

21 December 2021

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Emma Butcher  
Department Planning, Industry and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Emma,

## **Proposed s4.55(1A) Application - SSD 10378 - Alterations to Approved Buildings 42 Honeysuckle Drive, Newcastle NSW 2300**

### **1 Introduction**

SLR Consulting Australia Pty Ltd (SLR) acts on behalf of its client DOMA Holdings (Honeysuckle) Pty Ltd (DOMA) in lodging this s4.55(1A) application to the Department of Planning, Industry and Environment (the Department) for minor changes to the approved building design relating to SSD 10378, being a mixed-use development located at 42 Honeysuckle Drive, Newcastle NSW 2300.

Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP& A Act) states that a consent authority may, on application, modify a development consent if it is satisfied that the proposed modification is of minimal environmental impact and the modification is substantially the same as the development for which the consent was originally granted. Given the minor nature of the proposed modification, it is considered that this is the most suitable approval pathway.

#### **1.1 Background**

A State Significant Development (SSD) for the *construction a mixed-use development including: 187 hotel rooms, 5,442sqm of commercial office space, a café and gym, a licensed bar and outdoor terrace, 177 car parking spaces, and associated landscaping* (SSD-10378) was approved by the Department of Planning, Industry, and Environment on 27 January 2021.

A subsequent s4.55(1A) modification (SSD-10378-Mod-1) was lodged to delete Condition of Consent B18 which required the vertical height clearance of the ground floor to be raised to 4.5m. The removal of the condition was approved on the 8<sup>th</sup> December 2021.

No change of use or operations is proposed under this modification.

### **2 The Site & Surrounds**

The site is described as 42 Honeysuckle Drive Newcastle, situated within the Local Government Area (LGA) of Newcastle. The site is legally described as Lot 22 DP 1072217 and has a site area being 3,728m<sup>2</sup>. The site is currently under development, aligned with the approved SSD application. The site is under the ownership of DOMA, who purchased the land from the Hunter Central Coast Development Corporation.

The site is a regular quadrilateral configuration, with its boundaries shared with public space on three sides, being Honeysuckle Drive (north), public reserve (west), Light Rail Corridor (south). Private land that supports a three-storey commercial building is located to the immediate east.

The Newcastle Transport Interchange is located approximately 200 metres west of the site, with the Light Rail Corridor extending along the rear, southern boundary of the site.

Refer to Figure 1 and Figure 2 for the site and its surroundings.

**Figure 1 Site Aerial (Source: Near Maps)**



**Figure 2 – Cadastre Plan (Source: Six Maps)**



### 3 Proposed Modifications

#### 3.1 Proposed Design Modifications

The proposed modification seeks to amend the approved building design and involves:

General Site:

- Change from modular construction methodology to traditional built form;
- Alterations to site landscaping to accommodate proposed changes;
- South west end of buildings at Level 00, 01, & 02 setback from southern boundary;
- Loss of three (3) car parks associated with reconfigured car parking area reducing total parking from 177 to 174, commensurate with the reduction in GFA;
- Amendment to end of trip facility, meeting rooms, and back of house areas to accommodate enhanced lobby space and visibility to car park entry and lift lobby; and
- Minor changes to façade treatments on the podium commercial office and Hotel facades.

Commercial Building:

- Substation relocated 450mm to the west to align with structural columns above;
- Minor increase in plant screening area and height on the commercial tower (600mm) with fire stairs extended to roof;
- Relocation of commercial lobby and associated stairs; and
- Commercial building amenities shifted and combined with hotel building.

Hotel Building:

- Reduction in hotel building slab to slab level from 3,380mm to 3,100mm resulting in reduced building height;
- Amendments to sun shading from western hotel façade;
- Relocation of Level 2 hotel communal space;
- External terrace of hotel building omitted with sunshading added to space on Level 02;
- Removal of skylight over feature stairs;
- Façade amendment to lift lobby replacing glazing with concrete to enhance privacy between hotel and commercial buildings; and
- Hotel building geometry has been squared off at the South elevation removing one room from each level.

The purpose of the amendments is to better align the development with the evolving detail design requirements whilst improving development and construction outcomes.

The lowered hotel building height is a result of a reduction in slab to slab height, which has been amended from 3,380mm down to 3,100mm. The amendment will reduce the building height from 33.7m to 33.25m, a

difference of 450mm. The reduction in height will have a negligible impact on the approved presentation of the building and will provide a slight decrease in potential overshadowing impacts from the approved hotel building.

The proposed increase in plant screen height to the commercial building will ensure the approved plant area is appropriately screened from view to the surrounding area, providing an improvement in visual amenity. While this element is proposed to increase in height, the plant area is sufficiently setback to be obscured from view from street level and is considered to have a negligible impact on the bulk and scale of the development.

The approved hotel building orientation and layout is proposed to be 'squared off' by removing a room from each level. This change will reduce the capacity of the hotel by six (6) rooms down to 181 rooms and also remove the provision of three (3) car parks from the car park area reducing parking from 177 to 174. The removal of these hotel rooms will reduce the overall gross floor area (GFA) by 318m<sup>2</sup> down to a total of 12,393m<sup>2</sup>.

A wide range of general arrangement and minor alterations to the internal configuration and external presentation are proposed however these alterations have been designed to maintain the existing façade scheme which focuses on the building massing's of the existing design, supported by expressed grids which reflect the structural and room modules inherent in the approved design.

### 3.2 Modification

To achieve the proposed changes Condition A2 is proposed to be amended to reflect updated plans which show the amended building elements described in Section 3.1. The intended change is detailed below:

#### Current Condition:

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
  - (b) in accordance with all written directions of the Planning Secretary;
  - (c) in accordance with the EIS, Response to Submissions and additional information;
  - (d) in accordance with the management and mitigation measures
  - (e) in accordance with the approved plans in the table below:

Architectural Drawings prepared by BatesSmart			
Drawing No.	Revision	Name of Plan	Date
A.03.1000	6	General Arrangement Plan Ground- Café/Gym	08.12.20
A.03.1010	5	General Arrangement Plan Ground- 1 <sup>st</sup> Floor- Hotel / Office Podium	18.09.20
A.03.1020	5	General Arrangement Plan Ground- 2 <sup>nd</sup> Floor – Hotel/Office Podium	18.09.20
A.03.1030	5	General Arrangement Plan Ground- 3rd Floor – Parking	18.09.20

Architectural Drawings prepared by BatesSmart			
A.03.1040	5	General Arrangement Plan Ground- 3 <sup>rd</sup> Floor- Hotel/Office	18.09.20
A.03.1041	5	General Arrangement Plan Ground- 4 <sup>th</sup> Floor- Hotel/Office Tower	18.09.20
A.03.1050	5	General Arrangement Plan Ground- 5 <sup>th</sup> Floor- Hotel/Office Tower	18.09.20
A.03.1060	5	General Arrangement Plan Ground- 6 <sup>th</sup> Floor- Hotel/Office Tower	18.09.20
A.03.1070	5	General Arrangement Plan Ground- 7 <sup>th</sup> Floor- Hotel/Office Tower	18.09.20
A.03.1080	5	General Arrangement Plan Ground- 8 <sup>th</sup> Floor- Hotel/Office Tower	18.09.20
A.03.1090	6	General Arrangement Plan- 9 <sup>th</sup> Floor- Hotel Roof/Plant	08.12.20
A.07.001[5]	5	North Elevation	08.12.20
A.07.002[5]	5	West Elevation	08.12.20
A.07.003[5]	5	East Elevation	08.12.20
A.07.004[5]	5	South Elevation	08.12.20
A.07.005[4]	4	West Commercial Elevation	08.12.20
A.07.006[4]	4	East Hotel Elevation	08.12.20
A.08.001[6]	6	Section AA-BB	08.12.20
A.08.002[5]	5	Section BB-CC	08.12.20
A.08.003[5]	5	Section DD	08.12.20
Landscape Plans prepared by Terras Landscape Architects			
Drawing No.	Revision	Name of Plan	Date
L100	D	Landscape Plan, LG	21/10/20
L101	D	Green Wall System, L1:L3	21/10/20
L103	D	Terrace, L3	21/10/20
L104	D	Courtyard, L3	21/10/20

Architectural Drawings prepared by BatesSmart			
L301	D	Planting	21/10/20

**Proposed Condition:**

A2. The development may only be carried out:

- (a) in compliance with the conditions of this consent;
- (b) in accordance with all written directions of the Planning Secretary;
- (c) in accordance with the EIS, Response to Submissions and additional information;
- (d) in accordance with the management and mitigation measures
- (e) in accordance with the approved plans in the table below:

Architectural Drawings prepared by BatesSmart			
Drawing No.	Revision	Name of Plan	Date
AD.03.1000	8	General Arrangement Plan Ground- Café/Gym	29.11.21
AD.03.1010	8	General Arrangement Plan Ground- 1 <sup>st</sup> Floor- Hotel / Office Podium	29.11.21
AD.03.1020	8	General Arrangement Plan Ground- 2 <sup>nd</sup> Floor – Hotel/Office Podium	29.11.21
AD.03.1030	8	General Arrangement Plan Ground- 3rd Floor – Parking	29.11.21
AD.03.1040	8	General Arrangement Plan Ground- 3 <sup>rd</sup> Floor- Hotel/Office	29.11.21
AD.03.1041	8	General Arrangement Plan Ground- 4 <sup>th</sup> Floor- Hotel/Office Tower	29.11.21
AD.03.1050	8	General Arrangement Plan Ground- 5 <sup>th</sup> Floor- Hotel/Office Tower	29.11.21
AD.03.1060	8	General Arrangement Plan Ground- 6 <sup>th</sup> Floor- Hotel/Office Tower	29.11.21
AD.03.1070	8	General Arrangement Plan Ground- 7 <sup>th</sup> Floor- Hotel/Office Tower	29.11.21
AD.03.1080	8	General Arrangement Plan Ground- 8 <sup>th</sup> Floor- Hotel/Office Tower	29.11.21
AD.03.1090	8	General Arrangement Plan- 9 <sup>th</sup> Floor- Hotel Roof/Plant	29.11.21
AD.09.0010	2	North Elevation	29.11.21
AD.09.0020	2	West Elevation	29.11.21



Architectural Drawings prepared by BatesSmart			
AD.09.0030	2	South Elevation	29.11.21
AD.09.0040	2	East Elevation	29.11.21
AD.09.0100	2	Courtyard Elevation - East	29.11.21
AD.09.0100	2	Courtyard Elevation - West	29.11.21
Landscape Plans prepared by Terras Landscape Architects			
Drawing No.	Revision	Name of Plan	Date
L100	D	Landscape Plan, LG	21/10/20
L101	D	Green Wall System, L1:L3	21/10/20
L103	D	Terrace, L3	21/10/20
L104	D	Courtyard, L3	21/10/20
L301	D	Planting	21/10/20

## 4 Consultation

### Department of Planning, Industry, and Environment

A scoping meeting was held between the DPIE and SLR to discuss the proposal. A range of amendments were discussed with the appropriate pathway for the proposed modification was agreed upon.

## 5 Legislation & Planning Controls

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

- Environmental Planning and Assessment Act 1979;
- State Environmental Planning Policy (Infrastructure) 2007';
- Newcastle Local Environmental Plan (LEP) 2012; and
- Newcastle Local Development Control Plan (DCP) 2012.

### 5.1 Environmental Planning and Assessment Act 1979

It is considered that the modification of the development consent proposed will result in minimal environmental impact and is substantially the same development as that for which the original consent was granted. Accordingly, the approval path for the proposed modification is s4.55(1A) Minimal Environmental Impact under the EP&A Act 1979:

*Section 4.55 Modification of consents - generally*

*(1A) Modifications involving minimal environmental impact*

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) It is satisfied that the proposed modification is of minimal environmental impact, and*

**Comment:** the proposed modification will not result in any environment impact such as overshadowing, noise, etc. and does not alter the original environmental assessment or mitigation measures.

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

**Comment:** The proposal seeks to amend a range of minor elements of the proposed development with the overall structure remaining substantially the same as approved and maintaining the use, operational measures, and mitigation measures consistent with approved.

*(c) it has notified the application in accordance with:*

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

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

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

**Comment:** Noted, appropriate notification to be undertaken if deemed to be required.

This application is made pursuant to section 4.55(1A) of the EP&A Act 1979 and the proposed modification is 'substantially the same' as the approved development, for the above reasons.

## 5.2 State Environmental Planning Policy (Infrastructure) 2007

### Clause 104 – Traffic-generating development

Clause 104 requires consideration as the proposed development relates to new premises with a relevant size and capacity included in the Table to Schedule 3 of the Infrastructure SEPP.

The mixed-use development proposal is deemed a 'commercial premise' and hotel component is defined as 'Any other purpose' under column 1 of the table in Schedule 3.

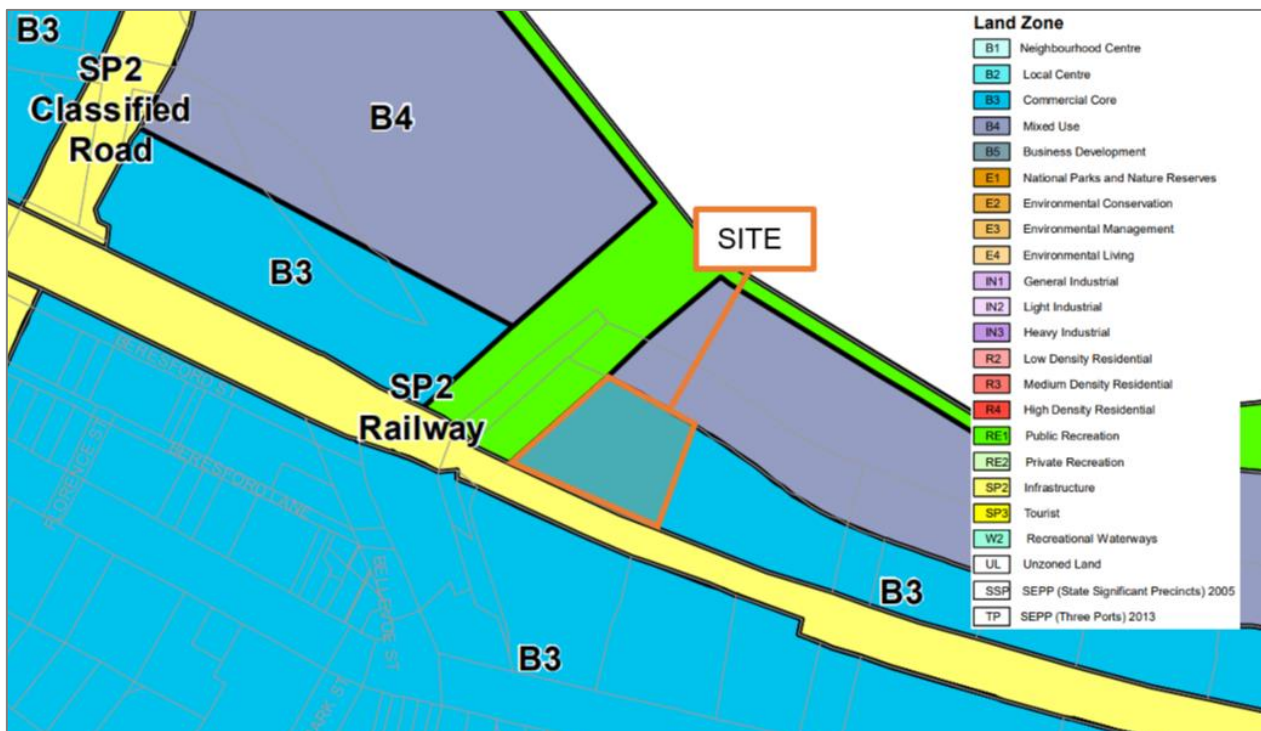


The proposed modification will result in a minor reduction in hotel rooms reducing the capacity of the development. Further, this capacity does not exceed more than 200 of more vehicles per hour and as a result referral to Transport for NSW is not required.

### 5.3 Newcastle Local Environmental Plan (LEP) 2012

The site is identified under the Newcastle Local Environmental Plan (2012) as being situated within the B3 Commercial Core zone, as illustrated in Figure 3. The proposed modification does not amend the approved land uses and the development remains consistent with the objectives of the B3 Commercial Core zone.

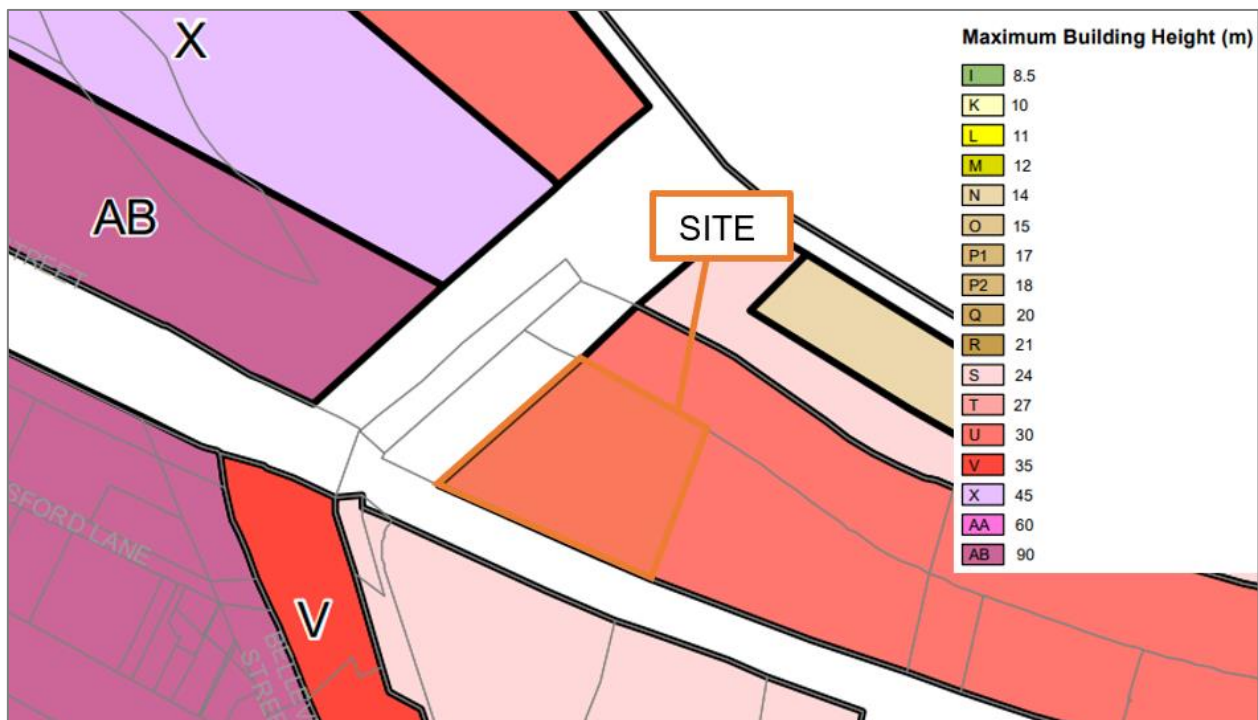
**Figure 3 Land Zoning Extract from LEP 2012 (Map LZN\_004G)**



### Clause 4.3 Height of Buildings

The objectives of Clause 4.3 are to ensure the scale of a development makes a positive contribution towards the desired built form, while also allowing reasonable daylight access to all developments and the public domain. As demonstrated below in **Figure 4** in the map extract from the Newcastle LEP 2012, the maximum height for a building in the proposed site is 30m.

**Figure 4 Maximum Building Height Extract from LEP 2012 (Map HOB\_004G)**



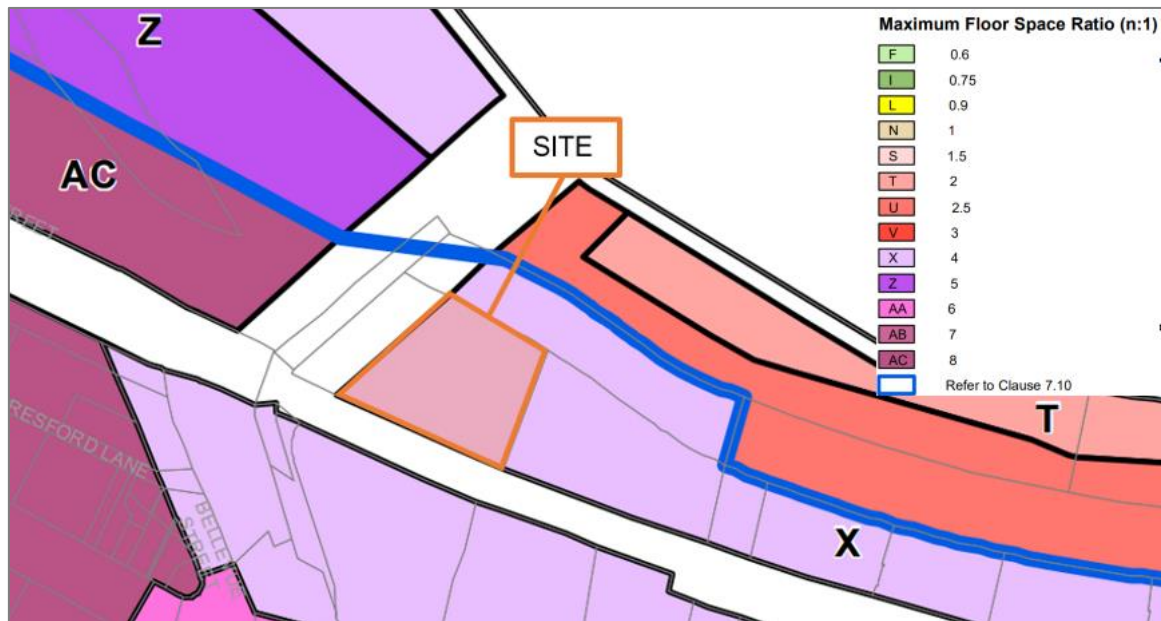
The approved development has a maximum height of 35.78m which represents an existing exceedance of 5.78m. The proposal will include an addition of 0.6m in height resulting from an increase in the plant enclosure height increasing the maximum building height to 36.38m.

The proposed development includes a variation to this development standard discussed in Section 6.1; however, it is considered that the objectives of Clause 4.3 are met.

#### **Clause 4.4 Floor Space Ratio**

In accordance with Clause 4.4, the site is identified under the Floor Space Ratio Map in the Newcastle LEP 2012 (refer to **Figure 5**), as having a maximum floor space ratio (FSR) of 4:1. The site is situated within 'Area A' and therefore the provisions of LEP 2012 Clause 7.10 can apply. Clause 7.10 has the ability to reduce the FSR standard for the site to 3:1. The reduction to FSR in Clause 7.10, however, does not apply as the building is a commercial premise. The proposed development will reduce the GFA down to 12,393m<sup>2</sup> resulting in an FSR of 3.32:1, compliant with the control of the NLEP 2012.

**Figure 5 Floor Space Ratio Extract from LEP 2012 (Map FSR\_004G)**



#### Clause 4.6 – Exception to Development Standards

The objective of this clause is to provide an appropriate degree of flexibility in applying certain development standards to particular developments in the essence of achieving better design outcomes for and from development.

Caselaw (*North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*) demonstrates that for a Section 4.55 application, a Clause 4.6 Exceptions (or SEPP 1 objection) to Development Standards is not required.

A Section 4.55 enables the development to be approved notwithstanding any breach of development standards. Section 4.55 is a broad power to approve, subject to its own stand-alone tests (such as the “substantially the same” test, and a requirement to consider all relevant s.4.15 matters). Section 4.55 does not rely upon having any SEPP 1 objection or Clause 4.6 variation in order to enliven that power to approve.

The development under SSD 10378 included an exception to a development standard for an exceedance of the 30m maximum height limit on the site. This exceedance is continued and expanded upon within this modification with justification provided in Section 6 of this report.

This modification report demonstrates that the proposed development is substantially the same and remains appropriate for the setting. It is noted that the proposed minor non-compliance with the height standard has been decreased from the original approved DA with the proposed modification. Consideration of the impact of the proposed modification is detailed in Section 6 of this SEE.

#### 5.4 Newcastle Development Control Plan (DCP) 2012

The proposal has been assessed against the relevant provisions of the Newcastle Development Control Plan 2012 (DCP) and is considered to comply with relevant controls and objectives outlined by Council with only a single exception related the car parking requirements under Section 7.03 Traffic, Parking and Access.

A variation to the parking requirement has been justified in Section 6.2 of this SEE.

## 6 Environmental Impact Assessment

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

### 6.1 Built Form and Urban Design

The scheme for 42 Honeysuckle Drive has been through numerous iterations and the design process has been a continuous evolution, with DOMA and Bates Smart (architect) being consistent throughout the process. It is acknowledged that the land use elements and overall scheme has changed overtime, however the overall design intent for the site remains consistent.

A range of minor façade alterations are proposed as part of the modification, with an aim of improving development and construction outcomes. The overall façade design remains consistent with the approved with the four distinctive building masses being the hotel, podium office, tower officer, and car park being maintained as part of the modification. The façade continues to express the approved grids which reflect the structure and room modules wrapped around the building to reinforce the building massing's.

The proposed bulk and scale of the development will see a minor alteration from the approved structure, with the commercial building seeing a minor isolated 0.6m increase in height due to an increase in rooftop plant enclosure height. The approved hotel tower will see a decrease in height of 0.45m. Refer to **Table 1** for comparison of approved and proposed.

**Table 1 Building Height Comparison**

Parameter	Approved	Proposed	Difference
Maximum Building Height (Commercial)	35.78m (RL 39.58)	36.38m (RL 40.18)	+ 600mm
Maximum Building Height (Hotel)	33.7m (RL 36.71)	33.25m (RL 36.26)	- 450mm

Both the approved and proposed amended design result in exceedances of the maximum height of 30m applicable to the site. The proposed increase has been assessed against the objectives of Clause 4.3 of the NLEP 2012 below.

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

The proposed development has been designed by Bates Smart and consists of a high quality, architecturally designed building that makes a positive contribution to the street frontage and built form of Honeysuckle Drive. The projection of the building above the height limit will not result in an overbearing visual impact.

The proposed increase in building height is limited to only 0.6m, resulting from an increase to the plant enclosure located atop the roof level. This plant area is set back from the building line establishing a step which masks the enclosure from the main view points around the site. Due to the minor increase in height, along with the screening provided by the location and setback the development is considered to continue to make a positive contribution to the surrounding area and established centres hierarchy along Honeysuckle Drive.

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

Reasonable daylight access is provided to all surrounding developments. Due to sensitive design and siting, the proposed height variation will not result in any detrimental impact to any neighbouring land uses. The proposed increase in rooftop plant enclosure height will not unreasonably overshadow the properties to the south or east; and will not cause significant overshadowing of the public domain. Refer to Appendix B for Shadow Diagrams which demonstrate existing and proposed overshadow impacts.

## 6.2 Traffic, Access and Parking

### Traffic

The proposed modification will result in a small reduction in hotel rooms which will have a minor reduction in traffic generation resulting from the proposed modification. The change will have a negligible impact on the road network and is considered acceptable in this instance.

### Access

No changes are proposed to vehicular or pedestrian access to the site.

### Parking

The proposal includes a reduction in parking from 177 to 174, a reduction of three (3) car parks.

The NDCP 2012 provides that for non-residential city-centre developments, a flat car parking rate of 1 car parking space per 60 m<sup>2</sup> of GFA is required. The reduction in GFA will result in a reduction in parking demand by 5.3 car parks which is greater than the proposed 3 removed car parks.

The proposed modification will therefore not increase the previously approved variation to car parking.

### Servicing

No changes to servicing are proposed as part of this modification.

## 7 Conclusion

The proposed modification to the approved development at 42 Honeysuckle Drive consists of a range of smaller elements with an aim of improving development and construction outcomes for the site. The projected impacts resulting from the amendment are considered to be minor in the context of the whole development.

The proposed modifications are considered minor and will result in the proposed development continuing to provide a high-quality mixed-use building in the Greater Newcastle community within the Honeysuckle precinct. The proposal is permissible with consent within the B4 Mixed Use under Newcastle Local Environmental Plan 2012.

Given the merits of the proposal and the absence of any significant adverse environmental impacts, the DA is considered to be in the public interest and is recommended for Council's support.

We thank you for the opportunity to lodge this application and look forward to timely approval. Should you have any questions please do not hesitate to contact the undersigned.

Yours sincerely,



Kale Langford  
Project Consultant – Planning  
SLR Consulting Australia Pty Ltd

## Appendices

**Appendix A** – *Amended Architectural Plans*

**Appendix B** – *Design Statement*



## APPENDIX A – AMENDED ARCHITECTURAL PLANS

## APPENDIX B – DESIGN STATEMENT