

## ASSESSMENT REPORT

### HONEYSUCKLE HOTEL LEE WHARF, BUILDING C, NEW CASTLE MP 05\_0007 (MOD 3)

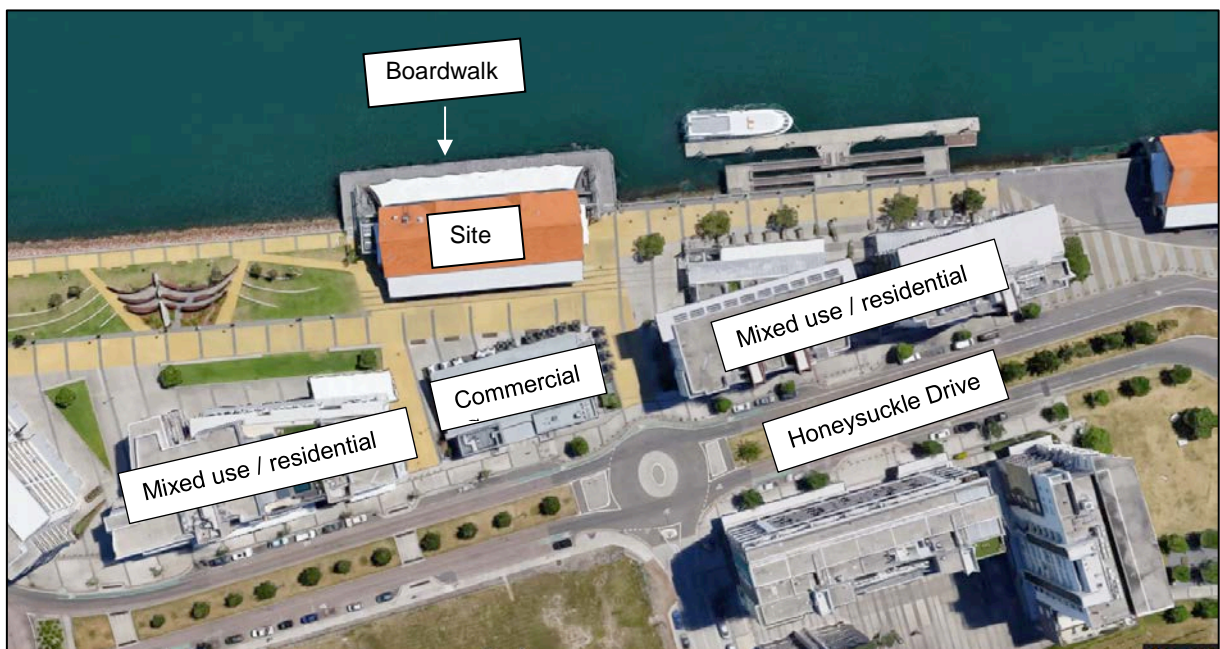
#### 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval MP 05\_0007 for the adaptive re-use of a building, as a hotel and restaurant, at Lee Wharf, Building C, Honeysuckle Drive, Newcastle. The request has been lodged by Planik Pty Ltd on behalf of the Australian Leisure Hospitality Group (the Proponent), pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to extend the outdoor dining area of the hotel onto a boardwalk which runs around the northern perimeter of the site.

#### 2. SUBJECT SITE

The site was formally known as Lee Wharf Building C and now operates as The Honeysuckle Hotel. It is located at the edge of Newcastle Harbour to the north of Honeysuckle Drive within the City of Newcastle local government area. It forms part of the Honeysuckle Development Precinct, which comprises 50 hectares of land being redeveloped and revitalised along the Newcastle Harbour, under the ownership of the Hunter Development Corporation (HDC).

The site has an area of 6,923 m<sup>2</sup> and is bounded by Newcastle Harbour to the north, public domain areas to the west and east, mixed use/residential development to the south-east and south-west and commercial development (James Squire Hotel) to the south (**Figure 1**).



**Figure 1-** Site location (source: Google Maps)

The building is constructed partially on land and partially over a wharf, which extends over Newcastle Harbour.

The site is heritage listed under Newcastle Local Environmental Plan 2012 (LEP 2012). It is nominated as having state significance as a remnant of the main general cargo wharves of the Port of Newcastle and one of the last remaining examples of wharf facilities which existed on the foreshore.

The hotel operates as a food and drink premises. It comprises a pub and restaurant with an undercover outdoor eating area, adjacent to the public boardwalk which runs around the northern perimeter of the site, over Newcastle Harbour (**Figure 2**). A positive covenant permits public access along the boardwalk.



**Figure 2** – Outdoor dining area and northern boardwalk (source: request documentation)

### 3. APPROVAL HISTORY

On 9 July 2008, the Minister for Planning granted Project Approval (MP05\_0007) for the adaptive reuse of the Lee Wharf Building C for the use of a hotel and restaurant, and public domain works associated with Stage 3 of the Lee Wharf development in the Honeysuckle Development Corporation Precinct.

The approval has been modified on two occasions:

- MOD 1 approved the deletion of condition G1, which restricted the total number of persons in the premises to 150, however it did not approve the deletion of condition A6 (2), which restricted the hours of operation of the outdoor deck. Consent orders were subsequently issued by the Land and Environment Court, which included the deletion of condition A6 as a part of MOD 1.
- MOD 2 approved the erection of a new shade structure on the northern side of the building.

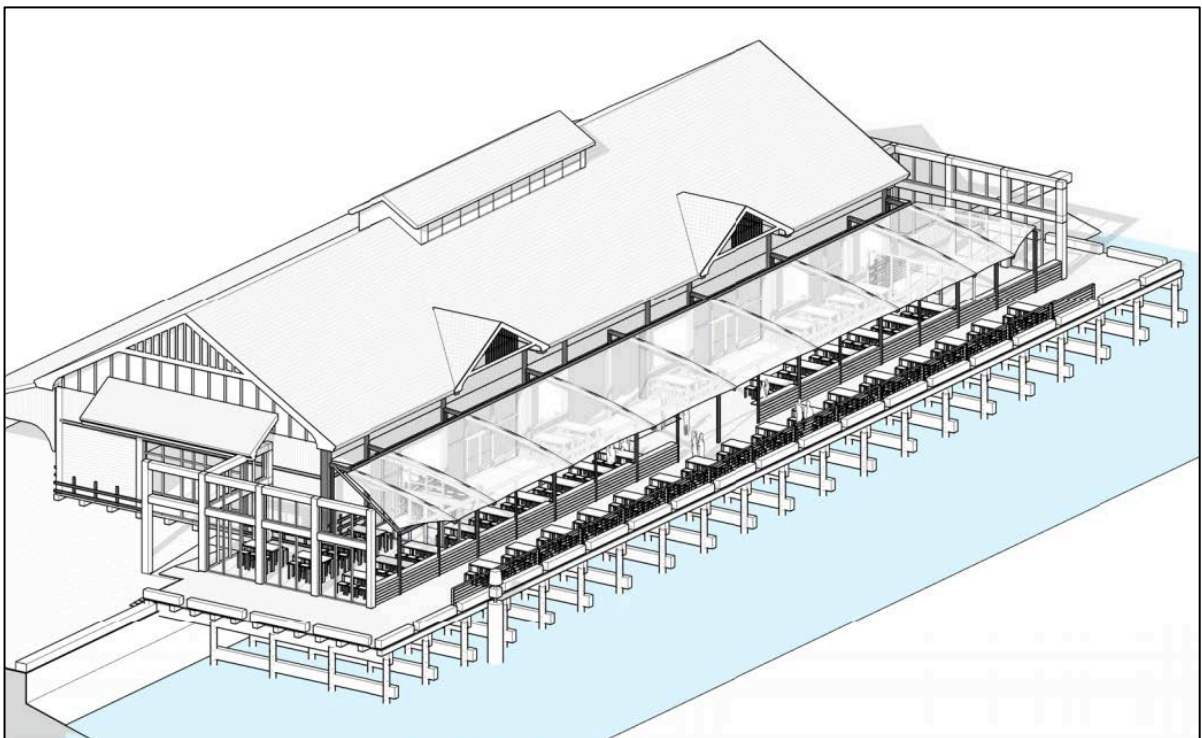
#### 4. PROPOSED MODIFICATION

The Proponent lodged a Section 75W modification request seeking approval to:

- extend the outdoor dining area of the hotel onto a boardwalk which runs around the northern perimeter of the site
- reduce the width of the public access area of the boardwalk from 3.6 m to 1.4 m
- install 16 tables with removable umbrellas, 96 seats (the outdoor dining furniture would be removable and packed away daily)
- install a 1.1m high steel framed balustrade along the northern edge of the boardwalk.

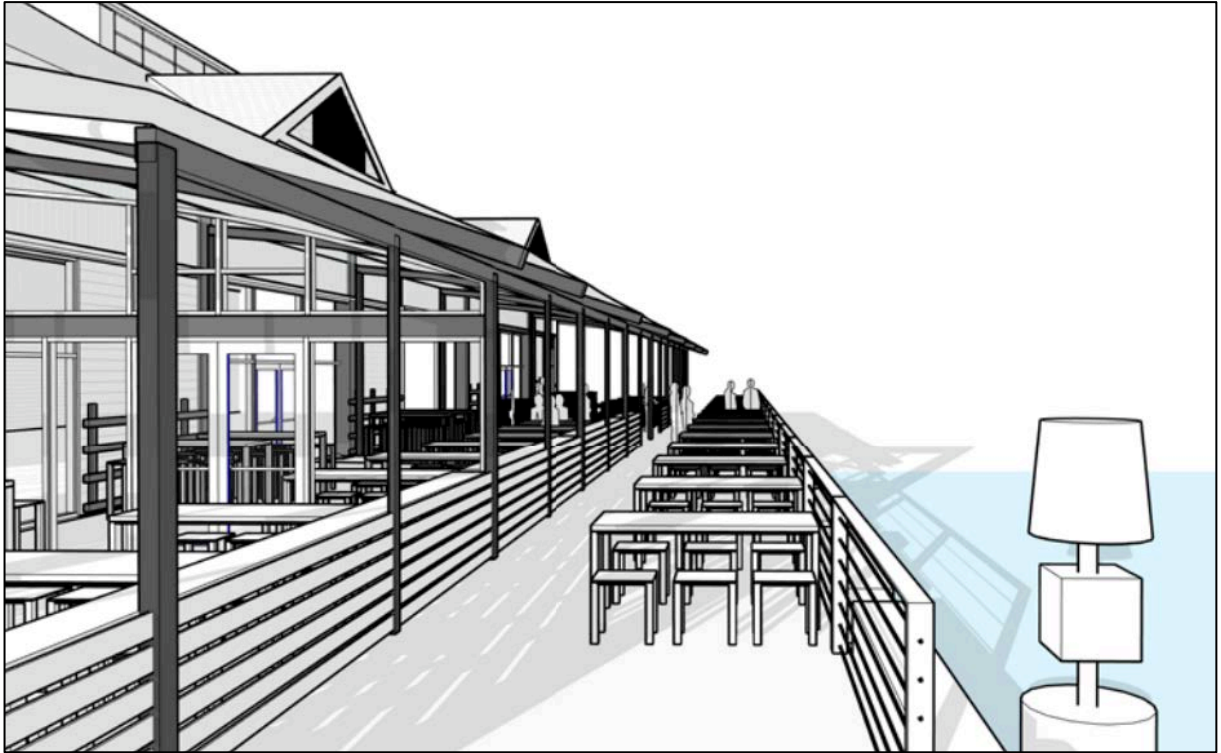
The proposal also sought an extension of operating hours for the outdoor deck area (to be consistent with the approved indoor hotel trading hours), but this aspect is no longer sought as it was approved by MOD 1.

The proposed balustrading and seating are illustrated in the perspective images in **Figures 3 to 6**.

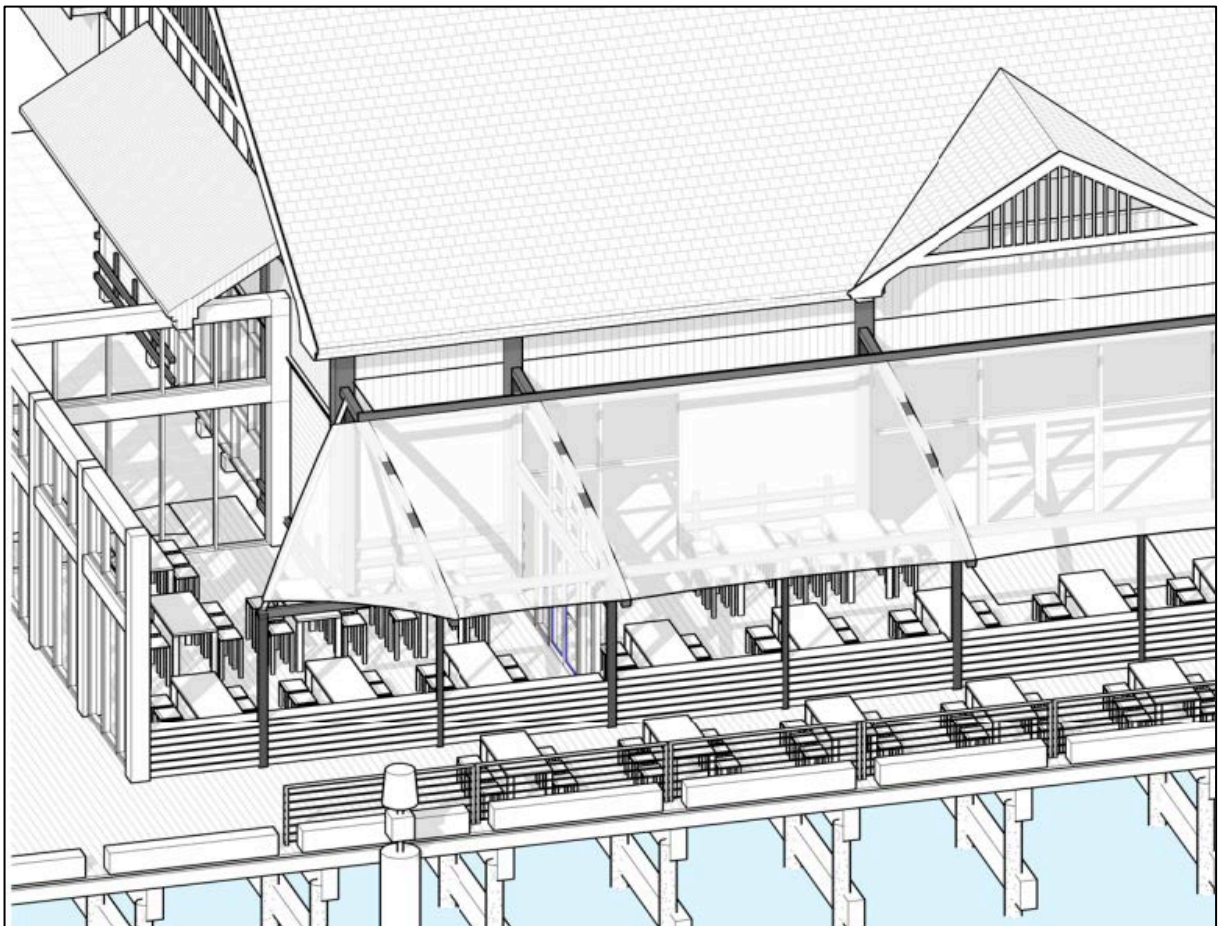


**Figure 3:** *Perspective drawing of hotel with furniture and balustrading along the edge of the Boardwalk (source: request documents)*

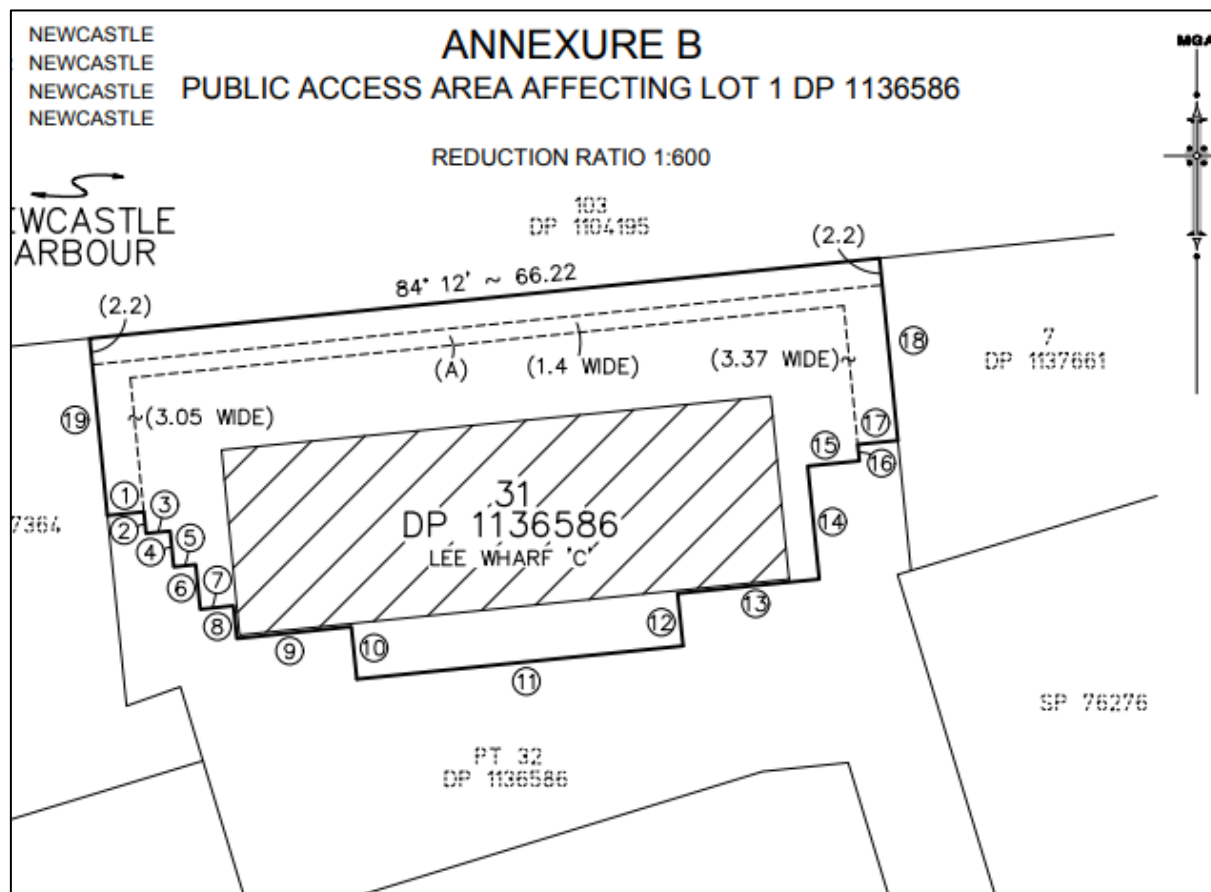




**Figure 4:** *Perspective view along boardwalk indicating proposed tables, chairs and balustrading (source: request documents)*



**Figure 5:** *Perspective view of proposed tables, chairs and balustrading (source: request documents)*



**Figure 6 :** *Proposed public access area – marked (A) on the above plan (source: request documents)*

## 5. STATUTORY CONSIDERATION

## 5.1 Section 75W and Modification of a Minister's Approval

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the ‘cut-off date’ of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the request under section 75W of the EP&A Act.

## 5.2 Zoning and Permissibility

Most of the site is zoned 'B4 – Mixed Use' under the Newcastle Local Environmental Plan 2012. The northern part of the site, including the existing outdoor dining areas and the public boardwalk are zoned 'SP1 Special Activities' under State Environmental Planning Policy (Three Ports) 2013. The proposed modifications relate to the land within the SP1 zone. Food and drink premises are permissible with consent within the zone and the Department notes the proposal would not impact on the achievement of the zone objectives which are aimed primarily at protecting the port facilities.

### 5.3 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Executive Director, Key Sites and Industry Assessments may determine the request under delegation as:

- Council has not made an objection;

- a political donation disclosure statement has not been made; and
- less than 25 public submissions were received objecting to the proposed modification.

## 6. CONSULTATION

### 6.1 Consultation and Submissions

The Department made the modification request publicly available on its website, consulted with Newcastle City Council (Council) and government agencies, and notified surrounding landowners of the proposed modification.

**Council** did not object to the request but made the following comments:

- the proposed use of the northern boardwalk for additional outdoor dining would constrain its use for public recreation and access
- the proposed extension of hours has already been approved by MOD 1
- the premises has not come to the attention of Council as being a generator of significant acoustical impacts, however, the Department should consider the potential noise impacts of increased patron numbers leaving the hotel late at night.

**Hunter Development Corporation (HDC)** advised it provided owners' consent for the request. It raised concern about any changes to the existing Positive Covenant or Easement for Access, and requested further information.

**EPA** advised it had no comments and that Council is the appropriate regulatory authority for the control of environmental impacts at the site.

**RMS** did not object to the proposal. It noted any construction works planned below the mean high-water mark must obtain RMS approval.

**Port of Newcastle** and **Port Authority NSW** advised they would not be making submissions.

Thirteen **public** submissions were received, all objecting to the proposal. Concerns included:

- additional acoustic impacts from increased patrons in the hotel, additional noise in the surrounding area from patrons leaving the hotel, and increased noise from plant and deliveries. Residents note the hotel already creates significant noise in a residential area and does not comply with current noise controls.
- potential increase in antisocial behaviour with increased patron numbers and later closing time
- loss of public space, with pedestrians having to walk past hotel patrons to use the public boardwalk.
- adverse visual impacts on the building and the integrity of the historic wharf precinct.

### 6.2 Response to Submissions

On 3 May 2018, the Proponent submitted a Response to Submissions (RTS) to address the matters raised by the Department, Council, HDC and the public, including:

- confirmation that a change to the permitted hours of operation of the outdoor deck are no longer being sought, as the hours were already approved by MOD 1
- an updated acoustic report, correcting errors and providing an assessment of impacts on the nearest residential receivers.
- confirmation that changes to the public positive covenant over the land will be required.

**Council** advise the RTS did not address its concerns in relation to the reduction in the width of the public access area. Council also note that should consent be granted, conditions should be included to reflect the recommendations of the revised acoustic assessment.

**HDC** advised it raises no objection to the amendment to the positive covenant to 1.4m as proposed.

## **7. ASSESSMENT**

The Department considers the key assessment issues are:

- Noise impacts and amenity
- Public access

Other issues have been considered in **Table 1**.

### **7.1 Noise and amenity impacts**

Public submissions raised concern about potential noise impacts and anti-social behaviour associated with the operation of the premises. In particular, concern was raised about:

- audible music and patrons from within the premises
- excessive noise from patrons leaving the premises
- plant and delivery noise
- violence and anti-social behaviour in the surrounding area

To assess noise impacts associated with the proposal, the Proponent submitted an Acoustic Assessment. The Acoustic Assessment predicted noise impacts on the nearest residential dwellings and concluded the proposal would comply with the NSW Industrial Noise Policy and The Office of Liquor Gaming and Racing requirements.

The Acoustic Assessment also made three recommendations to mitigate noise impacts from the premises:

- no amplified music being played outside the premises
- outdoor dining to cease at 12:00 midnight
- signs being erected at exit doors advising patrons to leave the premises in an orderly and quiet manner.

The Proponent also submitted an Operations, Safety and Security Plan of Management which includes measures to manage patron noise and behaviour.

Council reviewed the Acoustic Assessment and were satisfied that noise impacts would comply with the relevant noise criteria, subject to compliance with the recommendations listed above.

#### Department's Consideration

The Department has carefully considered the findings of the Acoustic Assessment and accepts that, subject to conditions in relation to amplified music and signage, the modification is unlikely to result in adverse acoustic impacts on surrounding residential properties. The Department notes the Project Approval does not include a condition limiting noise emissions from the premises. As such, the Department considers an additional condition should be imposed, to ensure the premises complies with applicable noise criteria. This would also enable compliance officers to take appropriate action should the noise criteria be exceeded. The Department has therefore recommended a new condition setting strict noise limits accordingly.

The Department also notes the proposed plan of management includes appropriate measures to manage patron behaviour at closing times. This includes security patrolling and monitoring patron's behaviour outside the premises and encouraging appropriate and responsible behaviour.

In relation to plant and delivery noise, the Department is satisfied that existing conditions of approval would appropriately manage those noise impacts. This includes:

- condition F3, which requires plant and machinery to comply with noise guidelines and not

- cause offensive noise
- condition G3, which controls the hours of loading activities.

The Department is therefore, satisfied that the proposal would comply with the relevant noise criteria and the recommended conditions would appropriately mitigate and manage any residual noise impacts to an acceptable level.

## 7.2 Public Access

The Project Approval provides a 3.6 m wide boardwalk around the northern perimeter of the site, over the Newcastle Harbour. A positive covenant provides public access areas around the boardwalk. The request seeks to reduce the width of the public access area to 1.4 m, to enable the provision of outdoor dining along northern edge of the boardwalk.

The Proponent argues that the reduction in the width of the public access area would not significantly impact on pedestrian movements, as the main path of travel along the foreshore is along the public pathway to the south of the hotel. The Proponent also argues that the boardwalk is underutilised and the proposal would provide a public benefit by activating the area.

In addition, the Proponent argues the provision of a 1.4 m wide public access area would still enable the public to freely use the boardwalk. The Proponent advises the hotel, including the foreshore seating, would be made freely available for public use as a rest point, without the need to purchase food or drink. This would provide a public benefit and increase passive recreation choices along the seven-kilometre promenade.

Concerns were raised by Council and in some public submissions that the proposed use of the boardwalk for additional outdoor dining would significantly constrain the use of this for public recreation and access. Council also note the following:

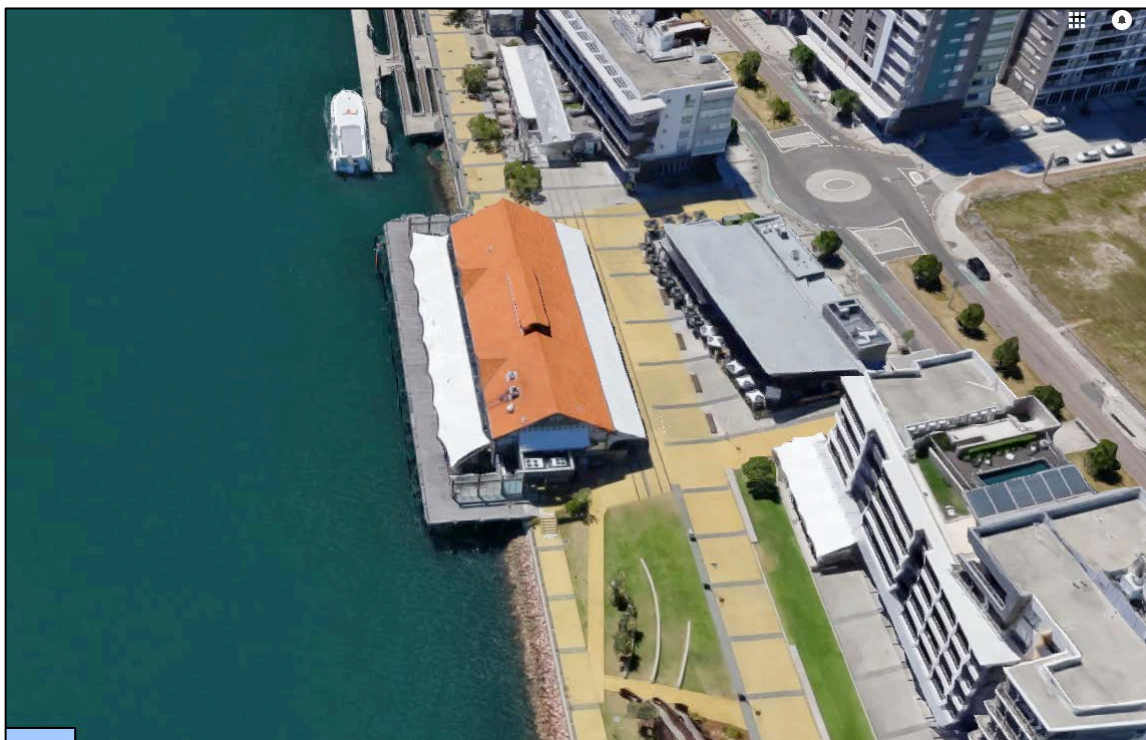
- little weight can be given to the survey given the small sample size and the time of the year it was taken
- it would be difficult for the public to use the area freely, particularly due to operational difficulties during peak trading times, but also due to potential issues from a licensing perspective
- Council's Outdoor Trading Policy requires a minimum unobstructed pedestrian path of 1.8 m
- there is space at the western end of the existing outdoor area which could accommodate further seating if need
- it is questioned whether the proposed modification would satisfy the objectives of the Honeysuckle Public Domain Strategy (2000) or the requirements the Newcastle Local Environmental Plan 2012 aimed at maintaining and improving public access.

### Department's Consideration

The Department considers the use of the boardwalk for additional dining is acceptable in this instance because:

- the pedestrian/cycleway to the south of the hotel (shown in **Figure 7**) provides excellent access and connections for pedestrians and is likely to be the preferred path of travel for most users (having more direct desire lines and easy access)
- access to the foreshore would still be maintained along the boardwalk
- the additional seating would increase activation of this space and improve passive recreation choices along the seven-kilometre promenade
- the foreshore seating would be made freely available for public use as a rest point
- HDC, as the beneficiary of the public positive covenant, and the authority responsible for delivering the precinct, raise no objection to the reduction in the width of the public access area.





**Figure 7:** Aerial view of the site showing wide boulevard and pedestrian connections to the south of the building (source: Google Maps)

However, the Department considers that the public access area should be widened from 1.4 m to a minimum of 1.8 m to allow pedestrians including wheelchairs to freely move along the boardwalk in both directions. This would also be consistent with Council's Outdoor Trading Policy, which requires a minimum unobstructed pedestrian path of 1.8 m. The Department also recommends conditions allowing the seating to be used by the public, as well as requirements to ensure the public access area is kept clear at all times.

### 7.3 Other Issues

**Table 1:** Assessment of key issues

<b>Issue</b>	<b>Consideration</b>	<b>Recommendation</b>
<i>Visual and Heritage Impacts</i>	<ul style="list-style-type: none"> <li>The proposal would result in minor changes to the appearance of the site, including the addition of 1.1 m high steel framed balustrades along the wharf edge and the addition of removable chairs, tables and umbrellas (packed away daily and in high winds).</li> <li>Due to the heritage significance of the site and its location within a conservation area, the Proponent submitted a Statement of Heritage Impact (SHI) to assess the impacts of the proposed changes.</li> <li>The SHI notes the balustrading and furniture would be sympathetic to the existing building design and could be reversed at any time. The SHI concludes the works would be minor in nature and would have minimal impact on the appearance or function of the heritage item and minimal impacts to views to and from the item, including views from within the conservation area. Further, the SHI finds the increased pedestrian use along the northern side of the building would allow for greater appreciation of the heritage item.</li> <li>The Department agrees with the findings of the SHI and is satisfied the proposal would not result in any adverse visual or heritage impacts to the site or locality.</li> </ul>	No additional conditions or amendments necessary.
<i>Parking</i>	<ul style="list-style-type: none"> <li>The hotel does not provide any on-site parking and staff and patrons rely on nearby public parking and public transport.</li> <li>While the Newcastle Development Control Plan 2012 (DCP) does not apply to the assessment of the request, it provides that non-residential development in the Newcastle City Centre should provide parking at the</li> </ul>	No additional conditions or amendments necessary.

<b>Issue</b>	<b>Consideration</b>	<b>Recommendatio</b>
	<p>rate of 1 space per 60 m<sup>2</sup> of floor space. Based on the DCP, the modification would generate a parking demand for 2 additional spaces.</p> <ul style="list-style-type: none"> <li>• A traffic and parking assessment submitted with the modification request analysed the availability of public parking in the vicinity of the site and concluded the additional parking demand could be accommodated within nearby public parking areas.</li> <li>• The Department notes the site is well located within the city centre with good access to public transport links. Many patrons would also walk or use taxis to travel to and from the site. The Department is therefore satisfied the proposed additional capacity would not result in adverse parking impacts.</li> </ul>	

## 8. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements in the EP&A Act. The Department's assessment concludes the proposed modification is appropriate on the basis that:

- the proposal would comply with the relevant noise criteria and additional conditions have been imposed to appropriately mitigate and manage noise impacts
- sufficient public access would be provided along the boardwalk, subject to increasing the width of the public access area to a minimum of 1.8 m wide
- the proposed external changes are minor and would not result in unreasonable visual or heritage impacts.

Consequently, the Department recommends the modification request be approved subject to conditions.

## 9. RECOMMENDATION

It is RECOMMENDED that the Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** the application can be determined under former section 75W of the EP&A Act
- **approves** the application, subject to conditions, and
- signs the notice of modification (Appendix A).

Recommended by:

Anthony Witherdin  
**Director**  
**Regional Assessments**

## DECISION

Approved by:

Anthea Sargeant 26/7/18  
**Executive Director**  
**Key Sites and Industry Assessments**  
as delegate of the Minister for Planning

## **APPENDIX A: NOTICE OF MODIFICATION**

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The Notice of Modification can be found on the Department's website at the following address:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8912](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8912)

## **APPENDIX B: SUPPORTING INFORMATION**

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8912](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8912)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8912](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8912)

3. Response to submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8912](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8912)