.12**

The Planning Agreement will not exclude s7.11 or s7.12 contributions to development of the land for any future development application.

#### **Timing and provision**

As is standard practice, the timing and provision of land dedication and delivery of completed works included as part of the agreed public benefits are to be negotiated post Gateway determination.

#### **Resolution of disputes**

Any dispute under the Planning Agreement would be resolved by expert determination or mediation in accordance with the process specified in the Planning Agreement.

#### **Security**

The EP&A Act requires the Planning Agreement to provide provisions of a suitable security such as insurance bonds or bank guarantee. We acknowledge the requirements of the Legislation and understand a bond or bank guarantee will be required as security.

#### **Legal costs**

Fidem Property Group will appoint a legal professional, at no cost to CN to document the negotiated Planning Agreement and any subsequent versions arising from CN's legal review, public exhibition, or Council resolution.

### Timing for when the Planning Agreement would be entered into

Fidem Property Group seeks to commence preparing and negotiating a draft Planning Agreement, post Council's endorsement of our offer, amendment to the Planning Proposal and Gateway determination.

The draft Planning Agreement and Planning Proposal should then be exhibited concurrently. The final execution of the Planning Agreement will be required to be signed prior to gazettal of the LEP amendment. The Planning Agreement would operate from such time as Council executes it.

### 3. Conclusion

We are committed to working with Council throughout the LEP amendment process. We confirm that we are willing to enter into a Planning Agreement with Council post Gateway determination, when some certainty surrounding Council's support and Gateway requirements are known. Fidem Property Group is willing to invest the resources and capital to achieve the right outcome, however it needs more certainty on the likely outcome of the Planning Proposal before we can continue with negotiations.

We trust the above supports your assessment and recommendations to Council.

Please do not hesitate to contact me if you have any additional queries or require further clarification.

Yours Faithfully,



Michael Ghobrial

Managing Director

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