

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Development Application

File No:	S03/1611 Pts 1 - 6
Application Number:	DA 230-05-2003, DA 231-05-2003, DA 232-05-2003 and DA 233-05-2003.
Date of lodgement:	28 May 2003
On land comprising:	Honeysuckle Drive, Newcastle DA 230 – Lot 4 DP 883 474, Lot 12 DP 883 474, Part Lot 51 DP 1036132 and Lot 21 DP 1051525. DA 231 – Lot 4 DP 883474 and Lot 21 DP 1051525: DA 232 – Part Lot 51 DP 1036132. DA 233 – Lot 7 DP 883474 and Road Reserve.
Application made by:	Caverstock Group Level 1/185, Liverpool Street Sydney NSW 2000
Application made to:	Minister for Infrastructure, Planning & Natural Resources
Local government area:	Newcastle City
State electorate:	Newcastle, Bryce Gaudry MP. The views of the Member are not known.
Notification:	Advertised in Newcastle Herald on 14 July 2003.
Public Exhibition	Start: 16 June 2003. End: 16 July 2003.
For the carrying out of:	Development detailed in Section 3 of the Planning Report
Estimated cost of works:	DA 230 = \$32,780,107 DA 231 = \$10,869,893 DA 232 = \$2,249,651 DA 233 = \$971,110 Total = \$46,870,761
FTE Jobs created:	DA 230 – 70 full time equivalent (FTE) construction jobs and 40 FTE operational jobs. DA 231 – 40 FTE construction jobs and 10 FTE operational jobs. DA 232 - 30 FTE construction jobs and 1 FTE operational job. DA 233 - 20 FTE construction jobs. Total - 160 FTE construction jobs and 51 FTE operational jobs.
Type of development:	Integrated Development, Advertised Development.
Was a public inquiry held?	An inquiry under s.119 of the Act was not held.
Integrated approval bodies:	Heritage Council, Mine Subsidence Board, NSW Waterways Authority, Newcastle City Council
Main Issues:	Refer to attached page.
Compliance with the Act	The application has been considered with regard to the matters raised in section 79C of the Act. The application was notified in accordance with the Regulations and all submissions received in the period have been considered. On balance, it is considered that the proposed development is acceptable and that development consent be granted.
Applicant views on draft conditions:	Applicant expressed general support for proposed draft conditions.

Recommendation

It is recommended that the Minister for Infrastructure, Planning and Natural Resources pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 7(2) of the Newcastle Local Environmental Plan 2003.

- (A) grant **consent** to the application subject to conditions (Tagged “**A, B, C** and **D**”), and
- (B) authorise the Department to carry out post-determination notification.

Approved:

Sam Haddad
**Deputy Director General,
Office of Sustainable Development
Assessments & Approvals**

Jennifer Westacott
**Director General,
Department of Infrastructure, Planning
and Natural Resources**

Craig Knowles
**Minister for Infrastructure and Planning
Minister for Natural Resources**

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Development Application: Supplementary Information

Proposed Development

Consent is sought for the following:

DA 230-05-2003

Mixed Use development consisting of 4 multi-storey buildings and associated facilities:

- Building A1: 7 storey apartment building containing 26 residential apartments, 361m² ground floor retail space and 93 basement car parking spaces;
- Building A2: 5 storey apartment building containing 24 apartments, 650m² ground floor retail space and shared basement car parking with Building A1;
- Building B1: 9 storey apartment building containing 41 residential apartments, 497m² ground floor retail space and 108 basement car parking spaces;
- Building B2: 6 storey apartment building containing 44 apartments, 646m² ground floor retail space and shared basement car parking with Building B2);
- Temporary 200 space car park;
- 2 lot subdivision; and
- Associated Rights of way.

DA 231-05-2003

Mixed use development consisting of 6 storey building containing:

- 74 serviced apartments;
- 1251m² of ground floor retail space;
- 46 basement car parking spaces; and
- Associated facilities.

DA 232-05-2003

Construction of Public Domain and Foreshore Promenade consisting of:

- Landscaped open space;
- 8 m wide foreshore promenade;
- 4 m wide timber board walk;
- 3 m wide pontoon; and
- The demolition of remnants of wharf structure and sea wall.

DA 233-05-2003

- Reconfiguration of the “Honeysuckle Gardens (Squareabout)” and consequential reconfiguration of Honeysuckle Drive;
- Landscaping of Honeysuckle Drive and Honeysuckle Gardens; and
- The provision of a mid-block, signalised pedestrian crossing.

Summary of Significant Issues

(1) Commission of Inquiry

- Issue:* A Commission of Inquiry (COI) has been requested
- Raised by:* Public Submissions, Newcastle City Council (NCC), Friends of Honeysuckle
- Consideration:* NCC has called for a COI as have public submissions. The Department is satisfied that the DAs have been exhibited in accordance with statutory requirements. Such consultation has raised a comprehensive range of issues that have been thoroughly assessed by the Department, Approval Bodies and Council officers. Indeed the submissions made have led to the development being amended to lessen impacts.
- The proposed developments are generally in accordance with the relevant planning controls applying to the Central Honeysuckle Precinct.
- Resolution:* It is considered that a COI would provide little additional value to the comprehensive assessment carried out and is not recommended.

(2) Amended Plans

- Issue:* The applicant has amended the proposed development subsequent to the public submission.
- Raised by:* The Department, Heritage Council
- Consideration:* The amended plans were requested by the Department and the Heritage Council to lessen potential impacts and improve the overall quality of the development. The amendments are summarised as:
- Deletion of floor space from Building B2 such that it complies with the height requirement under DCP 40 and has a better relationship to the heritage context in which it is set;
 - The southern elevations of Buildings A1 and A2 have been altered to better relate to Honeysuckle Drive,
 - The location of the access to Buildings A1 and A2 has been relocated out of a view corridor resulting in a better public domain outcome; and
- Redesign of roof top equipment to reduce bulk and height of such.
- Resolution:* The amendments differ in minor respect from the DA and do not give rise to additional impacts. As such they did not require readvertising.

(3) Heritage Impacts

- Issue:* Impacts on the heritage of the area has not been properly considered.
- Raised by:* Public Submissions
- Consideration:* The subject land is situated within the Newcastle City Centre Heritage Conservation Area. It is adjacent to the Civic Railway Workshop Complex, an item of state heritage significance and Lee Wharf Buildings "A" and "C", both of local heritage significance. Two Heritage Impact Statements accompanied the DAs.
- The development proposals have been reviewed by the Heritage Council and NCC's Heritage Advisor. The Heritage Council raised strong objection to Building B1 as originally proposed, to the point that it would not issue General Terms of Approval (GTA) until substantial amendments were carried out. That building has been amended to the Heritage Council's satisfaction and GTAs have been issued.

The Heritage Council GTAs have been incorporated in to consent conditions as have the recommendations of NCC's Heritage Advisor. Consultation with the Awabakal Local Aboriginal Land Council has not identified issues pertaining to Aboriginal archaeological material or cultural matters.

Resolution: A comprehensive assessment of the proposal has been carried out which has determined that the proposal (as amended) is appropriate within the heritage context it is set.

(4) Public Domain

Issue: The public domain areas are unsatisfactory

Raised by: Public Submissions

Consideration: The proposed foreshore promenade is generally in accordance with the provisions of DCP 40. However, there is no landscape planting proposed to provide shading and amenity. This is to be addressed by consent condition.

The proposed works within Honeysuckle Drive (excluding the Squareabout/Honeysuckle Gardens) is generally in accordance with the DCP. However, NCC's Landscape Architect has recommended that the median be planted with Norfolk Island Pines and not Crows Ash as identified in the City West Streetscape Design Specifications. Furthermore NCC officers have advised that Council proposes to continue the avenue of Norfolk Island Pines along Honeysuckle Drive. Honeysuckle Gardens as it currently exists is virtually a grassed median in the centre of the Squareabout. It is unused by the public. The proposed upgrading of the parkland and its reconfiguration will result in better linkages to Workshop Way, Civic Railway and Railway Square as well as providing the opportunity for the establishment of cafes and restaurants in adjacent Building B1 to support the parks use.

Resolution: The public domain areas are generally in accordance with the provisions of the DCP with inappropriate departures to be addressed by condition.

There is significant benefit from the upgrading and reconfiguration of Honeysuckle Gardens.

(5) Building Heights

Issue: The proposed buildings do not comply with the applicable height controls.

Raised by: Public Submission

Consideration: It is acknowledged that the provisions of DCP were amended subsequent to exhibition of the DAs. At the time of exhibition there were variations to the "old" DCP.

With the alterations to Building B1 required by the Heritage Council, all the proposed buildings comply with the height controls contained in DCP 40.

Resolution: The proposal is consistent with the aims and objectives of the planning controls relating to building heights

(6) Scale Of Development

Issue: The proposal represents over development.

Raised by: Public Submission

Consideration: The proposed buildings comply with the height provisions contained in DCP 40.

The other major statutory determinant of scale of development is floor space ratio (FSR). The proposed development generally complies with the FSR provisions of DCP 40. There is a slight exceedence of 138m² in relation to Buildings A1 and A2, which is more than compensated by the remainder of the development being 762m² less than permitted by the DCP.

The proposal meets the appropriate standards in terms of solar access, natural ventilation as well as acoustic and visual privacy. It is noted that the proposal does not comply with the numeric standard for Building Separation, but it can be demonstrated that it complies with the objective of that standard.

Resolution: The proposal meets the performance standards contained in the relevant planning control and as such is of the scale anticipated by such controls.

(7) Views

Issue: The proposal will block views to the Harbour.

Raised by: Public Submission

Consideration: DCP 40 identifies a number of view corridors of various widths, which have been designed to allow maintenance of harbour views. A 20m wide view corridor to Nobbys Head and a 15m wide corridor adjacent to Lee Wharf Building C apply to the subject land. The proposed development complies with these view corridors.

An additional view opportunity from Harbour Square (private domain) has been designed to increase amenity for users of the square. This view is through a gap the lower floors of Building B2 and the 12 metre separation between Buildings A1 and A2. The users of Honeysuckle Drive will also receive this additional view opportunity.

The view to Christ Church Cathedral from Fig Tree Park is also maintained

Resolution: The proposal goes beyond the requirements of DCP 40 with respect to maximising views.



Planning Assessment Report Development Application

DA 230-05-2003, DA 231-05-2003, DA 232-05-2003 and DA 233-05-2003. Proposed “Lee Wharf Development”

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application numbers DA 23-05-2003, 231-05-2003, 232-05-2003 and 233-05-2003.

The applications seek consent for the following:

DA 230-05-2003

Mixed Use development consisting of 4 multi-storey buildings and associated facilities:

- (1) Building A1: 7 storey mixed use development comprising basement level car parking (common with Building A2); ground level retail/commercial floor space (361m²); and 6 storeys of residential apartments comprising 8 one-bedroom apartments, 8 two-bedroom apartments and 10 three-bedroom apartments.
- (2) Building A2: 5 storey mixed used development comprising basement level car parking (common with Building A1); ground level retail/commercial floor space (650m²); and 4 storeys of residential apartments comprising 12 one-bedroom apartments; 8 two-bedroom apartments and 4 three-bedroom apartments.
- (3) Building B1: 9 storey mixed use development comprising basement level car parking spaces (common with Buildings B2 and B7); ground level retail/commercial floor space (497m²); 8 storeys of residential apartments comprising 15 one-bedroom apartments, 19 two-bedroom apartments and 7 three-bedroom apartments.
- (4) Building B2: 6 storey mixed use development comprising basement level car parking spaces (common with Buildings B1 and B7*); ground level retail/commercial floor space (646m²) and 5 storeys of residential apartments comprising 23 one-bedroom apartments, 15 two-bedroom apartments and 6 three bedroom apartments.
- (5) 200 space temporary car park.
- (6) 2 lot subdivision readjusting the boundaries of Lot 4 DP 883474 (4000m²) and Lot 21 DP 1051525 (12141m²), creating Proposed Lot 24 of 6764m² and Proposed Lot 25 of 9377m².
- (7) Vehicular, pedestrian and service rights of way proposed on lots 24 and 25, 10 m wide and variable on each lot to facilitate the public connection between Honeysuckle Drive and Wright Lane.

- (8) Right of way located on part Lot 51 DP 1066132 containing 342m² and on part Lot 11 DP 883474 containing 250m² in favour of adjacent Lot 12 DP 883474 to facilitate access to the basement car park below Buildings A1 and A2.

DA 231-05-2003

Mixed use development consisting of 6 storey building containing:

Building B7: 6 storey mixed development comprising of basement level car park (common with Buildings B1 and B2), ground level retail/commercial floor space (1251m²), gymnasium, roof terrace and 5 storeys of serviced apartments comprising 74 one-bedroom apartments.

DA 232-05-2003

Construction of Public Domain and Foreshore Promenade consisting of:

- (1) Continuous Newcastle Harbour Foreshore Promenade with minimum 8 metre width.
- (2) Demolition of existing dilapidated remnants of wharf structure and sea wall.
- (3) 4 metre wide timber boardwalk.
- (4) 3 metre wide timber pontoon/floating walkway.
- (5) Landscaping of Public Open Space.

DA 233-05-2003

Construction of Roads and Parks consisting of:

- (1) Reconfiguration of Public Open Space (Honeysuckle Gardens) so that it is not surrounded by road reserve;
- (2) Consequent reconfiguration of Honeysuckle Drive to achieve the reconfiguration of Honeysuckle Gardens;
- (3) Landscaping of Honeysuckle Gardens and Honeysuckle Drive;
- (4) Provision of mid-block pedestrian crossing of Honeysuckle Drive,
- (5) Consequential subdivision of Lot 7 DP 883474 (2783m²) and Road Reserve to create proposed Lot 26 as Public Reserve (1699m²) and proposed Lot 27 as Public Reserve (1138m²); and
- (6) Road Widening (1083m²)

The Minister for Infrastructure Planning and Natural Resources is consent authority under clause 7(2) of the Newcastle Local Environmental Plan 2003.

Plans of the proposal are enclosed as **Attachment 1**. A completed Compliance Table and Section 76C Evaluation appears as **Attachment 2**.

It is recommended that the development applications be granted **consent**.

2 BACKGROUND

2.1 Site Context

The site is located in the Central Honeysuckle Precinct in the Newcastle City Council (NCC) local government area (LGA).

The development application was lodged with the Department on 28 May 2003 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site is generally situated adjacent to Newcastle Harbour and extends over both sides of Honeysuckle Drive. The land on which the subject DAs apply is situated between Workshop Way and Worth Place as indicated on the site plan, which occurs at **Attachment 1** (refer Drawing No ADAZ 001 C). The site includes Honeysuckle Drive "including the Squareabout" and Honeysuckle Gardens, both of which are owned by Newcastle City Council. The remainder of the development site is owned by the Honeysuckle Development Corporation.

Situated close to the site is the development known as the Boardwalk (currently nearing completion), Civic Railway Station and the Civic Railways Workshop Group, which are state significant heritage listed buildings associated with the site's historical use for railway purposes. Lee Wharf Buildings "A" and "C" are situated on the harbour side of the site. Both these buildings are heritage items of local significance. The land is situated within the Newcastle City Centre Heritage Conservation Area.

The land is generally low and flat with elevations of around 2.0m AHD. There is little vegetation remaining on site. Areas of Honeysuckle Gardens and that part of the development site south of Honeysuckle Drive are grassed and otherwise unused. Part of the site south of Honeysuckle Drive (known as Lot 4) is currently undergoing site remediation and is partially excavated.

2.2 Relevant approvals

Approvals from integrated approval bodies are required as follows:

DA 230-05-2003: NSW Heritage Council (Heritage Council), Mine Subsidence Board (MSB) and the NSW Waterways Authority (Waterways);

DA 231-05-2003: Heritage Council and MSB;

DA 232-05-2003: MSB and Waterways; and

DA 233-05-2003: Heritage Council, MSB, Waterways and NCC.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

DA 230-05-2003

Mixed Use development consisting of 4 multi-storey buildings and associated facilities:

- (1) Building A1: 7 storey mixed use development comprising basement level car parking (common with Building A2); ground level retail/commercial floor space (361m²); and 6 storeys of residential apartments comprising 8 one-bedroom apartments, 8 two-bedroom apartments and 10 three-bedroom apartments.
- (2) Building A2: 5 storey mixed used development comprising basement level car parking (common with Building A1); ground level retail/commercial floor space

- (650m²); and 4 storeys of residential apartments comprising 12 one-bedroom apartments; 8 two-bedroom apartments and 4 three-bedroom apartments.
- (3) Building B1: 9 storey mixed use development comprising basement level car parking spaces (common with Buildings B2 and B7); ground level retail/commercial floor space (497m²); 8 storeys of residential apartments comprising 15 one-bedroom apartments, 19 two-bedroom apartments and 7 three-bedroom apartments.
- (4) Building B2: 6 storey mixed use development comprising basement level car parking spaces (common with Buildings B1 and B7*); ground level retail/commercial floor space (646m²) and 5 storeys of residential apartments comprising 23 one-bedroom apartments, 15 two-bedroom apartments and 6 three bedroom apartments.
- (5) 200 space temporary car park; and
- (6) 2 lot subdivision readjusting the boundaries of Lot 4 DP 883474 (4000m²) and Lot 21 DP 1051525 (12141m²), creating Proposed Lot 24 of 6764m² and Proposed Lot 25 of 9377m².
- (7) Vehicular, pedestrian and service rights of way proposed on lots 24 and 25, 10 m wide and variable on each lot to facilitate the public connection between Honeysuckle Drive and Wright Lane
- (8) Right of way located on part Lot 51 DP 1066132 containing 342m² and on part Lot 11 DP 883474 containing 250m² in favour of adjacent Lot 12 DP 883474 to facilitate access to the basement car park below Buildings A1 and A2.

DA 231-05-2003

Mixed use development consisting of 6 storey building containing:

Building B7: 6 storey mixed development comprising of basement level car park (common with Buildings B1 and B2), ground level retail/commercial floor space (1251m²), gymnasium, roof terrace and 5 storeys of serviced apartments comprising 74 one-bedroom apartments.

DA 232-05-2003

Construction of Public Domain and Foreshore Promenade consisting of:

- (1) Continuous Newcastle Harbour Foreshore Promenade with minimum 8 metre width.
- (2) Demolition of existing dilapidated remnants of wharf structure and sea wall.
- (3) 4 metre wide timber boardwalk.
- (4) 3 metre wide timber pontoon/floating walkway.
- (5) Landscaping of Public Open Space.

DA 233-05-2003

Construction of Roads and Parks consisting of:

- (1) Reconfiguration of Public Open Space (Honeysuckle Gardens) so that it is not surrounded by road reserve;
- (2) Consequent reconfiguration of Honeysuckle Drive to achieve the reconfiguration of Honeysuckle Gardens;
- (3) Landscaping of Honeysuckle Gardens and Honeysuckle Drive;
- (4) Provision of mid-block pedestrian crossing of Honeysuckle Drive,
- (5) Consequential subdivision of Lot 7 DP 883474 (2783m²) and Road Reserve to create proposed Lot 26 as Public Reserve (1699m²) and proposed Lot 27 as Public Reserve (1138m²); and
- (6) Road Widening (1083m²)

3.1 Amended Plans

On 3 September 2003, after an initial assessment of the applications and close of the exhibition period, the Department advised the applicant in writing of concerns associated with the developments. In particular the following issues were identified as requiring design solutions:

- The height of Building B1 was considered excessive, particularly in relation to adjacent heritage items, being the Civic Railway Workshops;
- The southern elevations of buildings A1 and A2 required alternative design treatments to ensure the buildings better address Honeysuckle Drive;
- An alternative location for the access to the northern basement carpark not located in the view corridor was required;
- Tree planting along the public promenade was required; and
- Water conservation measures were required.

On 3 November 2003 the applicant, submitted amended plans the application incorporating altered elevations to buildings A1 and A2, the location of the basement carpark entrance was located outside the view corridor and water conservation measures were provided. The relocation of the carpark entrance also required the modification of the land description relating to DA No 230-005-2003. The written consent of the land owner was also submitted. The proponent chose not to amend the design of Building B1 nor provide tree planting along the foreshore promenade.

Further consultation was undertaken with the Heritage Council subsequent to the submission of the altered plans. That office advised the Department on 5 November that the relationship between Building B1 and the heritage items was unacceptable in terms of impacts on the heritage item. The Department again wrote to the applicant on 12 November, advising of the Heritage Council advice and that amendments to Building B1 were required.

The applicant provided amended plans on 1 December 2003 which amended the design of Building B1 by:

- Deletion of the 2 units from each of the upper two floors from Building B1 such that the building represented 7 stories at its southern façade adjacent to the Heritage item; and
- Additional massing around the base 3 levels of Building B1 so that a 3 storey podium is created of scale and construction material similar to that of the adjacent heritage item.

These amended plans were further assessed by the NSW Heritage Council. On 5 February 2004 the Heritage Council advised that upon submission of amended plans satisfying certain conditions it would approve the relevant applications under section 63 of the Heritage Act and issue GTAs. This approval was conditional upon the submission of amended plans showing *“part of Building B1 on levels 3, 4, 5 and 6 between grids B07 and B08 on drawings by Crone Nation Architects being deleted in order to reduce the adverse impact on the former Divisional Engineers Office, Boiler House and Machine Shop (Hunter Valley Wine Society Building).”*

On 12 February 2004 the applicant submitted amended plans which deleted floor space from Building B1 as indicated in the Heritage Council's letter of 5 February 2004. The amended plans also contained other minor variations to the plans. The most significant of which included the alteration of roof top plant and equipment on the proposed buildings such that these facilities were not as extensive and lower in height.

In all, these amendments differ in minor respects from the DAs. They do not give rise to any additional impacts. The amended plans were not readvertised as they:

- Represented requests from the Department and Heritage Council for amended plans. The Heritage Council advised it would not issue its GTAs until amended plans for Building B1 were received;
- The amendments ensured that Building B1 complied with the height requirements listed in the relevant DCP;
- The amendments have a lower floor space ratio than that originally submitted;
- The amendments seek a better public domain outcome by relocating the access to the Building A1 and A2 car park;
- Buildings A1 and A2 better relate to Honeysuckle Drive; and
- The issues of bulk, height and relationship to public places were raised in public submissions.

Therefore, the amendments are considered to have lessened the impacts of the development and as such did not need to be renotified.

Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The proposed development is permitted in the 3(c) City Centre Zone as commercial premises pursuant to Clause 16 of the Newcastle LEP.

4.2 Instrument of consent and other relevant planning instruments

Pursuant to Clause 7(2) of the Newcastle LEP, the Minister is the consent authority.

4.3 Legislative context

The proposed development represents integrated, local development.

4.4 Other statutory provisions

Newcastle DCP 40 – City West applies to the site of the proposed development.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations and Newcastle DCP 49 – Notification Policy including:

Notifications – landowners/occupiers	Adjoining and adjacent landowners in the Honeysuckle Precinct plus owners in Hunter Street identified as potentially being impacted by the proposed development. (49 owners in all.) Occupiers of premises on the northern side of Hunter Street between Civic Railway and Worth Place were also delivered notifications.
Newspaper advertisements	Advertised in Newcastle Herald on 14 July 2003.
Site notices	16 June 2003.
Exhibition dates	Start: 16 June 2003. End: 16 July 2003.
Exhibition venues	<ul style="list-style-type: none">▪ Planning Information Centre, 20 Lee Street Sydney▪ DIPNR regional Office, 251 Wharf Street Newcastle▪ NCC Customer Enquiry Counter, 412 King Street Newcastle.

Eight submissions were received regarding the Application. A summary of submissions is in **Attachment 2**. Issues are considered in Section 6.2 of this report.

Subsequent to the end of the exhibition period and adjoining occupier and an organisation calling itself "Friends of Honeysuckle" conducted awareness campaigns relating to the Lee Wharf Development. As a result of these campaigns, a number of phone calls were received by the Hunter Regional Office during September 2003 and February 2004. Approximately 36 phone objections were taken during these times. The majority of callers were objecting the height of the proposed buildings. Also 25 callers advised that they had not viewed the plans.

The Friends of Honeysuckle have also written to the Minister calling for a Commission of Inquiry into the applications.

5.2 Referrals

5.1.2 Integrated Approval Bodies

Mine Subsidence Board

The Mine Subsidence Board has reviewed the DAs and a range of geotechnical information submitted for its consideration. It is an approval body for each of the DAs. The MSB raises no objections to the proposal and has issued its General Terms of Approval (GTA) for the development. The MSB raises no objections to the proposal and has issued its GTAs for the development. The MSB response is at **Attachment 3**.

Waterways Authority

The Waterway Authority has considered each of the DAs. It is an approval body in respect of DAs 230, 232 and 233-05-2003. This authority has advised that it raises no objection to the proposed developments. It has issued its GTAs and has advised in which circumstances a Part 3A Permit under the Rivers and Foreshores Improvement Act will not be required. Waterways Authority requirements are addressed by consent conditions. The Waterways response is at **Attachment 4**.

NSW Heritage Council

The Heritage Council has reviewed the DAs and the Heritage Impact Statements submitted for its consideration. It is an approval body for DAs 230, 231 and 233-05-2003.

The Heritage Council raised strong objection to Building B1 as was originally proposed. Even after the applicant amended the plans deleting floor space from the upper two stories of that building the Heritage Council still objected to the relationship between Building B1 and the adjacent Heritage item. The Heritage Council required the submission of an amended plan that showed compliance with the 12m height control at the southern portion of Building B1 before it would consider issuing GTAs for the development.

The applicant submitted the amended plans as required by the Heritage Council, which subsequently released its GTAs. The Heritage Council also advised that it supported the recommendations of the Heritage Impact Statement for Lee Wharf Park prepared by Godden McKay Logan, dated June 2003.

The Heritage Council requirements are incorporated in the consent conditions. The Heritage Council response is at **Attachment 5**.

5.2.2 Council

The application was referred to the Newcastle City Council on 16 June 2003. As Council is the relevant Road Authority under the Roads Act, it is Integrated Approval Body for DA 233-05-2003. Council has made no formal response to the DAs in its role of Approval Body. It has not issued GTAs nor has it advised that it will not be issuing GTAs.

Correspondence requesting its GTAs was forwarded to Council on 18 August 2003 along with copies of all submissions received. Pursuant to Clause 70 of the Regulation, Council had 21 days from that date (or until 8 September 2003) to issue its GTAs or to advise that it would not be issuing such. Pursuant to Section 91A (5) of the Act, the

Minister can grant consent to the DA No 233-05-2003 notwithstanding that Council has not issued GTAs.

Information pertaining to Council's assessment of the DAs, including relevant officer reports and Council Resolutions appears as **Attachment 6**.

A full discussion of Councils involvement in the assessment process is at **Section 6.2** of this report.

5.3.2 Design Review Panel

There is no Design Review Panel established for the Newcastle Local Government Area pursuant to SEPP 65. The Newcastle Urban Design Consultative Group does, however provide comments on design issues relating to development proposals in the Newcastle LGA. The group considered the subject applications on 16 August 2003. The response is at **Attachment 7**. The group made positive comment on the high quality of architecture associated with the proposal.

The group raised concern over the exposure of the public domain area (Foreshore Promenade) and suggested the provision of shelter. The group felt this issue needs to be considered in the context of the full extent of the promenade. A consent condition is proposed that requires a detailed landscaping plan be submitted and approved prior to construction certificate that, inter alia, requires tree planting adjacent to the promenade to provide shelter from weather elements.

The group noted that plant rooms and the like extend beyond the DCP height and the south western building (B7) is a full floor over the DCP height. The Group noted that there may be some potential for view impacts on buildings in Hunter Street and it was considered that building heights should comply with DCP 40 unless it can be established that there are no significant impacts. If this can be demonstrated to be the case, the additional height would not be of concern.

It is noted that the Group considered the DAs on 16 July 2003. This was prior to an amendment to DCP 40. The amendment became effective on 15 August 2003. The amendments included: alteration to the building height controls to allow plant rooms and the like to extend above the nominated height control; the alteration of the height control in the vicinity of Building B7 from 18m to 30m; and the reduction of building heights adjacent to the Civic Workshops heritage item to 12m. The proposal considered by the Consultative Group now complies with the stated building height controls in DCP 40, with the exception of Building B1.

Building B1 has been altered such that its southern façade has been reduced in height and it now complies with the height provisions of DCP 40 as amended.

5.4.2 Other Agencies

State Rail Authority and Rail Infrastructure Corporation (Rail Estate)

Rail Estate, which is the property group of State Rail, has responded on behalf of the State Rail Authority of NSW (State Rail) and the Rail Infrastructure Corporation (RIC). The response to the DAs is at **Attachment 8**.

State Rail and RIC are concerned that occupants of the development may encounter rail related noise and vibration from the adjacent rail corridor. It asks that applicants install noise attenuation devices if necessary and an easement to permit vibration and electrolysis. The proponent has prepared an Acoustic Assessment Report that

considers noise vibration impacts associated with the development, and includes an assessment of rail associated impacts. Certain noise mitigation measures are proposed. The requirements of State Rail and RIC are addressed by consent conditions requiring the adoption of mitigation measures contained in the Acoustic Assessment Report.

A need exists to ensure there will be no adverse impact upon the operation of rail services, the integrity of rail infrastructure and stability of the rail corridor. It is essential that any work does not compromise rail safety. State Rail and RIC have proposed conditions to minimise impacts in these areas. The conditions proposed by State Rail and RIC have been incorporated into the consent conditions.

No work is permitted within the rail corridor or its easements unless prior approval or an Access Deed has been entered into with State Rail. This requirement is addressed by consent condition as recommended.

Hunter Water

The Hunter Water Corporation made comment on possible impacts on water and sewer infrastructure that is located within the vicinity of the proposed developments. Prior to construction, the proponent is to undertake a services check to determine the location of infrastructure and ensure no damage to this infrastructure occurs.

A Certificate of Compliance under Section 50 of the Hunter Water Corporation Act is required prior to construction commencing that addresses Developer Work Charges, capacity of existing assets or additional works required by the proponent and connection points for water and sewer. The requirement for a Section 50 Compliance Certificate forms a consent condition.

A copy of the Hunter Water response is at **Attachment 9**.

NSW EPA

The EPA made comment on noise impact and management. Noise levels associated with Port redevelopment may affect proposed residential development. Noise impacts need to be considered. Noise during the construction phase is also to be considered. It is acknowledged that the DAs are supported by an Acoustic Assessment Report that addresses noise impacts on the proposed development from rail and port sources and also addresses construction noise being emitted from the site. The requirements of the EPA are addressed as consent conditions.

Risk from potential site contamination is to be minimised and development is to comply with established planning guidelines. The concerns and requirements of the EPA are addressed by consent conditions requiring Remedial Action Plans and Site Audit Statements.

Adequate sediment and pollution controls should be provided to ensure minimal impact of runoff during and after development of the land. The EPA recommends the preparation of an Erosion and Sediment Control Plan. Such a Plan is required as a consent condition.

A copy of the EPA response is at **Attachment 10**.

Newcastle Port Corporation

The Port Corporation has commented that the proponent is to ensure that suitable noise attenuation measures are undertaken to minimise or eliminate noise generated from Port activities. The Acoustic Assessment Report that accompanied the DAs has considered Port related noise sources in its assessment. Compliance with the recommendations of the Acoustic Assessment Report is proposed.

The Corporation further added that lighting and other aspects of building design (e.g. reflective material including glazing) are not to represent a hazard to safe navigation within the Port. These concerns are addressed by consent conditions.

A copy of the Port Corporation response occurs at **Attachment 11**.

Energy Australia

Energy Australia raises concern about potential impacts on the 33kV tie feeder between Carrington and the City Main Zone substations. The feeder is an underground cable that traverses the southern side of Workshop Way, then the southern and western perimeter of the square about and the southern side of Honeysuckle Drive. Specifically there are concerns about the depth of the feeder post development, paving and reinstatement costs and impacts on the feeder during excavations. It is proposed that to address the concerns of Energy Australia (and other service providers) that the proponent is to comply with the requirements of any public authority in regard to relocation and/or adjustment of services affected by the proposed development.

Energy Australia has also commented that there is the possibility that existing street lights are likely to be redundant and new lights placed as new road conditions require. This should be addressed in landscape design. This requirement is addressed by consent condition.

Energy Australia's response is at **Attachment 12**.

Roads and Traffic Authority.

The RTA has not made any comment in respect of the DAs. It is noted that it has representation to the Hunter Regional Development Committee.

That Committee's comments are addressed fully in **Section 1.2** of the Compliance Table and Section 79C Evaluation, which appears as **Attachment 2**. The Committee raised the following issues as matters to be considered:

- Effects on existing Road Network;
- Pedestrians/Cyclists;
- Parking;
- Public Transport; and Internal Circulation.

Generally, the requirements of the Committee are addressed by conditions of consent. The Committee's response is at **Attachment 13**.

Awabakal Local Aboriginal Land Council

The development proposals were discussed with a representative of the Awabakal Local Aboriginal Land Council (LALC). A site inspection took place on 25 August 2003 and a further meeting took place at the LALC office on 25 November 2003.

During these discussions the LALC advised that the site was not considered to be a place of Aboriginal heritage significance, as defined in the Newcastle Local Environmental Plan.

The representative did point out that aboriginal archaeological material might be encountered during excavations for the development and the view was expressed that members of the local Aboriginal community should be present during excavation works. To this end, a condition of consent is recommended that requires the assessment of the likelihood of Aboriginal sites being present on the site and that consultation take place with the Awabakal LALC to the extent that the LALC is satisfied with the study process and that suitable arrangements are in place for continual consultation during development of the site.

6 CONSIDERATION

6.1 *The Environmental Planning & Assessment Act, 1979*

6.1.1 *Section 79C*

The application and the likely impacts of the proposed development have been considered in accordance with s.79C of the Act. Significant issues are discussed below in Section 6.2, and A completed Compliance Checklist and Section 76 C Evaluation appears as **Attachment 2**.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. A summary of Submissions with comments is included in **Attachment 2**. Copies of the submissions are at **Attachment 14**.

On balance, the proposed development is considered to be in the public interest.

Instrument / Policy	
SEPP 11 – Traffic Generating Development, SEPP 55 – Remediation of Land, SEPP 65 – Design Quality of Residential Flat Development, Newcastle LEP 2003 [s79C(1)(a)(i)]	Attachment 2
Draft Environmental Planning Instruments [s79C(1)(a)(ii)]	Not Applicable
Newcastle DCP 24 – Car Parking Code, Newcastle DCP 40 – City West, Newcastle DCP 49 - Notification [s79C(1)(a)(iii)]	Attachment 2
Matters prescribed in the Regulations [s79C(1)(a)(iv)]	Not Applicable

6.2 *Issues*

6.1.2 *Commission of Inquiry*

Issue: A Commission of Inquiry (COI) has been requested

Raised by: Public submissions, Council, Friends of Honeysuckle

Consideration: During the exhibition period a number of submissions called for the Minister to hold a COI into the proposed development. These submissions quoted that the proposal is contrary to the Statutory Planning Scheme for the area (Hunter Regional Environmental Plan – Amendment No. 3 Central Honeysuckle). The submissions contend that the Minister can consent to the proposal if the development is of state significance and publicly justified by a COI. This view point is incorrect and with the gazettal of the Newcastle LEP on 8 August 2003, the REP

no longer applies to the land.

Newcastle City Council resolved that the Minister call for a COI as had a group which calls itself "Friends of Honeysuckle". In its letter of 23 February 2004 to the Minister, Council gives no reason for its decision to request a COI. The Friends of Honeysuckle cite there was a lack of community consultation associated with the Lee Wharf proposal; and that the assessment process is not transparent.

The DAs were advertised in accordance with the provisions of the Act and its Regulation including written notification to adjoining and nearby property owners and occupants and notification in the Newcastle Herald. Eight public submissions were received in response to the exhibition period. It is noted that many of the submissions were very detailed, raising many issues to be considered in the determination of the DAs. Some of the issues raised in the submissions such as public domain impacts and heritage impacts have been raised by the Department and agencies, which have seen alterations to the development lessening the anticipated impacts.

Resolution: The Department is satisfied that the consultation conducted meets all regulatory requirements and that the consultation raised a comprehensive range of issues that have been thoroughly assessed by the Department, Approval Bodies and Council officers. It is felt that a COI would provide limited additional value to the assessment that has been conducted and as such is not recommended.

6.2.2 Newcastle Local Environmental Plan 2003

Issue: The Newcastle LEP 2003 came into force after the exhibition of the DAs.

Raised by: The Department

Consideration: The Newcastle LEP came into force with its gazettal on 8 August 2003. Its relevance to the subject DAs and site is that it repeals the provisions of the Hunter REP applying to the Central Honeysuckle Precinct (i.e. Amendment No. 3). There are no saving clauses that apply to the subject DAs and as such the applications are to be determined in accordance with the LEP provisions. The LEP gazettal was preceded by an extensive consultation process. The Minister remains consent authority by virtue of Clause 7(2) of the LEP.

Resolution: The site is zoned 3(c) City Centre Zone and 6(a) Open Space and Recreation Zone. The proposed development is permitted in the zones, pursuant to Clause 16 of the LEP and the development complies with the LEP aims and particular zone objectives, as identified in section 1.6 to **Attachment 2**.

6.3.2 DCP 40 - City West

Issue: DCP 40 – City West was amended subsequent to the exhibition of the DAs

Raised by: The Department

Consideration: DCP 40 – City West provides planning controls for much of the Newcastle CBD. It also applies to the Central Honeysuckle Precinct as the main planning control. Prior to the exhibition of the DAs, a draft amendment to DCP 40 was prepared and exhibited by Council. The

exhibition period extended from 24 March to 16 May 2003. A public workshop was held by Council on 30 April 2003. The DAs were submitted on 28 May 2003.

On 22 July 2003, Council considered the amendments to the DCP. It resolved to adopt the amended DCP, which subsequently came into force on 15 August 2003. It is noted that there were alterations to the DCP that were not originally amended.

Therefore, it is noted that provisions in the DCP that are referred to in public submissions received are not necessarily the same as to that which now apply. In particular, buildings heights have altered so that all buildings now comply with the height provisions. Originally Buildings A1, A2, B1 and B7 did not comply. It is noted that the officer report to Council on the amendments to DCP 40 drew to Council's attention the impact on the DCP amendments on land to which the Lee Wharf DAs apply.

Resolution: DCP 40 contains no saving clauses. Therefore, the DAs are to be assessed in accordance with the provision of the DCP as amended.

6.4.2 Newcastle City Council Considerations

Issue: Council has made no formal comment on the DAs other than to request a COI. No GTAs have been supplied.

Raised by: The Department

Consideration: The DAs were referred to Council on 6 June 2003. It is noted that Council is an Approval Body in respect of DA 233-05-2003 under the Integrated Development assessment procedures. It is understood that the applicant briefed Council of the development proposal at its meeting of 10 June 2003. During assessment of the DA, Council and Department staff interacted regularly with information being exchanged both ways.

On 18 August 2003, the Department advised Council that it sought its General Terms of Approval for DA 233-05-2003. Pursuant to Clause 70 of the Regulation, Council then had 21 days in which to advise of its GTAs or to advise that it would not be issuing GTAs. (Note: Under the latter scenario the Minister would have no alternative but to refuse DA 233-05-2003). No response on the GTAs has been forthcoming.

On 3 February 2004 Council officers presented a report on the DAs, which in part recommended approval of the DAs subject to an extensive range of conditions. The relevant report forms part of **Attachment 6**. Council resolved to defer consideration pending a site inspection. The inspection was conducted on 12 February 2003.

At its meeting of 17 February, Council resolved to request the Minister to call for a COI.

On 2 March 2004, Council resolved in part to support the Lee Wharf DAs, to request that consideration be given to the reconfiguration of the "squareabout" such that it be connected with the harbour foreshore promenade and that there was no need for a COI. A copy of that resolution also forms part of **Attachment 6**. However, a rescission motion to the 2 March resolution was lodged on 3 March 2004. This motion was accepted by Council at its meeting of 23 March 2004, having the effect that Council's resolution of 17 February requesting a COI remains current.

Resolution: Council has not communicated any GTAs in respect of DA 233-05-2003, nor has it advised that it will not be issuing such. Pursuant to section 91A(5) of the Act, the Minister can grant consent to that DA notwithstanding that Council has not issued GTAs. Furthermore, that section also provides that if the consent authority approves the DA, Council cannot refuse to grant an approval to an application for approval in respect of the development and any approval granted by Council must not be inconsistent with the development consent. This is confirmed by Departmental legal advice.

Therefore, there is no statutory impediment to the determination of DA 233-05-2003.

As noted, Council officers have recommended that conditions be imposed in respect of the development and have identified which conditions apply to a particular DA. The conditions as recommended by Council officers have generally been incorporated as conditions of consent. This is particularly relevant to DA 233-05-2003 where road works are proposed. The conditions to be imposed will ensure that the proposed road works, and other certain works, are carried out in accordance with Council's normal requirements and specifications.

6.5.2 Alignment of Honeysuckle Drive and Configuration of Honeysuckle Gardens

Issue: It has been suggested that Honeysuckle Drive be located to the south and west of Honeysuckle Gardens

Raised by: Council

Consideration: DA No. 233-05-2003 is a separate application for all works within the Honeysuckle Drive road reserve and for the construction of Honeysuckle Gardens. The DA seeks consent in part for the reconfiguration of the "Squareabout" such that 2-way traffic will flow around the northern and eastern side of the proposed Honeysuckle Gardens and adjacent to the western side of the "Boardwalk" development. The DA also seeks consent for the consequential subdivision of Lot 7 DP 883747 (public reserve) and road reserve to create a new public reserve which is to adjoin Lot 4 DP 883747 (adjacent to where Building B1 is proposed).

The roadworks within Honeysuckle Drive, excluding the Squareabout/Honeysuckle Gardens reconfiguration, are considered satisfactory. This is reflected in Council's resolution of 2 March 2004 (which it subsequently rescinded).

However, Council at that time requested that consideration be given to the western and southern arms of the "Squareabout" and the consolidation of the proposed Honeysuckle Gardens with the Harbour Foreshore. It is understood the reason for the alternative would be to allow additional public domain area in the vicinity of the proposed Maritime Centre in the Lee Wharf A Building. The benefit would be that the Maritime Centre could use the Honeysuckle Gardens area to hold events. The following comments are made in respect of the road configuration:

- Newcastle Maritime Museum Society Inc has submitted a DA for

the adaptation and reuse of the building known as Lee Wharf 'A' as the home for the Newcastle Region Maritime Museum, to be known as the Maritime Centre (DA No. 429-9-2003 refers). As a submission to the subject DAs, the Maritime Centre supports the relocation of Honeysuckle Drive as proposed in the applications. The development as proposed will be of benefit to the Maritime Centre in that it will provide more area available for public domain in front of Lee Wharf A, improving its entry area and allowing easier, safer access. It is also proposed that a bus bay will be provided by Lee Wharf on the northern end of Honeysuckle Drive adjacent to the Maritime Centre. It will be difficult to arrange suitable access and bus parking for the Maritime Centre should the Honeysuckle Drive not be constructed as proposed in the DA.

- The road being situated on the northern side of Honeysuckle Gardens will permit easy access of maintenance vehicles to the promenade as well as access to the Maritime Centre. The access will be designed to accommodate heavy vehicles so that trucks can deliver exhibition materials directly to the Maritime Centre.
- The nearby "Boardwalk" development has its entry to Honeysuckle Drive from its western side. This is constructed and cannot be relocated. As a consequence, an access way to the Boardwalk must be maintained. To relocate Honeysuckle Drive to the southern end of Honeysuckle Gardens will result in roadways on the western, southern and part of the eastern side of the Gardens. A more practical solution is to have the road configuration as proposed.
- The reconfiguration of Honeysuckle Drive/Honeysuckle Gardens as proposed will result in a larger open space area in front of the Civic Workshop buildings and Engineers Office, which is an item of State Heritage significance.
- Building B1 has been designed on the basis that it is adjacent to Honeysuckle Gardens. Levels have been carefully managed to provide ease of "at grade" access between Honeysuckle Gardens, Buildings B1, B2 and B7 and Hunter Square. The proposal is particularly desirable for ease of access for those with disabilities, the elderly or those with young children. This outcome may not be achievable with an altered configuration of the roadway and gardens.
- To relocate Honeysuckle Gardens to the north would achieve the outcome of parkland connecting with the Harbour Promenade and this would become a harbourside facility. However, it is noted that there are a number of harbourside parklands within the Honeysuckle precinct such as Fig Tree Park and Lee Wharf Park. Lee Wharf Park, which will form later stages of the Lee Wharf Development, is less than 150m from Honeysuckle Gardens. Harbour Square is another harbourside public domain

area presently under construction and it is approximately 70m from Honeysuckle Gardens. It is appropriate that some open space parklands be set back from the waterfront, which can be achieved by the development as proposed.

- The location of Honeysuckle Gardens as proposed will allow for better connection of the parkland to the plaza area on the southern side of Workshop Way, to Civic Station and Railway Square and to Hunter Square (which is the public domain situated within the Lee Wharf development)
- Building B1 is to have commercial and retail uses on the ground floor. The location of Honeysuckle Gardens as proposed provides the opportunity for cafes and restaurants to be located adjacent to and support the use of the parklands.

Resolution: It is considered that the reconfiguration and realignment of Honeysuckle Drive/Honeysuckle is most appropriate and practical as submitted in the subject DAs. It is appropriate that the consent reflect the plans submitted with the DAs.

6.6.2 Building Heights

Issue: The heights of the proposed buildings have been the subject of objection.

Raised by: Public Submissions

Consideration: The proposed buildings generally comply with the building heights as detailed in DCP 40. The main height controls are contained in Clause 4.3 of the DCP. The relevant heights are shown on the following table. Clause 4.3 permits plant structures and the like to extend above the nominated height limit if in the opinion of the consent authority these structures complement the overall building design such structures can extend no more than 3m above the height limit and comprise no more than 20% of roof plan area. The proposal complies with these limits and the roof structures do complement and are an integral part of the building design.

Building	DCP Height (m)	Proposed Height (m)	Proposed Plant Height (m)
A1	24	23.56	26.06
A2	18	17.65	20.15
B1 (North)	30	29.84	32.04
B1 (South)	12	11.59	-
B2	30	20.54	23.03
B7	30	20.96	24.96

It is acknowledged that the DA as originally submitted did not comply with the height provisions. This is discussed above in respect of the DCP amendments. When Council resolved to amend the DCP it gave effect that the majority of the buildings in the Lee Wharf Development complied with the DCP height provisions. The exception was Building B1. The amended DCP introduced a 12 m height control adjacent to

the Civic Workshop buildings so that any development would relate in scale to the heritage item. The Heritage Council advised that it would not issue GTAs until such time that Building B1 was altered to, in effect, comply with this DCP provision. The plans were amended as required and the Heritage Council issued its GTAs.

By way of comparison, Council on 22 March 2004 approved a 10 storey mixed use building at 21 Merewether Street, Newcastle. That site is adjacent to the Honeysuckle Precinct, is situated within the Heritage Conservation Area and is in close proximity to the Civic Railway Workshop Buildings. (DA number 03/0634 refers.) That development is proposed on a site as having a 30m height control under DCP 40. The building was approved with heights between 30.52 and 30.84m, marginally exceeding the height control.

There is also a control affecting height of buildings along Honeysuckle Drive, which requires the buildings heights on the northern side of that street be limited to a 32° development control line. The aim of the control is to allow winter sun into the Honeysuckle Drive public domain (i.e. southern footpaths). The clause permits flexibility where adequate sun penetration can be demonstrate due to building form. This control therefore applies to Buildings A1 and A2. Building A2 complies fully with the control. The plant structures on Building A1 transect the development control line adjacent to the central stairwell. Given that the corridor between A1 and A2 will permit extra sun penetration into the public domain and the minor nature of the non-compliance for Building A1, the proposal complies with the provisions of the DCP in this regard, as adequate sun penetration is provided.

Clause 4.4.2 of DCP 40 requires that buildings in Honeysuckle should be simple forms with minimal upper storey setbacks. The development complies with this requirement. The DCP also states that sheer walls up to 30m should be avoided and that it **may be appropriate** to introduce setbacks above 18m. The proposed buildings have virtually no sheer walls. All buildings have substantial articulation and the building form is broken up with balconies, windows and roof parapets and comply with the requirements of DCP 40. Additionally, the Newcastle Urban Design Consultative Group has reviewed the development and commented favourably on the high standard of architecture. Given the above, the introduction of setbacks above 18m are not appropriate in the case of the proposed development.

Resolution: The proposed building heights comply with the provisions of DCP 40.

6.7.2 Scale of Development

Issue: That the proposal represents over development of the site.

Raised by: Public Submissions.

Consideration: The proposal complies with the height provisions of the DCP, as assessed above. The other major determinant of building scale contained in the DCP is the control of floor space ratio or FSR. There are 2 FSRs applying to the development. North of Honeysuckle Drive

the FSR is 2.0:1 and the applicable FSR on the southern portion of the site is 2.5:1. Given the site areas to which the DAs apply the proposed development can achieve floor space of up to 23,200m² and comply with the DCP. 22,602 m² is proposed.

However, the FSR of Buildings A1 and A2 is 2.04:1, which represents a departure of 138m². It is noted that Buildings B1, B2 and B7 have a floor area of 726 m² less than what is permitted under the DCP (FSR = 2.39:1). Therefore, across the whole site the FSR more than balances. The DAs as submitted, showed that the FSR for Buildings A1 and A2 equalled 2.0:1, or that permitted by the DCP. Upon review of the applications, the Department requested amended plans for these 2 buildings such that they better addressed and related to Honeysuckle Drive. One area of concern was the existence of an electricity substation at ground floor level within Building A2. The proponent submitted amended plans, which gave a much better design outcome for the elevations facing Honeysuckle Drive. The substation was deleted from Building A2. The additional internal floor space, which takes Buildings A1 and A2 over the FSR, was generated as a direct result of the Department's requirements. The buildings footprints have not altered, so neither has the scale of the buildings. Since that amendment, the proponent has submitted further amended plans showing reduced overall height and a reduction in roof plant bulk. Given that the departure is minor and the remainder of the development does not achieve the maximum floor space permitted by the DCP, the FSR bonus provisions for the development should not be applied.

Resolution: The proposal is not considered to be overdevelopment as it complies with the relevant planning controls contained in DCP 40.

6.8.2 View Corridors

Issue: The proposal will block views to the Harbour.

Raised by: Public submissions

Consideration: The type, size and location of view corridors are identified in DCP 40. Of relevance to the subject site, there is a major view corridor to Nobbys Head and another corridor immediately adjacent to the eastern side of Lee Wharf "C".

The proposed development maintains the major view corridor of 20m width to Nobbys Head. The proposed alignment of Honeysuckle Drive achieves this objective. The corridor next to Lee Wharf "C" is to be 15m wide extending northwards from Honeysuckle Drive. The proposal complies with the corridor width and location. In fact the link road between Honeysuckle Drive and Wright Lane is located such that the view corridor is extended to Wright Lane and the rail line.

In addition to the DCP view corridors, Buildings A1 and A2 are separated by 12 meters, and Building B2 is designed to allow views from Hunter Square (private domain) to the Harbour, through B2 and the separation of A1 and A2. Additional views from Honeysuckle Drive are also achieved.

Resolution: The heights of the buildings comply with the requirements of DCP 40. The proposed development exceeds the requirements of DCP 40 in respect of maintaining views.

6.9.2 Building Separation

Issue: The development does not comply with the numerical standards for building distance separation.

Raised by: Submissions, the Department

Consideration: The proposed development does not comply with the Building Separation controls of the Residential Flat Code that are repeated in DCP 40. These separation distances can be varied where it can be demonstrated that the objectives of the controls can be achieved. The objectives of the control, as listed in DCP 40 are:

- To achieve levels of amenity in terms of solar access and privacy;
- To ensure appropriate scale in terms of massing and space between buildings;
- To provide opportunity for deep soil planting;
- To avoid blank party walls; and
- To provide simple rectilinear building forms.

In respect of privacy, balconies are positioned to take advantage of prevailing views and do not look directly to other balconies or living areas. There are minimal opportunities to look from living areas into other living areas. The areas of most concern are between the eastern end of Building B2 and the western side of Building B1, and between the southern side of Building B2 and the northern side of Building B7. In both those locations, there are no balconies and windows have been designed to minimise opportunities for looking into the adjacent building.

In respect of solar access, the Foreshore Promenade is on the northern side of all buildings within the development. Honeysuckle Drive will also receive appropriate levels of sunlight in accordance with the requirements of DCP 40. The corridor between Buildings A1 and A2 will allow extra sunlight into the Honeysuckle Drive Domain. Honeysuckle Gardens will receive adequate levels of solar access. Shadow diagrams submitted with the DAs indicate that there will be substantial areas of the gardens shaded by 3:00pm mid winter. However, there are substantial areas that still receive sunlight at that time. More importantly, there will be no overshadowing of Honeysuckle Gardens at noon midwinter, which will allow extensive use of the gardens by lunchtime visitors.

The scale of development is in accordance with the applicable controls. There are opportunities for deep soil planting, there are no blank party walls and the buildings are simple rectilinear forms.

The proposal therefore is compliant with the objectives of the Building Separation control.

Resolution: The proposal does not meet the numeric standard for building separation but satisfies the objective of that standard.

6.10.2 Heritage Impacts

- Issue:** That the impacts on the heritage of the area have not been adequately considered.
- Raised by:** Heritage Council, public submissions
- Consideration:** The site is located within the Newcastle City Centre Heritage Conservation Area. The Civic Railway Workshop complex is an item of state heritage significance and Lee Wharf Buildings "A" and "C" are items of local significance.
- The Heritage Council is an integrated approval body in respect of DAs 230, 231 and 233-05-2003, and has commented on DA 232-05-2003. The applications were forwarded to Council's Heritage Advisor and comments have been received.
- The DAs were accompanied by 2 separate Heritage Impact Statements (HIS) prepared by Godden Logan McKay. These acknowledged the heritage context and importance of the site. The HISs were forwarded to and reviewed by the Heritage Council. The Heritage Council raised concerns over the height of Building B1, adjacent to the Civic Railway Workshops. These concerns were ultimately the cause for Council not issuing GTAs until the design of Building B1 was altered, by the loss of floor space from the southern façade of the building. Upon submission of amended plans, to the satisfaction of the Heritage Council, GTAs for the proposal were released. The Heritage Council GTAs, which must be incorporated in consent conditions include the following matters:
- The protection of an identified Norfolk Island Hibiscus tree;
 - The submission and approval by the Heritage Council of a detailed landscape plan for Hunter Square Park (i.e. Honeysuckle Gardens);
 - Approval of façade materials and colour treatments for the southern elevations of Buildings B1 and B7;
 - Vibration and structural monitoring;
 - An Archaeology Research Design is to be submitted and approved by the Heritage Council;
 - An Interpretation Strategy is to be submitted, approved and implemented to the satisfaction of the Heritage Council; and
 - Final Archaeological Report is to be submitted to the Heritage Council.
- Permits under sections 60 and 140 of the Heritage Act are required prior to excavation works being undertaken. The Heritage Council advised that it supported the recommendations of the Lee Wharf Park HIS which relates mostly to Lee Wharf Buildings "A" and "C".
- Council's Heritage Advisor has also recommended that consent conditions be imposed on DA 232-05-2003 relating to the interpretation of the Lee Wharf structures.
- Consultation with the Awabakal LALC has been undertaken with respect of the proposed development. Consent conditions requiring ongoing involvement and consultation with the LALC are imposed.
- Resolution:** The specific requirements of the Heritage Office and Council's Heritage Advisor have been incorporated as consent conditions. A comprehensive assessment of heritage impacts has been carried out.

6.11.2 Public Domain

- Issue:* The public domain areas are unsatisfactory.
- Raised by:* Public submissions, the Department
- Consideration:* The proposal for the Foreshore Promenade is generally in accordance with the provisions of DCP 40. However, no landscaping is proposed. This issue is addressed under the heading "Landscape". Council officers have recommended that the Promenade be of similar construction to that of the promenade at Merewether Wharf. This is appropriate.
- The proposed landscaping of Honeysuckle Gardens is generally considered appropriate. Council officers and the Heritage Council have both commented and made recommendations in respect of this proposed parkland. Council officers would prefer that the proposed "trellis" be replaced with a grove of trees, due to ongoing maintenance requirements. The Heritage Council is concerned that any landscaping and construction within Honeysuckle Gardens does not adversely impact upon the visual connection between the Civic Workshop building and Lee Wharf A. Both concerns are accommodated.
- The reconfiguration of Honeysuckle Drive/Honeysuckle Gardens is discussed above at **6.5.2**. However, NCC officers have advised that the planting in the Honeysuckle Drive median should be Norfolk Island Pines, noting that the City West Streetscape Design Specifications, as contained in DCP 40, identifies Crows Ash as the appropriate tree species. Council officers were asked to review this recommendation, in terms of impacts on the Honeysuckle Drive view corridor and asset maintenance. Council officers have reiterated that the Norfolk Island Pine is the appropriate species to plant and that Council proposes to continue the avenue of Norfolk Island Pines along Honeysuckle Drive.
- Resolution:* The public domain areas are generally in accordance with the provisions of DCP 40. Departures are addressed by condition of consent.

6.12.2 Car Parking

- Issue:* The proposal does not provide adequate car parking
- Raised by:* Public submissions
- Consideration:* The residential rate for car parking applicable to the proposed apartments is a minimum of 1 space per dwelling, under DCP 40. The DCP also states that parking in excess of 1.5 spaces per dwelling is to be included as floor space and be included in FSR calculations for the development. The applicable parking rate under DCP 40 is to be in accordance with DCP 24. The commercial rate is one space per 60m² gross floor area (this standard may be altered for larger users of car parking). The serviced apartments have been assessed as per the applicable standard in DCP 24 for hotels or 1 space per 3 serviced apartments. Council officers have suggested that the serviced apartments be assessed at the commercial rate of one space per 60m², which would require more parking spaces. It is noted that DCP 24 states that large scale developments in the Newcastle CBD will have their parking requirement considered on merit where the development has been supported by a Traffic and Transportation Assessment Report. The subject DAs were accompanied and supported by such a

report.

Under the above provisions the Buildings A1, A2, B1 and B7 generate a minimum of 135 residential spaces and 36 commercial spaces. Building B7 generates the need for 46 spaces. This gives a total requirement of 217 spaces. 257 spaces are proposed. Utilising Council officer's method of requiring 1 space per 60m² for all of Building B7, a total requirement of 273 spaces would be required or a difference of 16 spaces from that proposed. Having due regard to all the provisions of DCPs 24 and 40, the proposal satisfies its car parking requirements.

Resolution:

The proposed development is adjacent to Civic Railway Station and is near to the major bus routes in Hunter Street. The site is well serviced by public transport.

Therefore, the proposal satisfies its car parking requirements as per DCPs 24 and 40. Consent conditions require the provision of car parking spaces on site (exclusive of the 200 spaces temporary car park) and that no more than 203 spaces are allocated to residential usage as car parking has not been included in FSR calculations.

6.13.2 Land Contamination

Issue: The land is the site of former railway yards and wharf activity.

Raised by: EPA, The Department

Consideration: Various Site Audit Statements (SAS) have been prepared over parts of the subject by an accredited site auditor. SAS numbers WRR15 of 30 October 1998, WRR15A of 27 September 2003, WRR36A of 27 September 2003 and WRR16A of 27 September 2003 apply. In addition to these SAS other investigations and Remedial Action Plans have been prepared with parts of the development site currently undergoing remediation.

The reconfigured Squareabout/Honeysuckle Gardens proposal will see some of the existing road reserve be altered to be public land, representing a change of use. Further investigations, and possible remedial actions, are required prior to development taking place on the land where the use is to alter.

Resolution:

The proposal complies with the provisions of SEPP 55. Conditions of consent require the preparation of remedial action plans and site audit statements where required and development is to be in accordance with these plans and statements.

7 CONCLUSION

The Minister for Infrastructure, Planning and Natural Resources is the consent authority.

The application has been considered with regard to the matters raised in s79C of the Act and the Heritage Council, Waterways Authority and Mine Subsidence Board who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 8 March 2004. Discussions were held with the applicant on 19 March 2004, who then applicant responded on 6 April 2004. Most of the issues raised required the clarification of the proposed conditions. However, the applicant raised concerns with the “linking of the DAs” such that events outside of its control could prevent the timely occupation of the development upon completion. This was particularly relevant to works within Honeysuckle Drive and Honeysuckle Gardens, of which NCC is land owner. Further draft conditions were issued on 8 April 2004. Further discussions were held on 20 April 2004. The applicant has indicated that it generally accepts the conditions as proposed.

9 DELEGATION

No delegations apply to the proposed development.

10 RECOMMENDATION

It is recommended that the Minister for Infrastructure, Planning and Natural Resources pursuant to section 80 (1) and *80A of the Environmental Planning and Assessment Act, 1979* (as amended) and clause 7(2) of the Newcastle Local Environmental Plan 2003.

- (A) grant **consent** to the application subject to conditions (Tagged “A, B, C and D”), and
- (B) authorise the Department to carry out post-determination notification.

For Ministerial Approval

Prepared by

Endorsed:

Gary Freeland
Planner, Urban Assessments

Michael Brown
Team Leader, Urban Assessments

Robert Black
Director, Urban Assessments