



35 Honeysuckle Drive

*State Significant
Development Assessment
(SSD 8999)*



June 2019

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Cover photo

Photomontage of proposed development at 35 Honeysuckle Drive, Newcastle (Source: Applicant's EIS).

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Glossary

Abbreviation	Definition
ACHAR	Aboriginal Cultural Heritage Assessment Report
ADG	Apartment Design Guide
AHD	Australian Height Datum
Applicant	Doma Holdings (Honeysuckle) Pty Ltd
AS	Australian Standard
BASIX SEPP	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
BCA	Building Code of Australia
BDAR	Biodiversity Development Assessment Report
CAS	Contamination Assessment Summary
CBD	Central Business District
CIV	Capital Investment Value
Coastal SEPP	State Environmental Planning Policy (Coastal Management) 2018
Consent	Development Consent
Council	City of Newcastle
CPTMP	Construction Pedestrian Traffic Management Plan
Department	Department of Planning and Environment
DCP	Development Control Plan
DoI	Department of Industry
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FPL	Flood Planning Level
FRIA	Flood Risk and Impact Assessment
FSR	Floor Space Ratio
GANSW	Government Architect NSW
GFA	Gross Floor Area
GIA	Groundwater Inflow Analysis
GPR	Ground Penetrating Radar
HDC	Hunter Development Corporation

HNELHD	Hunter New England Local Health District
HURP	Honeysuckle Urban Renewal Project
LEP	Local Environmental Plan
Minister	Minister for Planning
NA	Noise Assessment
NLEP 2012	Newcastle Local Environmental Plan 2012
OEH	Office of Environment and Heritage
PMF	Probable Maximum Flood
RAP	Remediation Action Plan
RMS	Roads and Maritime Services
RSA	Road Safety Audit
RtS	Response to Submissions
RRtS	Response to Submissions Addendum (Additional Information)
SAR	Site Audit Report
SAS	Site Audit Statement
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SEPP 55	State Environmental Planning Policy No 55 – Remediation of Land
SEPP 65	State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
SSI	State Significant Infrastructure
TPA	Traffic and Parking Assessment
TfNSW	Transport for New South Wales
UDCG	City of Newcastle Urban Design Consultative Group
WMTGM	Newcastle Council's Waste Management Technical Guide Manual



Executive Summary

This report provides an assessment of a State Significant Development application (SSD 8999) seeking approval for the construction of two 8-storey residential buildings with ground floor retail at 35 Honeysuckle Drive, Newcastle. The Applicant is Doma Holdings Pty Ltd, and the proposed development is located within the Newcastle City Council local government area.

The development is State Significant Development (SSD) under Schedule 2 of the State Environmental Planning Policy (State and Regional Development) 2011, as it is development within the Honeysuckle Precinct having a Capital Investment Value in excess of \$10 million.

Engagement

The Department publicly exhibited the application for 28 days from 23 August 2018 until 19 September 2018. The Department received a total of 16 submissions, comprising 11 Government agency submissions and one Council submission. None of the Government agencies or Council objected to the proposed development. Four public submissions were also received, two of which objected, one was in support and one made general comments.

Key issues raised in agency submissions related to the design of the buildings, including the pavilion and use of the rooftops and use of Honeysuckle Drive for loading. Public submissions raised concerns about design, height, gross floor area and amenity impacts.

Assessment

The Department has considered the merits of the proposed development in accordance with the relevant matters under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the issues raised in the submissions and the Applicant's response to these.

The key issues associated with the proposed development are built form and urban design, amenity impacts, car parking and use of Honeysuckle Drive.

While the buildings exceed the height (by 13.9 m to the north and 3.9 m to the south) and floor space ratio controls (south by 37 % and overall by 6.2%) in the Newcastle Local Environmental Plan 2012, this is attributed to the site being divided in half by two separate north/south controls. The buildings have therefore been designed so that the bulk and mass of the buildings are set further back from the foreshore, providing a generous waterfront foreshore frontage consistent with the built form of the adjoining property to the east at 50 Honeysuckle Drive. Additional floorspace attributed to additional car parking spaces in the basement would not add to the visual bulk and scale of the buildings.

The Department considers the proposed development has exhibited design excellence through the provision of a high standard of architectural design that reflects the industrial maritime history of the area. The design is supported by the Government Architect NSW and Council.

The proposed development has also demonstrated that it will provide for high quality residential amenity and will not result in any adverse impacts on the neighbouring development including overshadowing and visual privacy. The proposed development will also improve pedestrian connectivity by providing through-site pedestrian links to the future foreshore promenade and activate the foreshore and streetscape via ground floor retail uses.

While the development proposes 190 car parking spaces on the site, which is 54 more than required in Newcastle Development Control Plan, it would not result in any adverse traffic impacts. Council and RMS also support the proposed car parking. While Council initially did not support the use of Honeysuckle Drive for loading and unloading, support has now been provided, subject to conditions.

The Department considers the impacts of the proposed development, including construction impacts, have been addressed and/or can be adequately managed through the recommended conditions of consent.

Summary

The Department is satisfied the proposed development will be a positive contribution to the Honeysuckle Precinct and Hunter River foreshore promenade. The proposed development will improve the public domain and increase opportunities for pedestrian activity, active frontages, while delivering 92 residential units and up to 220 jobs.

The Department is satisfied the proposed development is consistent with the strategic objectives for the area as outlined in the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036.

The Department concludes the site is suitable for the proposed development and that it is in the public interest, and recommends the application be approved, subject to conditions.



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1. Introduction

1.1 Introduction

This report provides an assessment of a State significant development (SSD) application (SSD 8999) lodged by Doma Holdings (Honeysuckle) Pty Ltd (the Applicant) for a mixed-use development at 35 Honeysuckle Drive, Newcastle. The development comprises two 8-storey buildings, 92 residential apartments, ground floor retail, retail pavilion, and basement car parking.

1.2 The Honeysuckle Precinct

The site forms part of the Honeysuckle Precinct, which is located within the broader Honeysuckle Urban Renewal Project (HURP), within the Newcastle City Council (Council) local government area. The HURP commenced over two decades ago to remediate and redevelop 50 hectares of surplus government land stretching from the Newcastle Central Business District (CBD) in the east to Wickham and Carrington in the north-west.

The area comprises seven precincts spanning four kilometres of waterfront supporting a diverse mix of employment and residential uses, tourism and public domain.

The site is located to the west of Newcastle CBD within the Honeysuckle Precinct, bound by the Hunter River to the north, a railway corridor to the south, Merewether Street to the east and Lee Wharf/Hannell Street to the west (**Figure 1**).

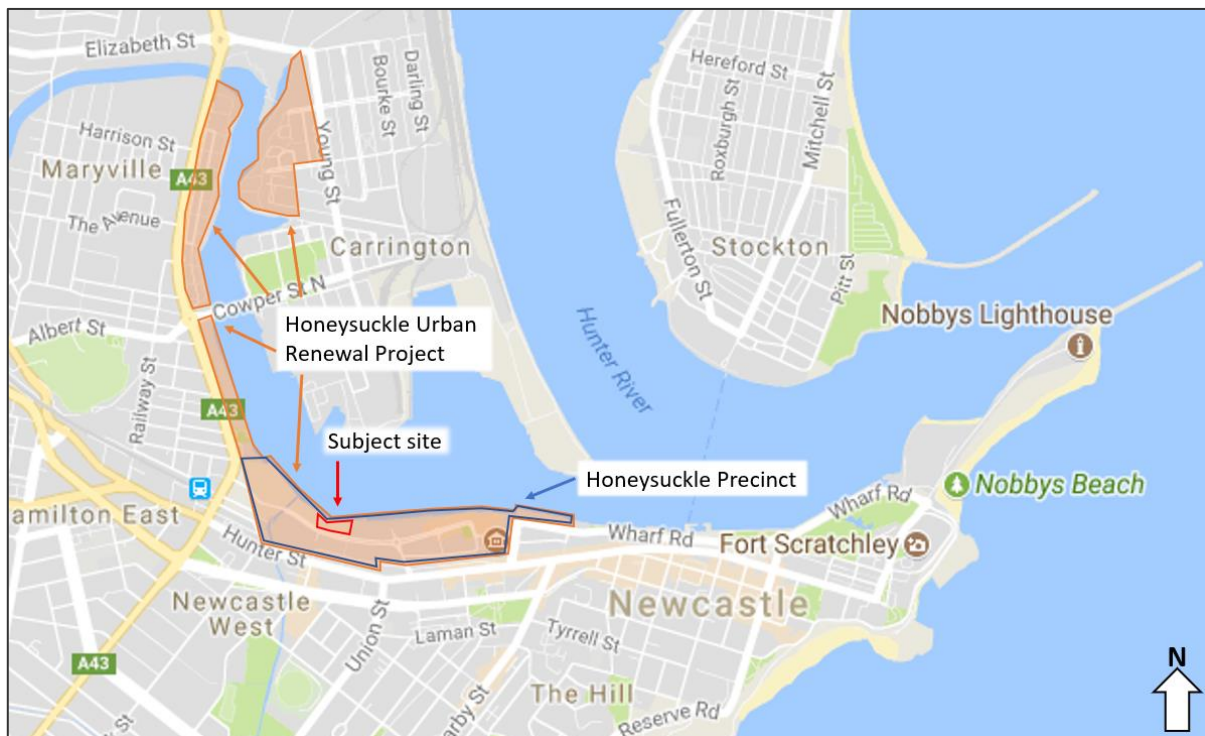


Figure 1 | Site location (Source: NearMap).

1.3 The site and surrounds

The site is part of Lot 4, DP 1238761, which has approval for subdivision. The development site will become known as 35 Honeysuckle Drive (once the subdivision plan is registered outlined in red in **Figure 2**). Lot 4 occupies former railway land that extends from Worth Place to the east and 50 Honeysuckle Drive to the west (outlined blue in **Figure 2**).



Figure 2 | The site (shown in red) and surrounds (Source: NearMap).

The development site has an area of 5,191 m² and is irregular in shape. The site is bound by Worth Place Park to the north, 50 Honeysuckle Drive to the east, Honeysuckle Drive to the south and vacant land to the west.

The surrounding area is characterised by a mix of buildings and uses, including:

- Worth Place Park West, a landscaped public open space area with a shared pedestrian and cycleway adjoining the Hunter River foreshore, to the north. The Hunter Development Corporation will be upgrading this landscaped public domain in the future
- approval for a mixed-use building at 50 Honeysuckle Drive, including ground floor commercial tenancies to the east
- commercial buildings to the south at 22 to 28 Honeysuckle Drive
- port facilities at the Port of Newcastle.



2. Project

2.1 Description of proposal

The proposal seeks approval for two 8-storey mixed-use buildings and public domain works. The key components of the proposal are provided in **Table 1** and shown in **Figures 3 to 5**.

Table 1 | Key components of the proposal

Aspect	Description
Built form	• Construction of two 8-storey mixed-use buildings • One standalone retail pavilion • Two levels of basement parking
Gross Floor Area (GFA)	Total GFA of 12,415 m ² comprising: • 10,405² residential • 1,271 m² retail • 739 m² basement car parking
Uses	• 92 residential units (Levels 1 to 7) comprising: ○ 19 one-bedroom units ○ 41 two-bedroom units ○ 32 three-bedroom units • 9 x retail premises (ground floor)
Access	• Basement car parking access from Honeysuckle Drive • Pedestrian access from Honeysuckle Drive and the future foreshore promenade
Parking	• 190 car parking spaces including: ○ 147 residential spaces ○ 21 visitor spaces ○ 22 retail spaces • 10 motorcycle parking spaces • 150 bicycle parking spaces
Public domain and landscaping	• Ground floor podium level walkway to connect into the future foreshore promenade with associated landscaping • Through site links connecting Honeysuckle Drive to the foreshore promenade • Ground floor communal open space and gymnasium for residents • Roof top communal open space with associated landscaping
Construction hours	• Monday to Friday: 7 am to 6 pm • Saturday: 8 am to 1 pm • Sundays and Public Holidays: No work

**Employment and
Capital Investment
Value (CIV)**

- CIV of \$41,707,787
- 120 construction jobs
- 100 operational jobs

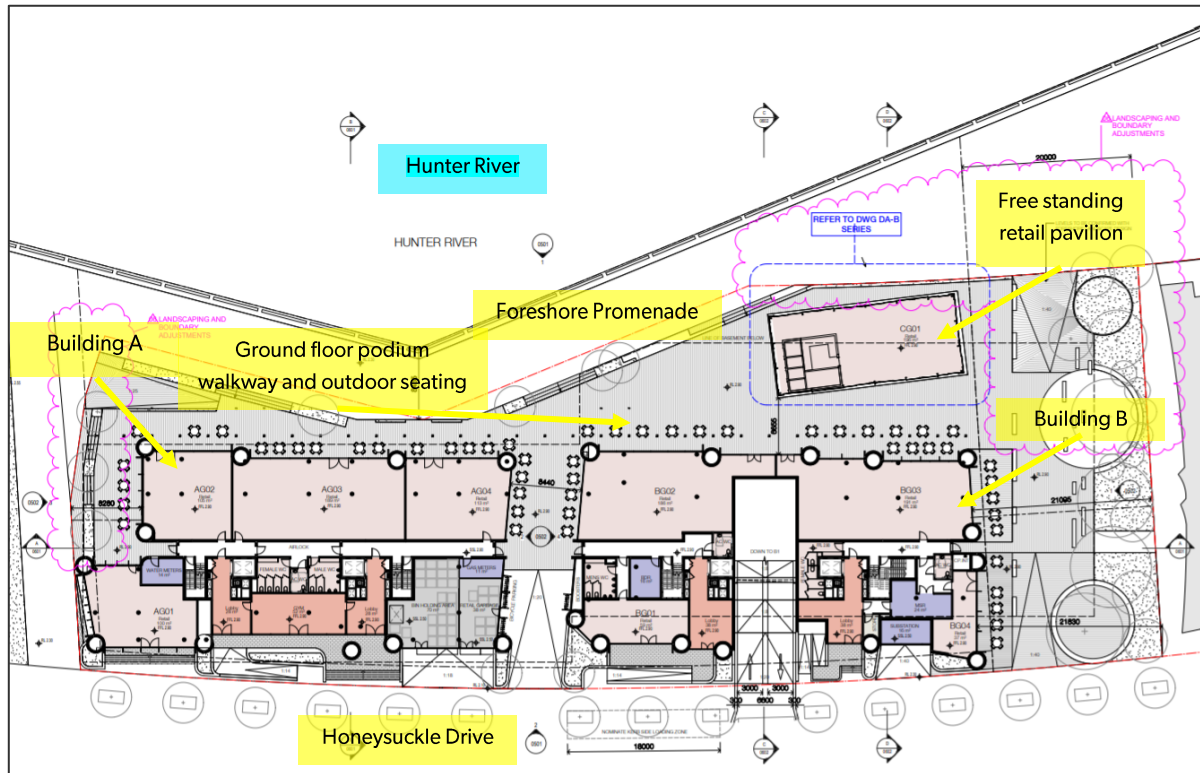


Figure 3 | Ground floor and site plan (Source: Applicant's RtS).



Figure 4 | Photomontage showing north elevation to Hunter River (Source: Applicant's RtS).



Figure 5 | Photomontage showing south elevation to Honeysuckle Drive (Source: Applicant's RtS).

2.2 Related development

On 18 October 2018, Council approved an application for the subdivision of Lot 4 DP1238761 into two lots. On 28 February 2019, Council approved a modification application to the subdivision to change the lot layout and conditions of consent. The development site will become known as 35 Honeysuckle Drive once the subdivision plan is registered. The final subdivision is shown in **Figure 6**.

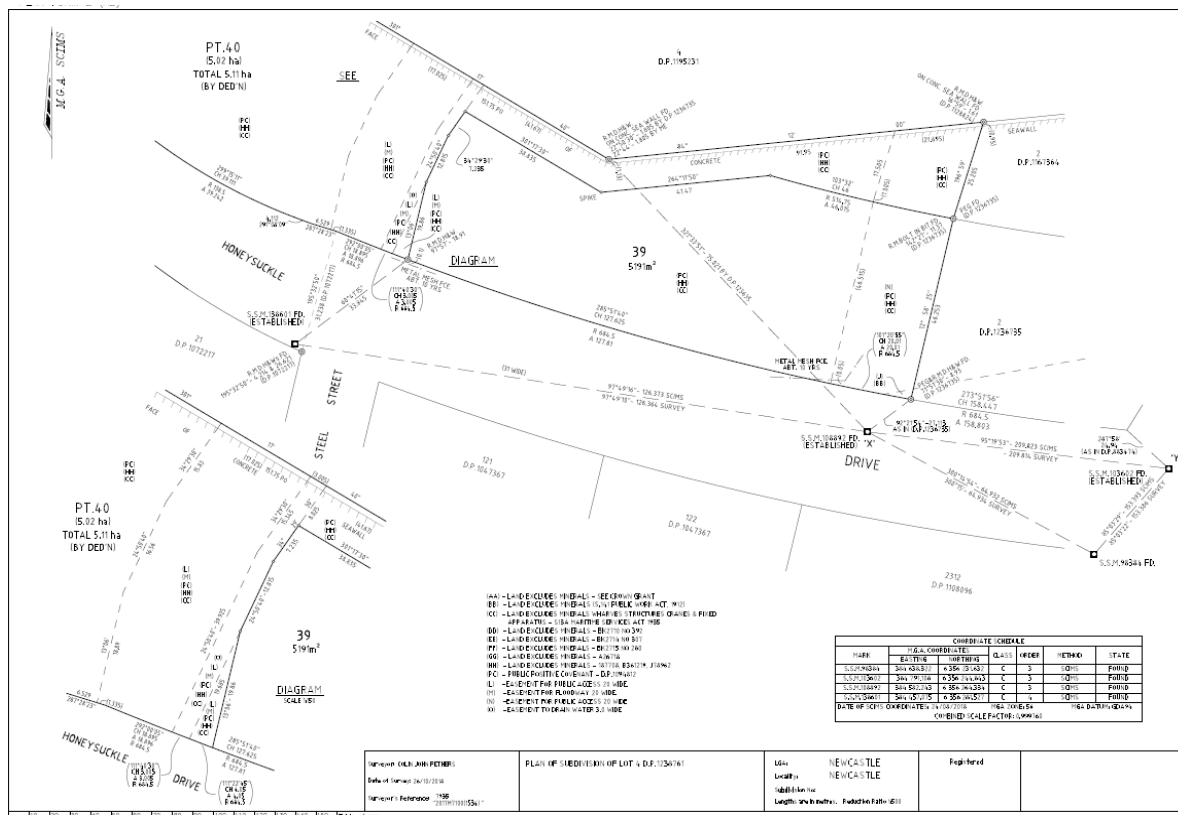


Figure 6 | Approved subdivision plan.



3. Strategic Context

3.1 Hunter Regional Plan 2036

The Hunter Regional Plan 2036 sets out the NSW Government's vision for the Hunter, 'to create a leading regional economy in Australia, with a vibrant metropolitan city at the heart' and sets the following regionally focussed goals:

- the leading regional economy in Australia
- a biodiversity rich natural environment
- thriving communities
- greater housing choice and jobs.

The proposed development supports these goals for the Honeysuckle Precinct and wider area by providing:

- economic benefits for local business, generated from new residents and employees and patrons of the retail premises
- additional employment opportunities through 120 construction jobs and 100 operational jobs
- increased supply of housing and greater housing choice within the area
- increased opportunities for pedestrian activity, active street uses, and passive surveillance to contribute to the establishment of a thriving community in the Honeysuckle Precinct.

3.2 Greater Newcastle Metropolitan Plan 2036

The Greater Newcastle Metropolitan Plan sets out strategies and actions that will drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities, which together make up Greater Newcastle. The Plan also helps to achieve the vision set in the Hunter Regional Plan 2036 for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

The site is located within the West End Precinct of Newcastle, which is identified for increased commercial and accommodation floorspace by 2036. The proposed development supports the Plan by providing additional residential accommodation and retail development.

3.3 Newcastle Urban Renewal Strategy 2014

The Newcastle Urban Renewal Strategy 2014 sets out the Department's vision for the renewal of Newcastle City Centre into a vibrant and innovative regional hub and an attractive destination for business, residents and visitors alike. The Strategy aims to encourage urban renewal and the revitalisation of the Newcastle City Centre through promoting growth, activity, innovation and employment. The proposed development supports the aims of the Strategy by redeveloping the site for mixed use purposes, including residential accommodation and ground floor retail uses that will provide for growth and an active interface along the foreshore.



4. Statutory Context

4.1 State Significant Development

The proposed development is State Significant Development (SSD) in accordance with clause 4.36 of the EP&A Act as it comprises development on land identified as being within the Honeysuckle Site and has a CIV in excess of \$10 million (\$41,707,787) under clause 2(d) of Schedule 2 of State Environmental Planning Policy (State and Regional Development) 2011.

In accordance with the Minister's delegation of 11 October 2017, the Executive Director, Key Sites and Industry Assessments may determine the SSD application as:

- the relevant Council has not made an objection
- there are less than 25 public submissions in the nature of an objection
- a political disclosure statement has not been made.

4.2 Permissibility

The site is zoned B4 – Mixed use under the Newcastle Local Environmental Plan (NLEP) 2012. The proposed residential and retail uses are permitted with consent in the B4 zone.

4.3 Mandatory matters for consideration

Section 4.15 of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These are summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, and the *Environmental Planning and Assessment Regulation 2000*
- the environmental, social and economic impacts of the development
- the suitability of the site
- any submissions, and
- the public interest, including the objects in the EP&A Act and the encouragement of ecologically sustainable development (ESD).

The Department has considered all of these matters in its assessment of the project, as well as the Applicant's consideration of environmental planning instruments in its EIS, as summarised in **Section 6** of this report. The Department has also given consideration to the relevant provisions of the EP&A Act, including environmental planning instruments in **Appendix C**.



5. Engagement

5.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application from 23 August 2018 until 19 September 2018 (28 days). The application was exhibited on the Department's website, at Service Centre NSW and the Newcastle City Council office.

The Department placed a public exhibition notice in the Newcastle and Lake Macquarie Star on 22 August 2018 and provided written notification to adjacent landholders and relevant Government agencies.

The Department considered the comments raised in the Council, Government agencies and public submissions during the assessment of the application (**Section 6**) and by recommended conditions in the consent at **Appendix F**.

5.2 Summary of submissions

The Department received a total of 16 submissions, comprising 11 submissions from Government agencies, one submission from Council and four submissions from the public, of whom two objected. Copies of the submissions may be viewed at **Appendix B**.

5.3 Key issues – Government agencies

Eleven submissions were received from Government agencies providing comments in response to the exhibition of the application. No Government agencies objected to the proposed development, and the key issues raised have been addressed through the provision of additional information, or through the recommended conditions of consent.

The key issues raised in submissions are summarised in **Table 2**.

Table 2 | Government agency submissions to the exhibition of the EIS

Government Architect New South Wales (GANSW)

GANSW noted the project has undergone a number of design excellence processes, including the preparation of a reference design, three meetings of a Design Review Panel and submission of a Design Excellence Strategy and acknowledged the proposed development achieves design excellence.

GANSW also noted the proposed development exceeds the building height and floor space ratio (FSR) requirements contained within the NLEP 2012. The architectural drawings demonstrate that this is as a result of rearranging the mass on the site to improve the public domain. GANSW supported this approach and requested the following additional information:

- Design Excellence Strategy to be updated to include all Design Review Panel notes.
- the detailed design of the proposed free-standing commercial pavilion is to be developed with regards to materials, relationship to the public domain, form and use.

Transport for New South Wales (TfNSW)

TfNSW discouraged the proposed direct access to Honeysuckle Drive, consistent with the location of other access points across the Honeysuckle Precinct. TfNSW recommended the Applicant complete a road safety evaluation to ensure the proposed access arrangements provide both pedestrian and road safety.

TfNSW also recommended a Construction Traffic Management Plan.

Roads and Maritime Services (RMS)

RMS noted the proposed development would not have a significant impact on the classified road network. However, the broader traffic and transport impacts on Honeysuckle Drive should be considered following ultimate development of the Honeysuckle Precinct.

RMS also recommended the following:

- the proposed direct access from Honeysuckle Drive is undesirable for all road users (including pedestrians), and suggested the proposed design is amended to include access from a northern leg to promote efficient and safe travel for all road users and future occupants of the site.
- traffic measures to be carried out during the construction to minimise the impacts of construction vehicles on traffic efficiency and road safety.
- the sight line distances are to be in accordance with Australian Standard 2890:1:2004.
- should any work need to be undertaken outside the property boundaries of the subject site, the developer is to engage with RMS.

Subsidence Advisory NSW

Subsidence Advisory NSW advised the subject site is affected by historical coal mine workings in the Borehole Seam which lie approximately 60 m to 70 m below the current ground surface. Though these historical workings pose a credible subsidence hazard to the proposed development, it is possible to mitigate against this by suitable means such as the emplacement of grout into the mine voids. Subsidence Advisory NSW recommended procedures to reduce the potential mine subsidence hazard to the proposed development.

Department of Industry (DOI)

DOI sought further clarification regarding the Groundwater Inflow Analysis and recommended conditions of consent regarding groundwater.

Office of Environment Heritage (OEH)

OEH granted an exemption to the requirement for a Biodiversity Development Assessment Report (BDAR) and an Aboriginal Cultural Heritage Assessment Report (ACHAR).

OEH recommended the Applicant provide more information regarding flooding, including the flood refuge, the underground car park, flood evacuation routes and protection of all critical electrical infrastructure in accordance with Council's DCP requirements.

Heritage Council of New South Wales (HC)

HC confirmed the proposed development site does not contain any heritage items. However, further investigation is required to determine if there will be any archeological relics contained within the reclaimed fill, and a condition of consent is recommended requiring further investigation and unexpected finds procedures.

Hunter New England Local Health District (HNELHD)

HNELHD provided the following comments:

- should noise generation become an issue, a mechanism is required to allow the community to seek remedial action from the Applicant in a timely fashion.
- a remediation plan is required to ensure that land being used for residential and commercial purposes will be validated as safe by a Site Auditor.
- a Mosquito Management Plan is required to manage the potential impacts from exotic mosquitoes, imported from the nearby international first port of entry.
- an air conditioning and ventilation system, other than a cooling tower with water circulation is recommended. If a cooling tower system is required, the system will need to be registered with Council and be consistent with the requirements of the Council, *Public Health Act 2010*, NSW Code of Practice for the Control of Legionnaires Disease 2004 and other relevant Australian Standards.
- the proposed roof water re-use system will need to comply with the *Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (phase 1) 2006*.

Port of Newcastle

Port of Newcastle recommended conditions of consent to prevent the impacts of noise associated with the Port on the future residents of the development.

Environment Protection Authority (EPA)

EPA noted the development does not involve any activity listed in Schedule 1 of the *Protection of Environment Operations Act 1997* (POEO Act). As such, Newcastle Council is the appropriate regulatory authority for matters under the POEO Act in respect of the proposed development.

5.4 Key Issues – Council/Community/Special Interest Groups

5.4.1 Council key issues

Council did not object to the application but provided the following comments/recommendations:

- further information is required regarding the use and operational details of the proposed pavilion and ground floor retail uses.
- the proposed development is to respond to the design issues raised by the City of Newcastle Urban Design Consultative Group (UDCG). These include further development of the roof areas to provide equitable access to communal facilities, and consideration to how the development will be seen from a distance.
- the additional car spaces proposed (beyond what is required under the DCP) are to be included as Gross Floor Area.
- the substation is raised to the recommended Flood Planning Level of 2.9 m AHD.

- it is recommended the construction of the Steel Street Floodway is undertaken as part of the development at 35 Honeysuckle Drive.
- the stormwater design for the proposed pavilion is to be provided and include a rainwater tank for reuse within the site.
- the plans are to demonstrate the location of the required loading zone and confirmation regarding the loss of any kerbside parking spaces.
- the estimated waste volumes are to be reduced to avoid any additional commercial charges.
- the plans demonstrate the capacity to achieve sufficient residential waste and recycling collection, and bulky good disposal can be managed through self-haul tipping vouchers for each residential unit.
- the following conditions of consent are recommended
 - the recommendations contained within the contamination consultant reports are to be imposed
 - the recommendations in the Acoustic Assessment prepared by Muller Acoustic Consulting, dated July 2018 are to be imposed.
 - an Excavation Management Plan and Dewatering Management Plan are required.
 - the civil design for the raised pedestrian crossing is to be provided with the proposed public domain works along Honeysuckle Drive (driveway and streetscape works).

5.4.2 Community issues

Four submissions were received comprising two objections, one support and one comment.

The submissions objecting to the proposed development were primarily concerned with the proposed building height and non-compliance with the NLEP 2012. The following issues were also raised:

- environmental impacts associated with the height non-compliance, including overlooking, overshadowing, noise, and poor design inconsistent with Lee Wharf.
- calculation of Gross Floor Area is to include the additional car spaces proposed (beyond what is required under the DCP), resulting in an overall GFA non-compliance.

A submission was received commenting on the suggestion of electric car charging facilities. Another submission was received commending the building on its context to the site, use of materials and geometry.

5.5 Response to Submissions

Following exhibition of the application, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions.

The Applicant provided a Response to Submissions (RtS) (**Appendix B**), including a built form analysis, landscape plans, road safety audit and amended consultant reports for flooding, noise, and the BCA.

The RtS was made publicly available on the Department's website. The Department received eight additional submissions, including seven from Government agencies and one from Council. The key issues raised in these submissions are summarised in **Table 3**. No additional public submissions were received.

Table 3 | Submissions to the RtS

Newcastle City Council (Council)

Council provided the following comments:

- the location of the proposed kerbside loading bay is not supported and there is sufficient space for the loading and unloading of goods and waste management should be provided on the site, maximising the available on street kerbside parking.
- the two outstanding issues raised by the Urban Design Consultative Group regarding the roof area and how the development will be seen from a distance has been addressed is a matter for the GANSW and Department.
- car parking in excess of what is required by the consent authority is to be included as GFA.
- the Flood Risk and Impact Assessment satisfactorily addresses the previous comments regarding the electrical substation and flood planning level.

Council also provided recommended conditions of consent, relating to including stormwater, stand-alone pavilion and future retail uses.

Transport for New South Wales (TfNSW)

TfNSW recommended a condition of consent requiring a Construction Pedestrian and Traffic Management Plan (CPTMP) to be endorsed by Council.

Government Architect New South Wales (GANSW)

GANSW provided support for the materials and additional detail around the pavilion.

Roads and Maritime Services (RMS)

RMS noted the amended proposed development maintains direct access from Honeysuckle Drive and provided the following recommendations:

- Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.
- Council should consider appropriate sight line distances in accordance with the relevant Australian Standards and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.
- matters relating to internal arrangements on-site such as traffic / pedestrian management, parking, maneuvering of service vehicles and provision for people with disabilities are matters for Council to consider.
- should any work need to be undertaken outside the property boundaries of the subject site, the developer is to engage with RMS. All such works shall be undertaken at full cost to the developer and no cost to RMS or Council.
- should a fourth leg extension from the existing Steel Street traffic control signals be sought as part of this proposed development, detailed designs should be submitted for RMS consideration prior to the issue of any consent.

Department of Industry (Dol)

Dol reviewed the RtS and considers it adequately addressed matters of interest previously raised.

Office of Environment Heritage (OEH)

OEH recommended the Flood Emergency Response Plan is revised to provide protocols that ensure fail safe access to the proposed flood refuge.

Hunter New England Local Health District (HNELHD)

HNELHD reviewed the RtS and is satisfied that the majority of the issues have been addressed or can be addressed through conditions of consent. HNELHD recommend the following conditions of consent:

- a Mosquito Management Plan containing a risk assessment to ensure potential mosquito breeding sites are identified and to prevent both nuisance biting mosquitoes and disease transmitting mosquitoes affecting workers, employees, visitors and the local population.
- the proposed Stormwater Management re-use system is to comply with the *Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (phase 1)* 2006.

Subsidence Advisory NSW

The Subsidence Advisory NSW provided a notice of determination for approval under section 22 of the *Coal Mine Subsidence Compensation Act 2017*.

5.6 Response to Submissions Addendum

On 23 May 2019, the Applicant submitted additional information in the form of a Response to Submissions Addendum (RRtS). The RRtS included:

- confirmation from Newcastle City Council that the Traffic Committee now supports the servicing of the development from Honeysuckle Drive, subject to conditions
- updated clause 4.6 variation that includes GFA for additional car parking in the basement
- JBS Remedial Action Plan
- groundwater inflow analysis.



6. Assessment

6.1 Key assessment issues

The Department has considered the proposed development, the issues raised in submissions and the Applicant's RtS in its assessment of the application. The Department considers the key issues associated with the proposed development are:

- built form, design excellence and urban design
- amenity impacts
- residential amenity
- traffic, parking and access
- noise
- stormwater and flooding.

Each of these issues are addressed in the following sections of this report. Other issues considered during the assessment are addressed in **Section 6.8**.

6.2 Built form and urban design

The proposed development comprises two 8-storey mixed use buildings and a standalone retail pavilion (**Figures 3 to 5**).

The Department considers the key assessment issues in determining the appropriateness of the proposed buildings in this location are:

- design excellence
- building height
- Gross Floor Area.

These issues are addressed separately below.

6.2.1 Design excellence

Clause 7.5 of Newcastle Local Environmental Plan 2012 (NLEP 2012) requires the consent authority to be satisfied that the development exhibits design excellence.

Under the NLEP 2012, there is no formal requirement for a design competition or any other formal design excellence strategy. However, the proposal included a Design Excellence Strategy that involved the preparation of a reference design and three meetings with a Design Review Panel (DRP) appointed by the Hunter Development Corporation (HDC). The DRP included membership from GANSW, Council and the Newcastle Urban Design Consultative Group (UDCG).

Council initially noted the application had not responded to issues raised by the UDCG. These included further development of the roof areas to provide equitable access to communal facilities, and consideration of how the development will be seen from a distance.

GANSW acknowledged the project achieved design excellence in accordance with the Design Excellence Strategy and provided its general support. GANSW also considered that while the proposed development exceeds the height and FSR under the NLEP 2012, the strategy to rearrange the building mass improves the public

domain by creating greater setbacks from the foreshore. GANSW also noted this approach results in minimal additional overshadowing on surrounding buildings and the public domain and creates a large area of open space on the northern, harbour-edge side of the proposed development.

GANSW requested a summary record from the Design Review Panel and further information regarding materials. GANSW also noted that the proposed free-standing commercial pavilion was not included in Design Review Panel discussions, and therefore the design is to be developed further with regard to context, materials and its relationship to the public domain and the proposed residential buildings.

In response to these issues, the Applicant provided additional information in the RtS, including a detailed schedule of materials, detailed plans of the free-standing pavilion, additional landscape plans and renders. The Applicant also provided an amended Design Statement that included further renders showing how the proposed building will appear from different viewpoints and how the rooftop space will operate.

GANSW noted and accepted the additional information, maintaining its support for the proposal.

Council raised no concerns about the detailed design and RTS information.

The Department has considered the design excellence criteria under clause 7.5 of the NLEP 2012 and considers the proposed development exhibits design excellence as it:

- displays a high standard of architectural design that incorporates high quality materials comprising brick, hardwood timber, concrete and glass that reflect the industrial maritime history of the area
- re-arranges the bulk and mass on the site to provide additional areas of public domain consistent with the adjoining property to the east (50 Honeysuckle Drive), providing for a consistent foreshore frontage
- maintains the existing view corridor along the foreshore the Steel Street view corridor identified in the Newcastle Development Control Plan 2012 (NDCP 2012)
- will improve connectivity of the existing public domain with through-site pedestrian links to the foreshore promenade and active street frontages
- minimises adverse environmental impacts, including overshadowing, visual privacy and wind
- maximises the amount of sunlight, natural ventilation, views and privacy for all unit types, and an acceptable level of amenity has been achieved
- incorporates appropriate sustainable design principles which exceed those required to meet energy and water reduction targets as required by BASIX.

For these reasons, the Department concludes the proposed development demonstrates design excellence and satisfies the design excellence requirements of clause 7.5 of the NLEP 2012. The building design suitably comprises high quality architectural design that will positively contribute to the quality and amenity of the built environment and the Honeysuckle Precinct.

6.2.2 Building height

Clause 4.3 of the NLEP 2012 requires the height of a building is not to exceed the maximum height shown for the land on the Height of Buildings Map. The site contains two maximum building heights comprising a maximum of 24 m along the southern frontage and a maximum of 14 m to the northern frontage as shown in **Figure 7** and **Table 4**.

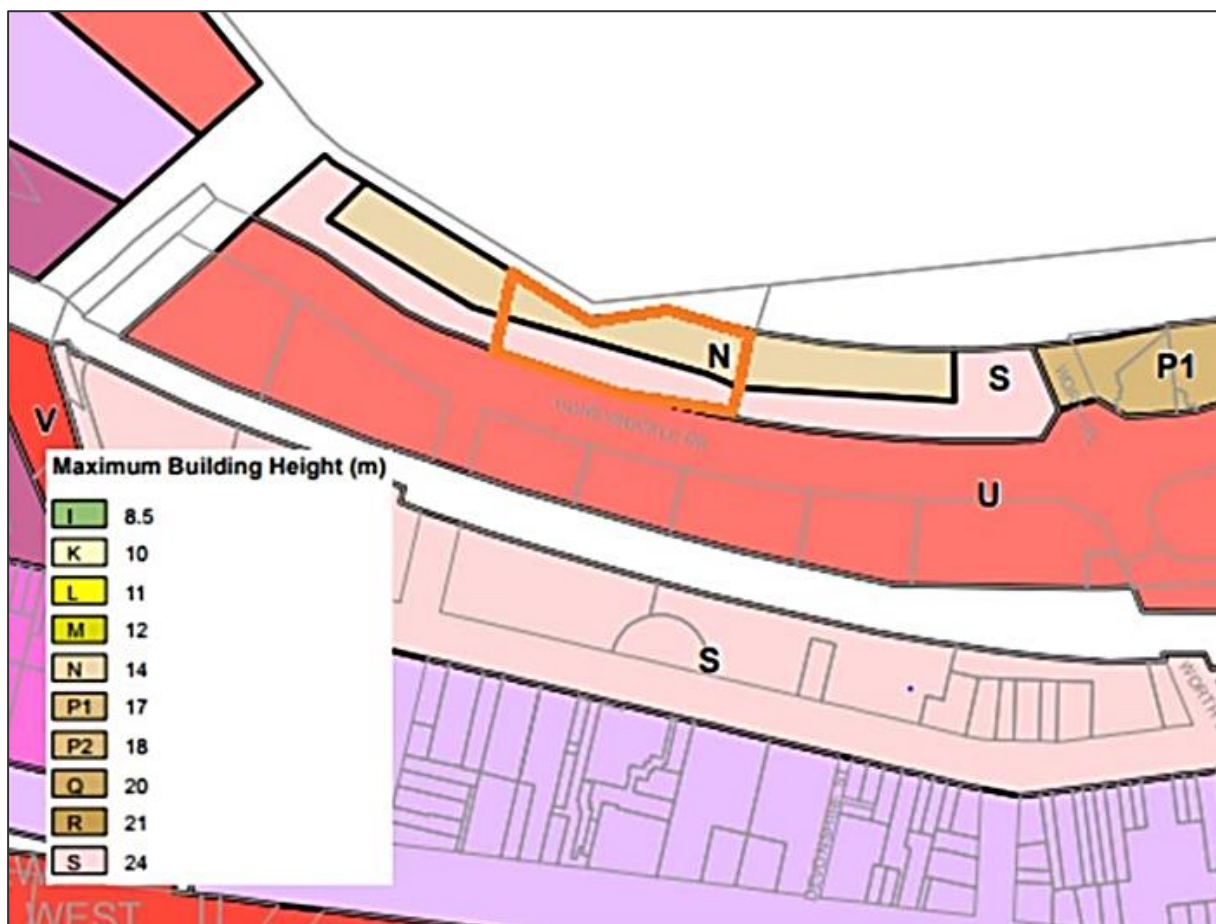


Figure 7 | Height of building extracted from the NLEP 2012 (Source: Applicant's EIS).

The proposed development seeks a variation to the maximum building height (**Table 4**) relating to the following:

- southern section: level 7 and rooftop elements (lift, stair and pergola) exceed the overall maximum building height control by a maximum of 3.7 m.
- northern section: up to 27.9 m which exceeds the maximum height of 14 m by 13.9 m.

Table 4 | Height of building variation

Location	Permissible building height	Proposed max. building height	Variation	% non-compliance
Northern section	14 m	27.90	13.9 m	99%
Southern section	24 m	27.90	3.9 m	16%

The Applicant has submitted a variation request under clause 4.6 of NLEP 2012 to justify the proposed variation to the height of building development standard (**Appendix B**). The Applicant provides that the proposed variations will reflect the character of the Honeysuckle Precinct and will not result in any additional environmental impacts, including visual impact and overshadowing. The Department has considered this clause 4.6 variation request in detail below and in **Appendix E**.

The Department considers the proposed 13.9 m variation to the northern section of the site will not result in any additional overshadowing to the south or result in any view loss, noting this portion of the site is located forward of the southern part of the site.

The Department acknowledges that in isolation the proposed 13.9 m variation is numerically significant. However, the Department is satisfied the proposed variation is appropriate given the varied height controls that apply to the site.

The Department has considered the advice provided by the GANSW and Council's Urban Design Consultative Group (UDCG). Both the GANSW and UDCG support the proposed built form, with the UDCG noting the proposed height distribution over the site achieves a better urban design outcome than the planning controls offer. The Department notes this arrangement and variation is also consistent with the approved built form at the adjoining property to the east at 50 Honeysuckle Drive.

The Department agrees the redistribution of height over the site provides an improved urban design outcome, including a uniform height and scale to the entire northern foreshore frontage. In addition, the variation of the 14 m building height control is in effect offset by a lower built form in the south-east portion of the site, which would otherwise be able to be built to 24 m in line with the LEP maximum height limit.

The transfer of building height from the northern frontage also results in a single-storey pavilion along the foreshore, and that while the parts of the upper mass of part of the buildings exceed the NLEP envelope controls, there are substantial areas of building envelope permitted by NLEP that are not utilised, affording the development with greater areas of public open space fronting the foreshore (**Figure 8**).

In regard to the 3.9 m variation associated with level 7 and the rooftop elements of Building A and B, the Department considers this 16% variation to be acceptable. The proposed development has also demonstrated it will not have any significant additional impacts in terms of visual privacy and overshadowing (**Section 6.3**) to neighbouring properties or the public domain and is consistent with the built form objectives for the site.

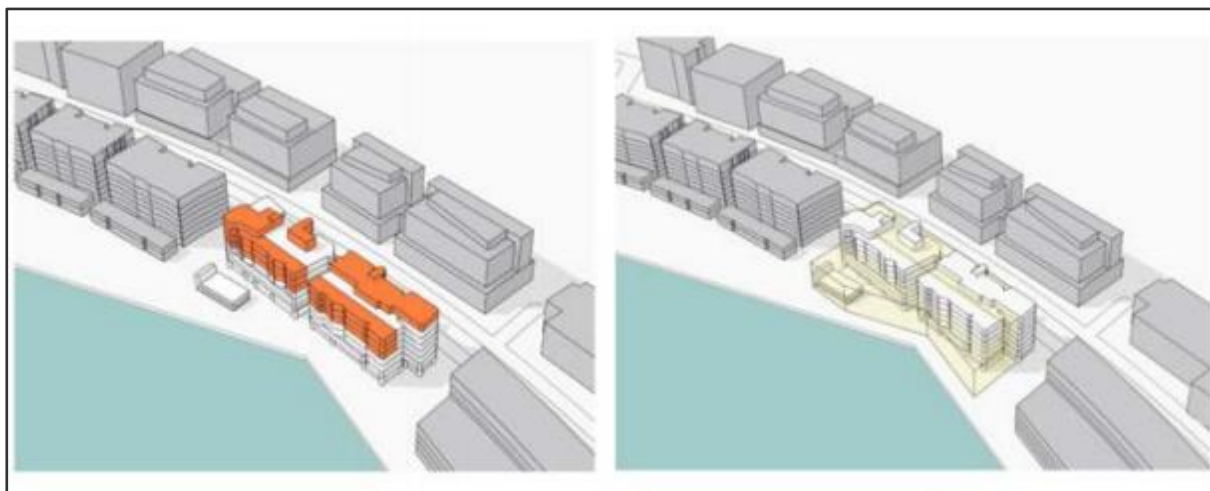


Figure 8 | Left: Building mass exceeding the LEP envelope (orange). Right: Unused areas of building mass permitted by the NLEP 2012 (Source: Applicant's EIS).

In regard to the 3.9 m variation associated with level 7 and the rooftop elements of Building A and B, the Department considers this 16% variation to be acceptable. The proposed development has also demonstrated it will not have any significant additional impacts in terms of visual privacy and overshadowing (**Section 6.3**) to neighbouring properties or the public domain and is consistent with the built form objectives for the site in the context of the existing and future built form in the Honeysuckle Precinct.

The Department is satisfied the proposed development is consistent with the objectives of the development standard and zone, enables a transition in built form from Honeysuckle Drive to the foreshore and achieves a high level of amenity for future residents.

The Department is therefore of the view that it is unnecessary for the proposed development to comply with the maximum height development standard. For these reasons, the Department supports the proposed building form and height.

6.2.3 Floor Space Ratio

Clause 4.4 of the NLEP 2012 requires the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Map. The site contains a split FSR comprising a maximum of 2:1 and a maximum of 2.5:1 as shown in **Figure 9** and **Table 5**. When combining both frontages' FSR, an overall FSR of 2.25:1 is established.

Table 5 | Floor Space Ratio variation

Location	Permissible FSR	Permissible GFA	Proposed GFA	Proposed FSR	% non-compliance
Northern frontage	2:1	5,052 m ²	Above ground = 2,554 m ²	0.51:1	Complies
			Above ground including basement = 3,293 m ²	0.65:1	Complies
Southern frontage	2.5:1	6,662.5 m ²	9,122 m ²	3.42:1	37%
Overall	2.25:1	11,714 m ²	12,415 m ²	2.249:1	6.2%

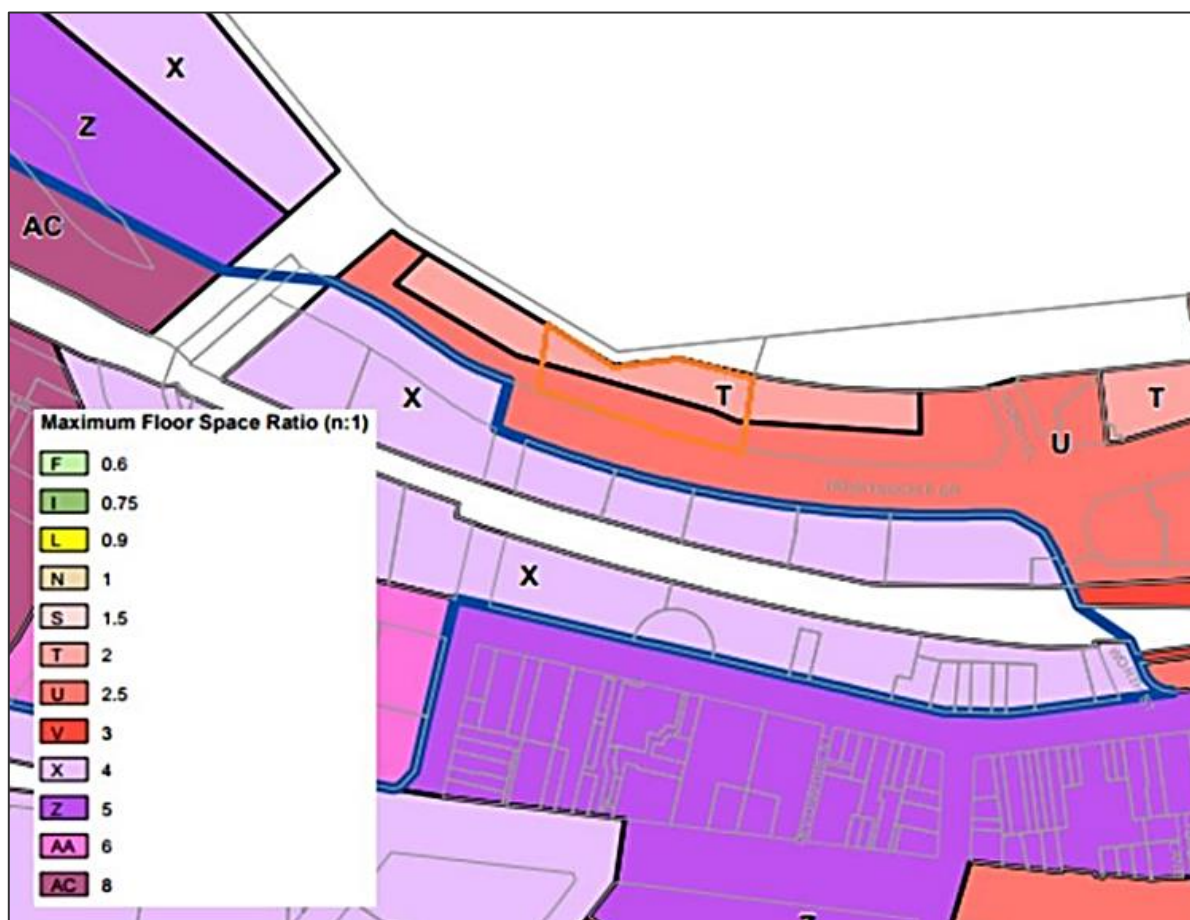


Figure 9 | Floor space ratio extracted from the NLEP 2012 (Source: Applicant's EIS).

The development proposes a variation to the floor space ratio for the southern frontage (37%) and overall of 6.2%, and therefore does not comply with this control.

Council and a public submission raised concerns regarding the calculation of GFA, specifically the exclusion of car spaces. The definition of GFA excludes car parking to meet any requirements of the consent authority. The submissions contend that in accordance with this definition, the car spaces proposed beyond what is required under the DCP, are to be included as GFA.

The Applicant originally provided that although the proposed car parking exceeds what is required under the DCP and is to be wholly contained within the basement, it is not calculated as the definition for GFA also excludes any basement storage and vehicular access, loading areas, garbage and services. Further, only habitable rooms in a basement are included.

The Department considered the definition of the GFA and how it relates to car parking beyond what is required by the consent authority. The Department concluded additional car parking is required to be included in the calculation of GFA, consistent with Council's reasoning.

The Applicant subsequently submitted a revised request under clause 4.6 of NLEP 2012 to justify the proposed variation to the floor space ratio development standard, detailed in **Appendix B** and **Appendix E**.

With regards to the FSR variation to the overall development of 6.2%, the additional floor space relates to car parking which is located within the basement and therefore does not contribute to any visible additional bulk of the proposed development.

The Department has also considered the proposed variation to the northern façade (less the additional proposed for the car parking). As the development complies with the overall FSR above ground when the northern and southern frontages' FSR is combined, the proposed variation relates to a redistribution of gross floor area and not additional visible gross floor area. The proposed development has demonstrated the redistribution for GFA is acceptable in terms of built form and design, as discussed in **Section 6.2.1**, and environmental impacts, as discussed in **Section 6.3** of this report.

The Department is satisfied the proposed development is consistent with the objectives of the development standard and zone, and the proposed density provides a built form that responds to the existing and desired future character of the area and would provide a high level of amenity for future residents.

The Department concludes that the proposed redistribution of floor space, in conjunction with the redistribution of height, results in a positive urban design outcome, which is supported by GANSW and Council. On this basis, the Department is of the view that it is unnecessary for the proposed development to comply with the FSR development standard in this instance.

6.2.4 Public domain

The proposed development involves a ground floor podium level walkway and through-site links that will connect to the future foreshore promenade as part of the public domain. The foreshore promenade between the proposed development and the Hunter River is to be delivered by Hunter Development Corporation, with sections already completed east and west of the development. The ground floor podium level will be raised and will comprise outdoor seating, landscaping and through-site links that will connect Honeysuckle Drive to the future foreshore promenade as shown in **Figure 10**.

Council recommended conditions of consent requiring the public domain works within Honeysuckle Drive frontage to be at no cost to Council and be in accordance with Council's *City Centre Public Domain Manual* guidelines, design specifications and Australian Standards. These works include a new footpath, driveway, a raised pedestrian crossing connecting north and south of Honeysuckle Drive, street lighting, street trees, street furniture and any required street signage.

The Department considers the raised podium will provide a soft barrier between the proposed development and the foreshore, defining the two spaces. The majority of the northern frontage of the podium abutting the foreshore is open to the sky, increasing the spaciousness to the promenade. Further, the frontage of the development will be activated through the retail uses and outdoor seating, having a positive waterfront interface.

The Department supports Council's public domain conditions and recommends they be imposed as conditions of consent.

The Department concludes the proposed development will contribute to the proposed public domain works and relate positively to the Hunter River foreshore.

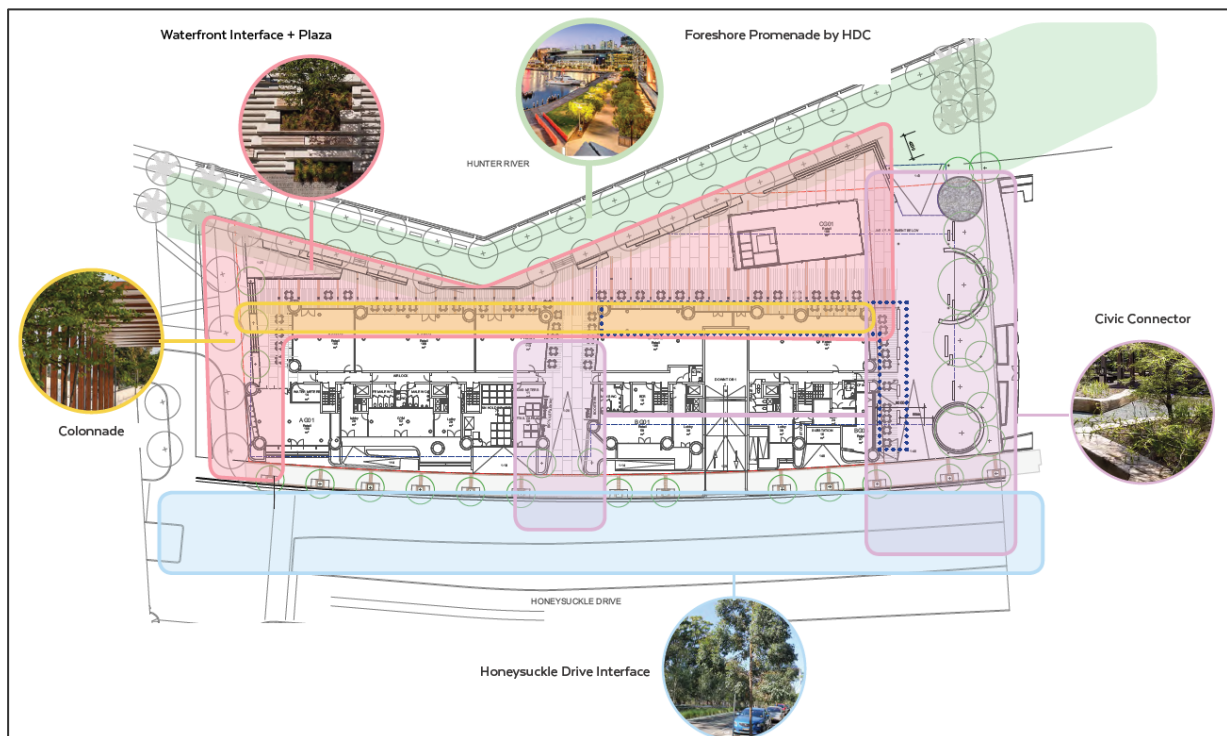


Figure 10 | Landscape strategy (Source: Applicant's EIS).

6.3 Amenity impacts

6.3.1 Overshadowing

The proposed development will result in overshadowing, primarily to HoneySuckle Drive and the lower floors of the existing commercial buildings to the south of HoneySuckle Drive.

The extent of overshadowing arising from the development is created by the established planning controls and is an inevitable consequence of the realisation of 7-storey building forms in the locality. While the proposal exceeds the height controls, the extent of overshadowing that is beyond a compliant development (in terms of height and setbacks under the NLEP 2012) is minor, relating to minimal additional overshadowing from the south-eastern side of the proposed development (**Figure 11**).

A public submission was received raising concerns with overshadowing in general. Council raised no concerns with regards to overshadowing. The Applicant provided shadow diagrams to demonstrate the overshadowing from the proposed development compared to the overshadowing from a compliant scheme. The Applicant

acknowledges that the building will result in overshadowing to Honeysuckle Drive. However, the extent of the overshadowing is not significant.

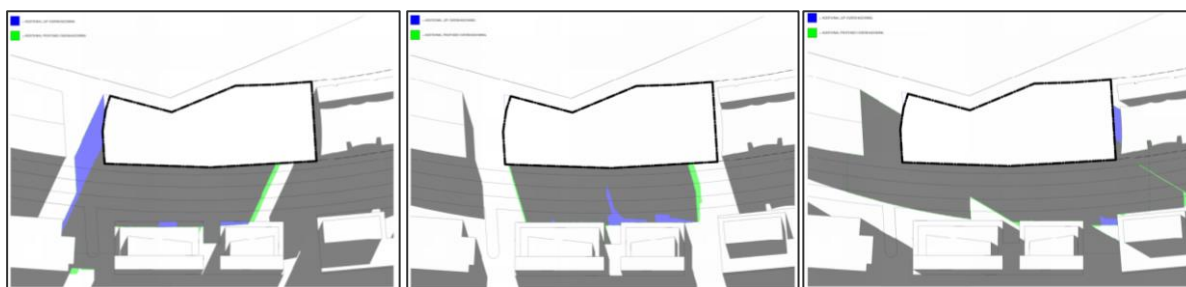


Figure 11 | Overshadowing at 9am, 12pm and 3pm at midwinter. Additional overshadowing beyond LEP envelope shown in green and reduced overshadowing from LEP envelop shown in blue (Source: Applicant's RRTS).

The Department considers overshadowing that will arise from the proposed development is largely consistent with the envisaged development for the site under the NLEP 2012. Further, the shadows will predominately fall to the south across Honeysuckle Drive, having minor impacts to the adjoining commercial buildings. There will be no additional overshadowing to the public domain, foreshore or residential dwellings.

For these reasons, the Department considers the overshadowing impacts are acceptable.

6.4 Residential amenity of apartments

SEPP 65 seeks to improve the design quality of residential development. The Apartment Design Guide (ADG) sets out best practice design principles for residential development. A detailed assessment is provided at **Appendix C**.

The Department has considered the residential amenity of the proposed development against the ADG design criteria and considers the proposed development is generally consistent with the criteria, and demonstrates good design in that the development provides an acceptable level of amenity. The departures from the recommendations of the ADG in relation to visual privacy are addressed below.

6.4.1 Visual privacy

The ADG recommends minimum building separation distances between habitable rooms and balconies of adjacent buildings as a way of ensuring suitable visual privacy. The development is bounded by the Hunter River and foreshore promenade to the north, Honeysuckle Drive to the south and the designated floodway of Steel Street and Worth Place to the west. The proposed development does not achieve the minimum separation distances from the building to boundary in these directions. However, as the adjoining areas in these directions are not capable of accommodating any development (i.e. they include a river, road and floodway), there are no visual privacy or building separation concerns (**Figure 12**).

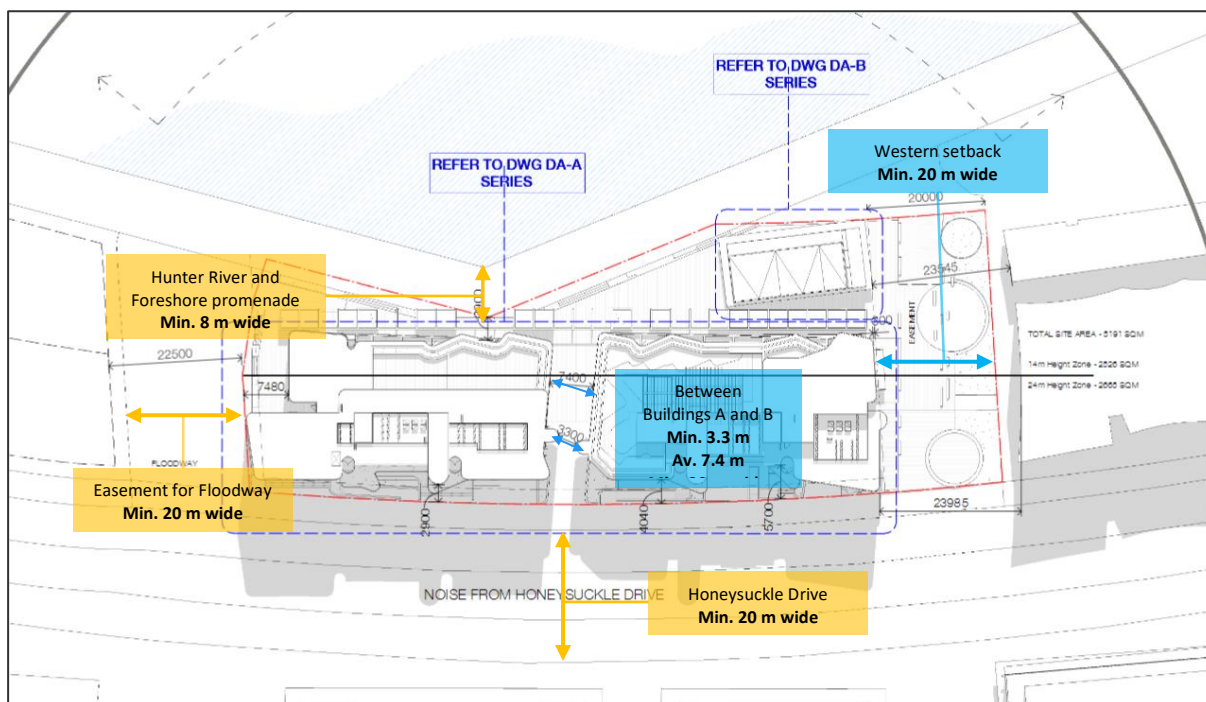


Figure 12 | Site boundaries (Source: Adapted from Applicant's RRTS).

The proposed development provides for a nil setback to the western and Honeysuckle Drive southern boundary, minimum 3.9 m to the northern Hunter River boundary, minimum 20 m to the western floodway boundary and minimum 3.3 m between buildings as shown in **Figure 12** and detailed in **Appendix C**.

On the eastern side, the development has provided a minimum setback of 20 m to the property boundary and the adjoining development to the east, achieving the minimum ADG requirement of 18 m.

For the through site link between Building A and Building B, the development proposes a minimum setback of 3.3 m and an average setback of 7.4 m, below the minimum ADG separation requirement of 12 m (up to Level 3) and 18 m (Level 4 to Level 7).

The Department has considered the distance between the proposed buildings on site and the design guidance provided for the ADG requirement. Direct overlooking has been adequately mitigated with privacy screens, angled balconies and offset windows.

The Department has also considered the layout of the site and recognises the proposed development will maintain existing view corridors along the foreshore and the Steel Street view corridor identified in the NDCP 2012.

The Department considers the proposed development will not experience any adverse visual privacy or building separation issues from within the site. Due to the site's location, the proposal will also not compromise the visual privacy or building separation for any future development.

6.4.2 Open space

The ADG requires units to provide appropriately sized private open space and communal open space for residential amenity. The ADG stipulates minimum areas and depths to achieve sufficient space for both private and communal open space areas.

The proposed development provides for private open space in the form of a balcony to each residential unit. All units achieve the minimum area requirement and the majority of the units achieve the minimum area width requirements.

The exceptions are unit 1-bed type 2, 3-bed type 4 and 3-bed type 5, resulting in 17 of 92 units (18.5%) not strictly complying. These balconies do not achieve the minimum depth requirement (between 200 mm to 1 m) as a result of their irregular shape as they form as part of the corner elements of the façade. However, all these unit types exceed the minimum balcony areas. The balconies are located adjacent to the living spaces and face predominantly north (80%). Eighteen units have primary balconies to the south, east or west. Secondary balconies are also provided to some bedrooms.

The Department considers these variations are acceptable as the proposed balconies generally exceed the minimum area and they have been designed to contribute to the overall architectural form and detail of the building and would still provide an appropriate level residential balcony amenity.

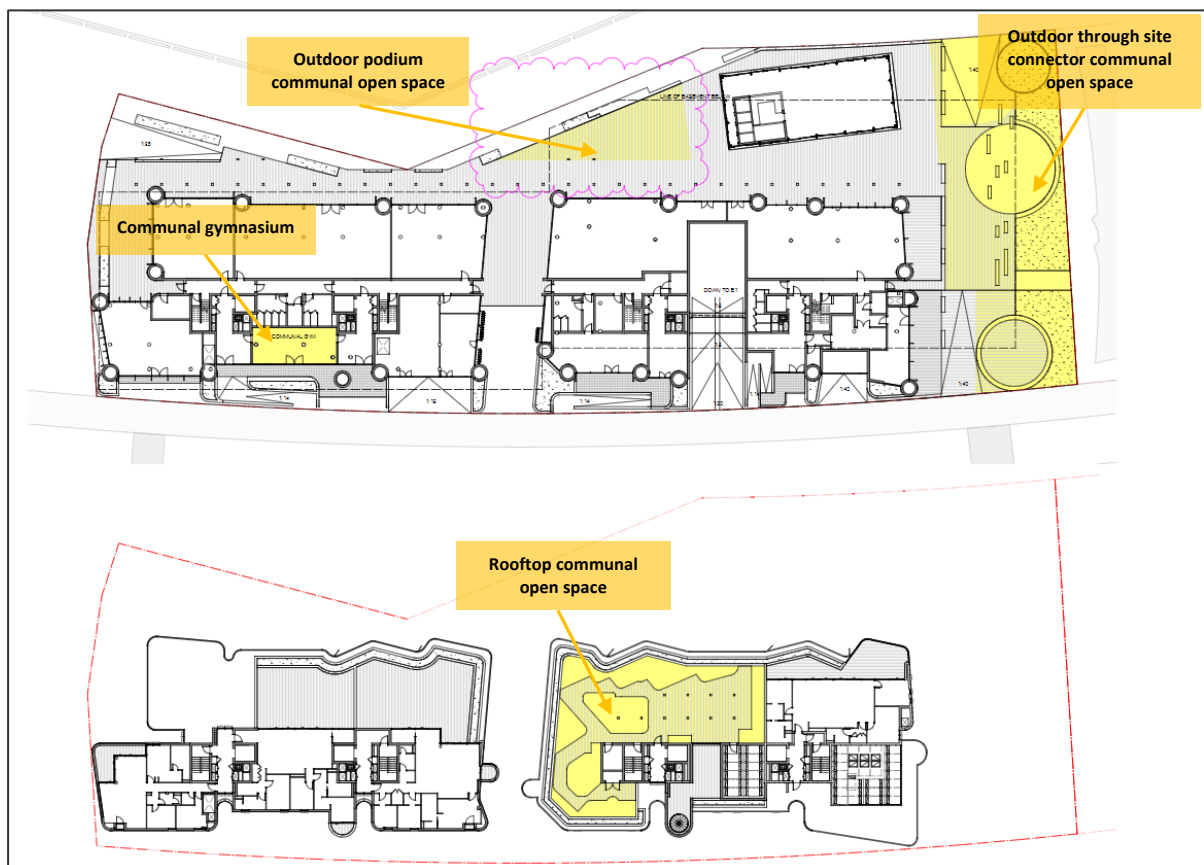


Figure 13 | Communal open space (Source: Adapted from Applicant's RRTS).

The ADG also requires a minimum of 25% of the total site area for communal open space. The proposed development provides for a total area of 1,236 m², or 24% of communal open space over four areas, comprising an indoor ground floor gymnasium, outdoor podium area, outdoor through-site connector and rooftop space as shown in **Figure 13**. Council recommended further development of the rooftop areas to provide equitable access to communal facilities for both Buildings A and B, in response to the design issues raised by the UDCG.

The Applicant noted the proposed communal space located on the rooftop of Building B will service the residents of both towers. The proposed communal gym to the ground floor of Building A will also service the residents of both towers and therefore, each building will have direct access to communal open space. Further, the travel distance between each building is minor and consistent with the distance between the car park and individual units.

The Department considers a minor shortfall of 1% acceptable as the proposed development overall exceeds the minimum requirements for private open space. The site also provides through-site links that contribute to improved connectivity to the public domain and which provides direct access to the foreshore promenade.

With regards to the quality of the communal open space, the Department considers that the proposed development can achieve this by requiring the detailed design of the communal open space to be provided prior to the relevant construction certificate.

Therefore, the Department considers the development provides sufficient open space for future residents as:

- all units either meet or exceed the minimum private open space area requirements
- the proposed development provides for a total of 1,236 m², or 24% of the site area for communal open space across four different areas
- the proposal provides for a range of communal spaces that can be accessed by all residents and will facilitate different recreational activities
- high-quality communal open space can be achieved
- the outdoor communal areas receive direct sunlight between 9 am and 3 pm during mid-winter and 80% of the private balconies face north
- the site provides through-site links with public access from Honeysuckle Drive to the foreshore.

6.4.3 Deep soil zones

The ADG requires deep soil zones for a minimum of 7% of the total site area with a minimum dimension of 6 m. The proposed development provides for a minimum of 5.3% of the total site area with a minimum dimension of less than 6 m.

The Applicant contended that the average of the areas provided for deep soil zones exceeds 6 m and the site currently does not contain any vegetation, therefore the proposed development will be an improvement to the existing situation. The Applicant also notes that the areas between the buildings on this site double as flood and stormwater flow paths and therefore further vegetation than what is proposed would impact overland flow.

Given the site context and the proposed built form, the Department considers the proposed deep soil zones are not sufficient. The proposed development to rearrange the built form to widen the outdoor space fronting the public domain provides for greater opportunity to include sufficient deep soil zones and accommodate healthy plant and tree growth for residential amenity.

The Department considers the proposed development is capable of complying subject to a condition of consent requiring the Applicant to provide amended plans demonstrating deep soil zones with a minimum dimension of 6 m for a minimum of 7% of the total site area, consistent with the ADG. The plans are to include section plans to demonstrate the capacity for deep soil plantings.

Therefore, subject to the above condition, the Department considers the proposed development will achieve sufficient deep soil zones, consistent with the requirement under the ADG.

6.4.4 Conclusion

The development has demonstrated appropriate visual privacy, open space and deep soil zones. The Department concludes the proposed development would achieve a suitable level of residential amenity and will not have any adverse impact on the locality, subject to conditions of consent.

6.5 Traffic, parking and access

6.5.1 Traffic

The Applicant submitted a Traffic and Parking Assessment (TPA), which provides an assessment of the potential traffic impacts, car parking and a series of recommendations.

The report estimates the proposed development will result in a morning peak of 128 vehicle trips per hour and an afternoon peak of 109 vehicle trips per hour. The report demonstrates the local road network has capacity to accommodate these traffic projections, including at key nodes, the Honeysuckle Drive/Worth Place roundabout and the Hannell Street / Honeysuckle Drive signalised intersection.

RMS confirmed traffic would not have a significant impact on the classified road network and no issues were raised by Council.

The Department considers that the proposed development and associated traffic generation is consistent with the strategic planning for the site and the proposed development has adequately demonstrated the existing road network can accommodate the development.

6.5.2 Parking

Basement car parking

The proposed development provides for 190 on-site car spaces contained within two levels of basement car parking. In accordance with the Apartment Design Guide, the maximum parking rates are calculated from the RMS guide to traffic generating development or the NDCP 2012 (whichever is less). **Table 6** demonstrates the parking rate in accordance with each guideline.

Table 6 | Car Parking rates

Component	RMS	NDCP 2012	Proposed	Additional
Residential	75	96	147	
Visitor	13	19	21	
Retail	6.1 per 100 m ² (78)	1 per 60 m ² (21)	22	
Total	166	136	190	54

Council did not raise concerns regarding the number of spaces proposed, but recommended the additional car spaces (beyond what is required under the DCP) be included as GFA. This is discussed in **Section 6.2.3** and **Appendix E**.

The Department concludes while the proposed car parking exceeds the controls, it is acceptable as the road network can accommodate the increase in traffic and would not result in detrimental traffic impacts.

Motorcycle and bicycle parking

The proposed development provides 150 bicycle spaces and 10 motorcycle spaces contained within the basement. In accordance with the ADG, the maximum parking rates are calculated from the NDCP 2012. While the 150 bicycle spaces exceed those in the NDCP by 49 spaces, the Department supports the additional spaces to encourage further bicycle usage in the area.

Table 7 | Motorcycle and bicycle rates

Component	RMS	NDCP 2012	Proposed
Motorcycle	-	10	10
Bicycle	-	101	150
Total	-	111	160

6.5.3 Access

The TPA recommends the car park access arrangements on Honeysuckle Drive provide suitable pedestrian safety and are capable of complying with the Council's requirements and Australian Standard (AS) 2890.1-2004 Parking Facilities – Part 1 Off-street car parking. The TPA also provides the proposed on-site basement car parking provision and layout is generally satisfactory providing sufficient spaces, manoeuvrability and serviceability.

TfNSW and RMS discouraged the proposed direct access to Honeysuckle Drive, as it is considered undesirable for all road users (including pedestrians). TfNSW recommended the Applicant complete a road safety evaluation to ensure the proposed access arrangements provide both pedestrian and road safety.

RMS recommended the proposed design is amended to include access from a northern leg to promote efficient and safe travel for all road users and future occupants of the site. RMS also recommended the sight line distances are to be in accordance with the relevant Australian Standards.

Council required confirmation of the location of the required loading zone.

As part of the RtS, the Applicant provided a Road Safety Audit (RSA). The RSA provides support for the application subject to recommendations, including the installation of tactile ground surface indicators, signage and parking restrictions and compliance with the relevant Australian Standards. The Applicant also confirmed the proposed loading was to be located kerbside.

RMS required additional items for Council to consider, including that appropriate sight-line distances have been provided and all internal arrangements on-site such as traffic / pedestrian management, parking, manoeuvring and provision for people with disabilities. This submission was forwarded to Council for their consideration.

Council did not raise any issues regarding sight-lines and internal arrangements. However, advised the kerbside loading arrangement from Honeysuckle Drive could not be supported, and sufficient space for loading of goods and waste should be provided on the site, maximising the available on-street kerbside parking.

Newcastle Council's local traffic committee subsequently considered the Applicant's request for the installation of one consolidated loading zone, comprising 3 parking spaces on the northern side of Honeysuckle Drive. The Committee included members from Council, RMS and NSW Police.

The Committee recommended the adoption of the loading zone on Honeysuckle Drive, with the approved hours of 6 am to 9 am Monday to Friday, 2 hour parking 9 am to 5 pm Monday to Friday, and 4 hour parking Saturday and Sunday 9 am to 5 pm.

The Department recommends a condition of consent requirement compliance with the relevant Australian Standards for car parking and site lines, and hours of operation for the loading zone on Honeysuckle Drive consistent with the Committee's recommendations.

6.6 Noise

The site is located between the Newcastle Port and Honeysuckle Road and is therefore likely to experience noise impacts. The EIS was accompanied by a Noise Assessment (NA) that provided an assessment of the impacts of potential noise intrusion and emission from the development on surrounding receivers.

The NA provided recommendations for noise attenuation, including minimum glazing requirements and sealable air gaps. Noise emissions relating to construction and operation were demonstrated to be below the relevant noise management levels.

Council recommended a condition of consent requiring the recommendations contained within the NA be imposed.

The Department also received a public submission raising concern with noise generally and a submission from HNELHD recommending a procedure to address any complaints from the community.

The Port of Newcastle identified likely noise impacts from the 24/7 operation of the port, including noise from ship engines, horns, loading and unloading operations and land sides operations. The Port of Newcastle recommended conditions of consent requiring the design of the buildings, in particular the window treatment for all habitable rooms to meet the standards for glazing and noise attenuation as set out in the NA.

The Port of Newcastle also recommended a notation be included in the 'Contract of Sale' and on the Section 149 Planning Certificate for each residential unit within the development.

The Department considers noise can be suitably managed subject to conditions of consent, requiring glazing treatments consistent with the recommendations contained within the NA and those consistent with 50 Honeysuckle Drive.

The proposed development also includes ground floor retail uses (e.g. shops or food and drink premises). The future uses of the retail tenancies are currently unknown and will be determined under separate future development applications. An assessment of the potential noise impacts in connection with these uses will occur during the consideration of these applications by Council.

With regards to any mechanical plant, details of the specific equipment to be installed have not been provided. The Department considers a detailed design can be provided at Construction Certificate phase and recommends a condition of consent requiring the plant and equipment to have a maximum noise emission of background plus 5dBA, and no greater than the background noise level between 12 midnight and 7 am, consistent with the Industrial Noise Policy.

The Department is satisfied that this approach will manage potential noise impacts.

6.7 Stormwater and flooding

The site is located within the Cottage catchment and is affected by stormwater flooding and riverine flooding. A Flood Risk and Impact Assessment (FRIA) was been provided that reviews existing flood studies and outlines flood risks to the site, including the assessment of flood impacts arising from the proposed development. The FRIA demonstrates the floor levels of the proposed development are set at or above the Flood Planning Level (FPL), with on-site flood-free refuge available above the Probable Maximum Flood (PMF).

The flood impact modelling assessment shows negligible off-site impacts within the Honeysuckle Redevelopment Area Flood Study. The provision of designated floodways within the broader Honeysuckle Redevelopment Area mitigate adverse flooding impacts external to the Redevelopment Area. The FRIA also includes a Flood Emergency Response Plan, to assist in the management of risk to life during extreme flood events.

Council recommended the substation is raised to the Flood Planning Level of 2.9 m, the construction of the Steel Street Floodway is undertaken as part of the development at 35 Honeysuckle Drive, and the stormwater design for the proposed pavilion is to be provided and include a rainwater tank for reuse within the site.

OEH recommended information on the proposed flood refuge, in accordance with Council's DCP requirements, confirming the underground car park can be safely evacuated during an extreme flood event and the proposed flood evacuation route from the isolated retail building can be safely traversed by pedestrians during an extreme flood event. OEH also advised all critical electrical infrastructure be located above the flood planning level in accordance with Council's DCP requirements.

HNELHD recommended the proposed Stormwater Management re-use system is to comply with the *Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (phase 1)* 2006.

To address these concerns, the Applicant provided an amended FRIA as part of the RtS demonstrating consistency with the FPL.

OEH reviewed the amended FRIA and recommended the Flood Emergency Response Plan is revised to include measures to ensure fail safe access to the proposed flood refuge.

Council provided support for the revised FRIA and consider the comments made regarding the proposed electrical substation and the FPL have been satisfactorily addressed and that the stormwater design for the proposed pavilion can be addressed through conditions of consent.

The Department considers the proposed development will not result in any adverse impacts with regards to flooding, including risks to residents or impacts to the surrounding area, subject to recommended conditions.

6.8 Other issues

The Department's consideration of other issues is provided in **Table 8**.

Table 8 | Department's consideration of other issues

Issue	Department's consideration	Recommended condition
Waste	- The Applicant has submitted an Operational Waste Management Plan. - Council provided that the Plan demonstrates sufficient capacity to achieve the required residential waste and recycling collection. - Council also noted that while there is no stated plan for bulky good disposal, there is an option for self-haul tipping voucher for each residential unit. - The Department is satisfied the development can adequately manage operational waste generation and collection.	Waste collection off Honeysuckle Drive to be approved by Council.
Retail uses	- Council requested further information regarding the proposed pavilion and ground floor retail uses. - In the RtS, the Applicant noted the future retail uses and impacts can be managed Council. - Council requested the uses are addressed through the imposition of conditions of consent. - The Department accepts the proposed development does not seek specific retail uses and subsequent development applications can be lodged with Council for the individual tenancies.	- No consent is granted for retail uses. - Separate development applications are to be lodged for the fitout and operation of retail uses, including outdoor seating areas.
Contributions	Newcastle Section 94A Development Contributions Plan 2009 requires development contributions to all new development that has an estimated cost of more than \$250,000.	The payment of 2% of the estimated cost of the development is required to be paid to Council prior to the

- The Plan stipulates a levy of 2% of the estimated cost of the development.
- Council has recommended a condition of consent requiring contributions.
- The Department supports the recommended condition.

issue of the first Construction Certificate.

Heritage and Archeology

- The EIS was accompanied by a Heritage Assessment (HA). The HA concluded there is low to nil archaeological potential for Aboriginal objects, no heritage listed items within or within the vicinity of the site and low to nil potential for archeological relics of significance.
- Heritage Council confirmed the proposed development will not impact upon any built, landscape or Aboriginal heritage. However, further investigation is required to determine if there will be any archeological relics contained within the reclaimed fill.
- Heritage Council recommended conditions of consent requiring ground penetrating radar, unexpected finds procedures and onsite inductions for contractors.
- The Department agrees that the discovery of any unexpected finds can be appropriately managed with conditions of consent.

- Should any Aboriginal objects or unexpected historical archeological remains be discovered during works, work is to cease, and a qualified archeologist is to be engaged and the relevant authority notified.

Acid Sulfate Soils

- The site is identified as having Class 3 acid sulfate soils in accordance with the NLEP 2012.
- The Applicant submitted an Acid Sulfate Soil Management Plan (ASSMP) containing management and monitoring strategies, including soil treatment, neutralising leachate and dewatering.
- Council recommended a condition of consent requiring an Excavation Management Plan and Dewatering Management Plan.
- The Department considers the recommended management and monitoring strategies contained within the ASSMP will suitably minimise the risk of harm to human health and the environment subject to conditions.

- Management of acid sulfate soils is to be in accordance with the ASSMP and an Excavation Management Plan and Dewatering Management Plan.

Groundwater	• The proposed development involves the excavation of approximately 6.6 m to accommodate two levels of basement. It is therefore likely groundwater will be encountered and as a result, dewatering will be necessary for basement construction. • A Groundwater Inflow Analysis (GIA) was submitted with the EIS outlining the estimated water take quantities and potential impacts of the proposed development against the provisions of the NSW Aquifer Interference Policy (2012). • The GIA advised widespread lowering of the unconfined aquifer is unlikely. The results suggest that a change in groundwater head of up to about 1 m is expected at a distance of 5 m to 10 m from the perimeter wall. • The Department of Industry (DoI) advised that a temporary groundwater extraction licence is to be obtained. • The Department is satisfied groundwater impacts can be appropriately managed subject to conditions of consent. • A temporary groundwater licence must be obtained. • Sufficient drainage must be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded. • Construction materials and methods must not cause pollution of the groundwater. • The disposal of any contaminated pumped groundwater must comply with the provisions of the <i>Protection of the Environment Operations Act 1997</i> and any requirements of the relevant controlling authority. • Contaminated groundwater must not be reinjected into any aquifer.
Construction traffic	• TfNSW recommended RMS require confirmation from Council that appropriate traffic measures are in place during the construction phase of the project, to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity. • TfNSW also recommended a condition of consent requiring a Construction Pedestrian and Traffic Management Plan (CPTMP) to be endorsed by Council. • RMS recommended appropriate traffic measures during construction to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity. • The Department considers the traffic generated by the construction of the proposed development will be less than the expected traffic generated from the development, therefore the Department is satisfied the surrounding road network can safely accommodate construction traffic. • A Construction Pedestrian and Traffic Management Plan (CPTMP) is to be prepared and endorsed by Council. • Construction hours restricted to: ○ Monday to Friday: 7 am to 6 pm ○ Saturday: 8 am to 1 pm ○ Sunday and Public Holidays: No work

Construction impacts

- The Applicant has provided a preliminary Construction Management Plan that sets out the management of the construction site, including traffic, noise and vibration, waste, dust, soil and water and the overall impact to adjacent sites.
- The Department requested detailed measures for receiving and handling noise complaints from the community during construction.
- The Applicant provided an amended Noise Assessment that included noise management measures involving a 24-hour toll-free complaints line, complaints register and follow up procedures.
- An updated Construction Environmental Management Plan and Construction Noise and Vibration Management Plan is to be prepared.



7. *Evaluation*

The Department has reviewed the EIS, RtS and assessed the merits of the proposed development, in consideration with the submissions received from the Government agencies, Council and the public.

The proposed development has demonstrated it is consistent with the objects of the EP&A Act and the State's strategic planning objectives for the site as set out in the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036, as it involves additional housing supply and employment opportunities.

The Department considers the proposed development is in the public interest as it would provide the following public benefits:

- increased opportunities for pedestrian activity, active street uses, public domain works and passive surveillance to contribute to the establishment of a thriving community in the Honeysuckle Precinct.
- delivery of 92 residential units.
- delivery of up to 120 construction jobs and 100 future operational jobs in the retail tenancies.

The Department concludes the impacts of the proposed development are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent.

Consequently, the Department considers the development is in the public interest and should be approved, subject to conditions (**Appendix F**).



8. 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;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **agrees** with the key reasons for approval listed in the notice of decision;
- **grants consent** for the application in respect of mixed-use development at 35 Honeysuckle Drive, Newcastle (SSD 8999), subject to the conditions in the attached development consent; and
- **signs** the attached development consent and recommended conditions of consent (see attachment).

Recommended by:

Cameron Sargent

Team Leader

Key Sites Assessments

Recommended by:

David McNamara

Director

Key Sites Assessments



9. *Determination*

The recommendation is: Adopted / Not adopted by:

Sargeant

Anthea Sargeant

Executive Director

Key Sites and Industry Assessments

21 June 2019



Appendices

Appendix A – List of documents

Appendix B – Relevant supporting information

Appendix C – Consideration of Environmental Planning Instruments

Appendix D – Exceptions to development standards

Appendix E – Community views for draft Notice of Decision

Appendix F – Recommended instrument of consent

Appendix A – List of documents

List of key documents relied on by the Department in its assessment:

- Environmental Impact Statement, prepared by KDC Pty Ltd, dated August 2018.
- Response to Department of Planning and Environment Request for Response to Submissions (SSD 8999) at 35 Honeysuckle Drive, Newcastle 2300, dated December 2018.

Appendix B – Relevant supporting information

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

1. Environmental Impact Statement

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8999

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8999

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8999

4. Response to Submissions Addendum and Additional Information

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8999

Appendix C – Statutory Considerations

In line with the requirements of section 4.15 of the EP&A Act, the Department's assessment of the project has given detailed consideration to a number of statutory requirements. These include:

- the objects found in section 1.3 of the EP&A Act
- the matters listed under section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered these matters in its assessment of the project and has provided a summary of this assessment in **Tables 1** and **2** below.

Table 1 | Department's consideration to the objects in section 1.3 of the EP&A Act

Objects of the EP&A Act	Department's consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed development will promote the social and economic welfare of the community by facilitating housing and employment through the provision of 92 residential units and 1,271 m² of retail floor space. The proposed development is located on land identified for urban development and therefore will not significantly impact natural and artificial resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The Department has considered the project in relation to the ESD principles. The Precautionary and Inter-generational Equity Principles have been applied in the decision making process by a thorough assessment of the environmental impacts of the project. Overall, the proposed development is generally consistent with ESD principles and the Department is satisfied the proposed sustainability initiatives will encourage ESD, in accordance with the objects of the EP&A Act. In particular, the proposed development has been accompanied by a BASIX certificate and includes the following ESD initiatives and sustainability measures: • water efficient fittings • rainwater reuse tanks • on demand hot water recirculation system • energy efficient LED lighting • motion sensing lighting • electrical metering and monitoring • centralised lighting control system or Building Management System for the common area • alternative water supply system • planting of hardy, endemic plant species.
(c) to promote the orderly and economic use and development of land	The proposed development is permitted with consent and involves the development for mixed use purposes of reclaimed

and undeveloped land, the merits of which are considered in **Section 6** of this report.

(d) to promote the delivery and maintenance of affordable housing	The proposed development provides for 92 residential units, contributing to the housing supply.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed involves development of reclaimed land and therefore will not adversely impact on any native animals and plants, including threatened species, populations and ecological communities, and their habitats. The application has also been granted a Biodiversity Development Assessment waiver by OEH on 8 January 2018 and Department on 26 February 2018..
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The proposed development would not have an adverse impact on nearby heritage items or conservation areas as addressed in Section 6.8 of this report.
(g) to promote good design and amenity of the built environment	The proposed development achieves a high standard of design and amenity as addressed in Section 6 of this report.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development was accompanied by a Construction Management Plan and a Building Code of Australia report, which concludes the development is capable of complying with the requirements of the relevant sections of the Act.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The Department publicly exhibited the SSD application as detailed in Section 5.1 , which included consultation with Council and other Government agencies and consideration of their responses.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department publicly exhibited the SSD application as outlined in Section 5 , which included notifying adjoining landowners, placing a notice in the newspaper and displaying the application on the Department's website and at Council's office.

Table 2 | Section 4.15(1) Matters for consideration

Section 4.15(1) Evaluation	Department's consideration
(a)(i) any environmental planning instrument	The proposed development is consistent with the relevant Environmental Planning Instruments (EPIs) as addressed in Section 4.2 and below of this report.
(a)(ii) any proposed instrument	The proposed development is consistent with the proposed EPIs as addressed below of this report.

(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, development control plans (DCPs) do not apply to SSD.
(a)(iia) any planning agreement	Not applicable.
(a)(iv) the regulations <i>Refer Division 8 of the EP&A Regulation</i>	The SSD application satisfactorily meets the relevant requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> (EP&A Regulation), including the procedures relating to applications (Part 6), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS.
(a)(v) any coastal zone management plan	Not applicable.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has considered that the likely impacts of the proposed development are acceptable and/or can be appropriately managed by recommended conditions of consent (refer to Section 6 and Appendix F of this report).
(c) the suitability of the site for the development	The site is suitable for the development as addressed in Section 6 of this report.
(d) any submissions	The Department has considered the submissions received during the exhibition period (refer to Sections 5 and 6 of this report).
(e) the public interest	The Department considers the proposed development is in the public interest (refer to Section 6 of this report).

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The aims of the SRD SEPP are to identify SSD, State significant infrastructure (SSI), critical SSI and to confer functions on regional planning panels to determine development applications. The proposed development is SSD as summarised at **Table 3**.

Table 3 | Department's consideration of the relevant sections of the SRD SEPP

Relevant Sections	Department's consideration	Compliance
3 Aims of Policy		
The aims of this Policy are as follows: (a) to identify development that is State significant development.	The proposed development is identified as SSD.	Yes
8 Declaration of State significant development: section 4.36		
(1) Development is declared to be State significant development for the purposes of the Act if: (a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and	The proposed development is permissible with development consent. The site is specified in Schedule 2.	Yes

- (b) the development is specified in Schedule 1 or 2.

Schedule 2 State significant development — identified sites

(Clause 8 (1)(b))

2 Development on specified sites

Development that has a capital investment value of more than \$10 million on land identified as being within any of the following sites on the State Significant Development Sites Map:

The proposed development is within the identified Honeysuckle Site and has a CIV in excess of \$10 million. Yes

- Honeysuckle Site

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)

The BASIX SEPP applies to all residential development and accordingly applies to the subject application. BASIX aims to deliver equitable, effective water and greenhouse gas reductions across the State.

A BASIX certificate has been submitted with the application and demonstrates the proposed development achieves compliance with the BASIX water, energy and thermal comfort requirements. The Department recommends a condition of consent requiring compliance with the BASIX certificate.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 aims to ensure that SEPP 55 aims to promote the remediation of contaminated land to prevent the risk of harm to human health and the environment. SEPP 55 requires the consent authority to consider whether the land is contaminated, and if so, whether the land is suitable for the purpose for the proposed development.

The site has been subject to extensive filling and potentially contaminating land uses, including industrial railway yards and shipping facilities. Several onsite contamination investigations and associated reports have previously been undertaken for the site, including JBS Remediation Action Plan (RAP) (2007), Environ Site Audit Report (SAR) and Site Audit Statement (SAS) (2007) and Contamination Assessment– Summary (2018) (CAS).

The RAP, prepared in 2007, documents the procedures and standards to remove the risks posed by any environmental impact which may be present underlying the 'Lee 4' site and to make the site suitable for the proposed redevelopment, while ensuring the protection of human health and the surrounding environment.

The Site Audit Report and Site Audit Statement, prepared in 2007, identified that the site can be made suitable for residential and commercial with minimal access to soil subject to the site being remediated in accordance with RAP.

The CAS, prepared in 2018 provides a review of these previous site investigations, recent waste classification reports and current investigations. The report finds the site is still suitable for the proposed development based on the following:

- general absence of contaminating activities since the preparation of the SAS and SAR in 2007.
- comparison of the results of previous and current site investigations to current contaminated land guidelines (i.e. current site conditions are commensurate with those identified in previous investigations and those considered in the 2007 SAR and SAS).
- consideration of the current proposed development (i.e. minimal access to soils due to site structures and pavements, and the use of imported approved soils for landscaping).

Therefore, consistent with similar sites within the Honeysuckle area, the following process is recommended:

- preparation of a RAP addendum (including the results of recent testing and details of the current proposed development).
- auditor review of the additional investigation report and RAP addendum.
- site remediation and validation in accordance with the approved RAP and addendum.
- consideration to groundwater quality in relation to dewatering for construction, in accordance with the relevant statutory and regulatory requirements for discharge/disposal.
- final Auditor sign-off and SAS following completion remediation and validation. The results of previous and current investigations indicate that the site can be made suitable for the proposed development in accordance with the remediation strategy presented in the JBS RAP and the SAS.

Council has considered the findings within the CAS and SAS and recommends a condition of consent to address the findings of the report.

HNELHD provided that a remediation plan is required to ensure that all land being used for residential and commercial purposes will have all contaminated soil removed and the final remediation be validated as safe by a Site Auditor. The Department notes a RAP has been provided and a RAP Addendum/Site Audit Statement will also be prepared.

The Department considers the proposed development is suitable for the site after remediation (consistent with the RAP and RAP addendum and site audit statements), and the land will be remediated before it is used for retail and residential uses.

[Draft Remediation of Land State Environmental Planning Policy \(Draft Remediation of Land SEPP\)](#)

The Department notes that the Explanation of Intended Effect for a Draft Remediation of Land SEPP was recently exhibited until 13 April 2018. The Remediation of Land SEPP proposes to better manage remediation works by aligning the need for development consent with the scale, complexity and risks associated with the proposed works. As the proposed development has demonstrated it can be suitable for the site, subject to conditions, the Department considers it would be consistent with the intended effect of the Remediation of Land SEPP.

[State Environmental Planning Policy \(Coastal Management\) 2018 \(Coastal SEPP\)](#)

The Coastal SEPP commenced on 3 April 2018. The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal Management SEPP gives effect to the objectives of the *Coastal Management Act 2016* (NSW) from a land use planning perspective. It defines four coastal management areas and specifies assessment criteria that are tailored for each coastal management area. The consent authority must apply those criteria when assessing proposed developments for development that fall within one or more of the mapped areas.

The Coastal SEPP identifies the site as being located within the Coastal environment area and Coastal use area. Land within these areas are subject to clause 13 and 14, which are considered in **Table 4**.

Table 4 | Department's consideration of the relevant sections of the Coastal SEPP

Relevant section	Department's consideration	Compliance
13 Development on land within the coastal environment area		
(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following: (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, (b) coastal environmental values and natural coastal processes, (c) the water quality of the marine estate (within the meaning of the <i>Marine Estate Management Act 2014</i>), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1, (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, (f) Aboriginal cultural heritage, practices and places, (g) the use of the surf zone. (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that: (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	The proposed development is to be located on reclaimed land and therefore will not result in any adverse impacts to the existing environment. The proposed buildings have been designed and sited appropriately respond to the foreshore as it is setback from the public promenade. The proposed development is unlikely to impact upon aboriginal cultural heritage values as, prior to the reclamation, the original landform would not have been suitable for occupation by Aboriginal people as it would have been underwater and only exposed at low tide.	Yes
14 Development on land within the coastal use area		
	The proposed development is to be located sufficiently	Yes

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

setback from the foreshore and will not have any adverse impacts.

The proposed development will facilitate public access to the foreshore via a through site link.

The proposed development is unlikely to impact upon Aboriginal, cultural or built heritage values as addressed in **Section 6** of this report.

The design, bulk and scale of the buildings are consistent with the future character of the area and approved development.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

The proposed development is not likely to result in increased risk of coastal hazards.

Yes

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any

A coastal management program does not apply to the land.

N/A

certified coastal management program that applies to the land.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)

SEPP No. 65 applies to residential flat buildings having 4 or more units and 3 or more storeys. Accordingly, the SEPP applies to the proposed development, and the application has been assessed against the design criteria and guidance as contained within the Apartment Design Guide (ADG) (**Table 5**).

The proposed development is consistent with the Design Quality Principles and responds appropriately to the site's context. Moreover, the application generally conforms to the key 'design criteria' and 'design guidance' contained in the Apartment Design Guide.

Table 5 | Department's consideration of Schedule 1 Design Quality Principles of SEPP 65

Principle	Department's consideration	Consistent?
1: Context and neighbourhood character	- The proposed development is well integrated with the existing context and desired future character of the Honeysuckle Precinct and responds appropriately to the Hunter River foreshore. - The proposed development will not have any detrimental impacts on the amenity of existing and future adjoining development.	Yes
2: Built form and scale	- The proposed development is consistent with the general scale of the surrounding locality and the desired future character for the site as set out in the height and floor space ratio controls in NLEP 2012. - The proposed massing is consistent with the approved development to the north at 42 Honeysuckle Drive. - The proposed variation to the building height and FSR is addressed in Section 6 and Appendix E of this report.	No, however the proposed development is acceptable, refer to Section 6
3: Density	The proposed development is considered to be of an appropriate density and scale consistent with the site and surrounding context. The proposed density, despite seeking a variation to FSR controls, achieves a high level of residential amenity and is supported by the desired Honeysuckle Precinct character and provision of future infrastructure, including the light rail service.	No, however the proposed development is acceptable, refer to Section 6
4: Sustainability	- The proposed development encourages sustainable transport choices, including use of public transport, walking and cycling. 81% of apartments achieve natural ventilation to reduce heating and cooling costs. 80% of apartments will achieve a minimum 2 hours solar access between 9am and 4pm during mid-winter, reducing reliance on lighting. - The proposed development includes ESD measures such as energy efficient lighting and low water use fittings.	Yes
5: Landscape	Landscaping is provided across the site, including in the through site link, around all boundaries of the site at the ground level and at the communal rooftop area to Building B.	Yes

	The proposed development will facilitate street tree plantings consistent with the existing species used along Honeysuckle Drive.	
6: Amenity	- The proposed development provides a high level of amenity for future residents, as considered against the ADG below. - The proposed apartments will achieve satisfactory levels of solar access to living areas, natural ventilation and privacy. Non-compliances are discussed in Section 6.4 of this report.	Yes
7: Safety	- The proposed development provides passive surveillance through balconies, terraces and windows that front the public domain and overlook the through-site link. - The principle building entrances are identifiable and have secure access with intercom and swipe card entry.	Yes
8: Housing diversity and social interaction	- The proposed development provides a mix of apartment sizes to meet a range of housing needs in close proximity to public transport and employment opportunities. - Communal open space, including a gym, pool and rooftop terraces on Building B will provide opportunities for social interaction. - The mix of apartment sizes includes one bed (20%), two bed (45%) and three bed (35%) provides housing choice for different demographics, living needs and household budgets.	Yes
9: Aesthetics	- The proposed building has demonstrated design excellence. - The proposed building design and materials are considered to fit well within the site and the buildings relate well to each other. - The proposed palette of materials is drawn from the natural environment to integrate the building into its location.	Yes

The Department's assessment against the objectives of the ADG are summarised in **Table 6**.

Table 6 | Department's consideration of the Apartment Design Guide

Relevant criteria	Proposed development
3A Site analysis Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	The proposed development is accompanied by a site analysis plan, identifying opportunities and constraints of the site conditions and surrounding context.

3B Orientation

Building types and layouts respond to the streetscape and site while optimising solar access within the development.

Overshadowing of neighbouring properties is minimised during mid-winter.

- The building is designed to define and address the street layout and foreshore. Direct ground level access is provided to the terraces fronting the foreshore to activate the public domain. The entry to each building provides an address to Honeysuckle Drive.
- A minimum of 2 hours solar access is provided to 80% of units in accordance with ADG requirements.
- There is communal open space provided on the rooftop which will optimise solar access.
- The building is designed to minimise overshadowing of neighbouring properties.

3C Public domain interface

Transition between private and public domain is achieved without compromising safety and security.

Amenity of the public domain is retained and enhanced.

- Passive surveillance is available from balconies and windows, which overlook the public domain, the through-site links and private areas. The terraces fronting the foreshore have direct private ground level access.
 - Each building has a clear entrance with large lobby areas for casual interaction and clearly delineates the public and private domain.
 - The ground floor contains retail tenancies with glazed frontages to activate the public domain.
 - Planting is provided around all building edges with integrated landscaping.
 - The ground floor has been designed to comply with minimum flood levels, ramping has been minimised where possible
-

3D Communal and public open space

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.

Communal open space is designed to maximise safety.

Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.

- The proposed development provides for a total of 1,236 m², or 24% of the site area for communal open space across four different areas. The Department considers the proposed shortfall is minor (1%) and acceptable for the following reasons:

- The site provides through-site links that contribute to the public domain and providing direct access to the foreshore.
- The proposed development provides for a range of communal spaces that can be accessed by all residents and will facilitate different recreational activities.
- The outdoor communal areas receive direct sunlight between 9 am and 3 pm in mid-winter.

3E Deep soil zones

Deep soil zones are to meet the following minimum requirements: 7% deep soil zone and a minimum dimension of 6 m.

- The development provides for deep soils zones for a minimum of 5.3% of the total site area with a minimum dimension of less than 6 m.
- The Department considers the proposed development is capable of complying subject to a condition of consent requiring the Applicant to provide amended plans demonstrating deep soil zones with a minimum depth of 6 m for a minimum of 7% of the total site area, consistent with the ADG (refer to **Section 6** of this report).

3F Visual privacy

Separation distances from building to boundary:

Height	Habitable rooms	Non-habitable rooms
Up to 12 m (4 storeys)	6 m	3 m
Up to 25 m (5-8 storeys)	9 m	4.5 m
Over 25 m (9+ storeys)	12 m	6 m

Separation distances between buildings on the

- The proposed development provided the following setbacks to habitable rooms:

	Habitable rooms and balconies
Ground floor	Min. 6 m
North	Ground floor uses comprise retail uses and services. There are no habitable rooms that will experience privacy impacts
East	
South	
West	
Between Building A and B	
Between Building B and retail pavilion	
Level 1 (up to 12 m)	Min. 6 m
North	3.52 m
East	20.7 m
South	0 m
West	7.9 m
Between Building A and B	3.3 m
Level 2 (up to 12 m)	Min. 6 m
North	3.5 m
East	20.7 m

same site should combine required building separations depending on the type of room.

Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.

South	0 m
West	0 m
Between Building A and B	3.3 m
Level 3 (up to 12 m)	Min. 6 m
North	3.9 m
East	20.7 m
South	0 m
West	0 m
Between Building A and B	3.3 m
Level 4, 5 and 6 (up to 25 m)	Min. 9 m
North	3.9 m
East	20.3 m
South	0 m
West	0 m
Between	3.3 m
Level 7 (up to 25 m)	Min. 9 m
North	3.9 m
East	20.3 m
South	2.9 m
West	0 m
Between Building A and B	3.3 m

- The development is bounded by the Foreshore promenade to the north, Honeysuckle Drive to the south and the designated floodway of Steel Street and Worth Place to the west. The proposed development does not achieve the minimum separation distances from the building to boundary in these directions, however as the adjoining areas in these directions are not capable of accommodating a development, there are no visual privacy concerns.
- With regards to the east the development has provided a minimum setback of 20 m to the property boundary and the adjoining development to the east, achieving the minimum requirement of 18 m.
- With regards to the separation distance of the through site link between the proposed buildings on site, the development proposes a minimum setback of 3.3 m and an average setback of 7.4 m, below the minimum separation requirement of 12 m (up to Level 3) and 18 m (Level 4 to Level 7). Direct overlooking has been adequately managed with privacy screens and angled balconies. This is further addressed in **Section 6** of this report.

3G Pedestrian access and entries

Building entries and pedestrian access connects to and addresses the public domain.

Access, entries and pathways are accessible and easy to identify.

Large sites provide pedestrian links for access to streets and connection to destinations.

- Each building has two lobbies that address the street.
- Individual ground floor entries are provided to the retail tenancies that address the foreshore.
- The communal residential entrances are all accessed from Honeysuckle Drive and are large, easily identifiable and accessible with ramped access provided.
- A through-site link is provided to connect Honeysuckle Drive with the foreshore.
- The link has clear sightlines, are overlooked by habitable rooms and will be well lit.

3H Vehicle access

Vehicle access points are to be designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.

- Vehicle access is via a new drive from Honeysuckle Drive and is addressed in **Section 6.5** of this report.

3J Bicycle and car parking

Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.

Parking and facilities are provided for other modes of transport.

Car park design and access is safe and secure.

Visual and environmental impacts of underground car parking are minimised.

Visual and environmental impacts of on-grade car parking are minimised.

Visual and environmental impacts of above ground enclosed car parking are minimised.

Positive street address and active frontages should be provided at ground level.

- Bicycle and car parking is addressed in **Section 6.5** of this report.
- The proposed basement includes provisions for bicycle parking and is investigating charging stations.
- The car park will have secure entry and there are no 'hidden corners' of the car park.
- The proposed car parking appears well organised with a logical and efficient structural grid.
- The basement car park does protrude above existing ground level due to habitable flood level requirements, however terraced landscaping is provided to minimise the visibility of the basement structure.
- On grade car parking is not proposed.
- The car parking entries are located within the building and surrounded by active street frontages.

4A: Solar and daylight access

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:

- At least 70% of apartments' living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9 am-3 pm in mid-winter.
- A maximum of 15% of apartments receive no direct sunlight between 9 am-3 pm in midwinter.

Daylight access is maximised where sunlight is limited.

Design incorporates shading and glare control, particularly for warmer months.

- 74 of 92 apartments (80%) have living rooms and private open space that receive a minimum of two hours direct sunlight between 9 am and 3 pm in mid-winter.
- 14 apartments receive no solar access between 9 am and 3 pm in mid-winter (15%).
- The proposed development exceeds the solar access benchmark as the site has direct northern frontage to Hunter River.
- The apartments are provided with covered balconies to provide shading from summer sun but permit the lower winter sun to enter living areas.

4B Natural ventilation

All habitable rooms are naturally ventilated

The layout and design of single aspect apartments maximises natural ventilation.

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents:

- at least 60% of apartments are naturally cross ventilated in the first nine storeys (apartments 10 storeys or greater are deemed to be cross ventilated).
- Overall depth of a cross-over or cross-through apartment does not exceed 18 m, measured from glass to glass.

- All habitable rooms are naturally ventilated.
- The apartments that do not achieve natural cross ventilation are orientated north with good solar access and have limited depths.

- 75 of 92 apartments are naturally cross ventilated (81%).
- No apartments exceed 18 m in depth.

4C Ceiling heights

Ceiling height achieves sufficient natural ventilation and daylight access. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Habitable rooms	2.7 m
Non-habitable rooms	2.4 m
2 storey apartments	2.7 m for main living area floor 2.4 m for second floor, where its area does not

- The residential areas of the building have a ceiling height of 2.7 m for all habitable rooms.
- The commercial areas on the ground floor have a ceiling height of 3.3 m.
- The first-floor heights are 2.7 m rather than the 3.3 m specified in the guideline. This is acceptable as the ground floor contains commercial areas and the surrounding area contains a number of commercial buildings.

	exceed 50% of the apartment area
Attic spaces	1.8 m at edge of room with a 30° minimum ceiling slope
If located in mixed use areas	3.3 m for ground and first floor to promote future flexibility of use

- The ceiling heights comply with the requirements and the design provides for well-proportioned rooms.

Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.

Ceiling heights contribute to the flexibility of building use over the life of the building.

4D Apartment size and layout

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

- Apartments are required to have the following minimum internal areas:
- All apartments comply with the minimum internal area.

Studio	35 m ²
1 bedroom	50 m ²
2 bedroom	70 m ²
3 bedroom	90 m ²
Additional bathrooms	+5 m ² per bathroom
Additional bedrooms	+12 m ² per bedroom

- Every habitable room must have a window in an external wall with a total glass area of not less than 10% of the floor area. Daylight and air may not be borrowed from other rooms.
- Habitable rooms have a window on an external wall or a door / window onto the balcony and windows exceed the 10% requirement.

Environmental performance of the apartment is maximised:

- Habitable room depths are limited to a maximum of 2.5 x the ceiling height (6.75 m).
- In open plan layouts the maximum habitable room depth is 8 m from a window.
- All units have open plan unit layouts and are within the maximum room depth of 8 m.

Apartment layouts are designed to accommodate a variety of household activities and needs:

- Master bedrooms have a minimum area of 10 m² and other bedrooms have 9 m² (excluding wardrobe space).
- Bedrooms comply with the maximum depth of 6.75 m as the proposed depths range from between 3 m and 6.32 m.

- Bedrooms have a minimum dimension of 3 m (excluding wardrobe space).
- Living rooms or combined living / dining rooms have a minimum width of 3.6 m for studio and 1 bed apartments and 4 m for 2 and 3 bed apartments.
- The width of cross-over or cross-through apartments are at least 4 m internally to avoid deep narrow apartment layouts.
- The proposed development achieves the minimum apartment size, solar access and natural ventilation recommendations outlined in the ADG and as such, the minor variation is acceptable in this instance.
- Master bedrooms are 10 m² and other bedrooms 9 m² as recommended by the guidelines.
- Bedrooms have minimum dimensions of 3 m.
- Combined living / dining rooms have minimum dimensions of 4 m.
- The width of the 12 cross through apartments is 4.8 m internally.
- All cross-through units are at least 4 m wide.

4E Private open space and balconies

Apartments provide appropriately sized principal private open space and balconies to enhance residential amenity:

Studio	4 m ²	-
1 bedroom	8 m ²	2 m
2 bedroom	10 m ²	2 m
3+ bedroom	12 m ²	2.4 m

Minimum depth to count towards area is 1 m.

Private open space on the ground level has a minimum area of 15 m² and a minimum depth of 3 m.

Primary private open space and balconies are appropriately located to enhance liveability for residents.

Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.

Private open space and balcony design maximises safety.

- All apartments provide open space in the form of balconies or private courtyards.
- Majority of unit achieve the minimum area and width for balconies with the exception of unit 1 bed type 2 (min 1 m – 3.85 m), 3 bed type 4 (min 1.3 m – 2.1 m) and 3 bed type 5 (min 2.195 m), resulting in 17 of 92 units (18.5%). These units all exceed the minimum area, however do not achieve the minimum depth.

These units are located as part of the corner elements and the balconies form as part of the façade. The Department considers these variations are acceptable as the proposed balconies still achieve the minimum area and the buildings exhibit design excellence.

- Primary private open space areas are located adjacent to the living spaces and face predominantly north (80%). 18 units have primary balconies to the south, east or west. Secondary balconies are provided to some bedrooms.
- The private open space is well designed and is integrated with the building architecture.
- Private open space provides passive surveillance from all elevations of the public domain, including the through site links. The balustrade design provides safety and privacy.

4F Common circulation and spaces

Common circulation spaces achieve good amenity and properly service the number of apartments:

- The maximum number of apartments off a circulation core is four.

- Maximum number of apartments off a circulation core is eight (or no more than 12 apartments).
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

Common circulation spaces promote safety and provide for social interaction between residents.

4G Storage

Adequate, well designed storage is provided in each apartment. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Studio	4 m ³
1 bedroom	6 m ³
2 bedroom	8 m ³
3+ bedroom	10 m ³

With at least 50% located within the apartment.

Additional storage is conveniently located, accessible and nominated for individual apartments.

- Storage areas provided for the two and three bedroom apartments meet the guidelines, with storage areas located internally and in storage areas in the basement.
- A total of 12 of the one bedroom units (13%) provide for a total of 7.1 m³, with 2.5 m³ provided internally. Despite the minor shortfall to required internal area, the Department considers the proposed development will provide for sufficient storage space overall.
- Additional storage areas in the basement are conveniently located and accessible for individual apartments.

4H Acoustic privacy

Noise transfer is minimised through the siting of buildings and building layout.

Noise impacts are mitigated within apartments through layout and acoustic treatments.

- Each floor in the three buildings have similar layouts, similar uses (e.g. bedrooms, living rooms) generally located on top of each other.
- An Acoustic report has been provided which details materials to mitigate noise impacts (refer to **Section 6** of this report).

4J Noise and pollution

Design solutions can help to improve quality of life in affected apartments (major roads, hostile and noisy environments) by minimising potential noise and pollution impacts.

- An Acoustic report has been provided which details materials to mitigate noise impacts (refer to **Section 6** of this report).

4K Apartment mix

A range of apartment types and sizes is provided to cater for different household types now and into the future.

The apartment mix is distributed to suitable locations within the building.

- The mix of apartment sizes includes one bed (20%), two bed (45%) and three bed (35%) providing a range of apartment types and sizes.
- The apartments are logically located within the building.

4L Ground floor apartments

Street frontage activity is maximised where ground floor apartments are located.

Design of ground floor apartments delivers amenity and safety for residents.

- There are no ground floor apartments.

4M Facades

Building facades provide visual interest along the street while respecting the character of the local area.

Building functions are expressed by the façade.

- The building façade is articulated and exterior materials, including face brick, bringing visual interest to the street.
- The residential and retail functions of the buildings are expressed with clear building entries. The buildings address the corner of Honeysuckle Drive.

4N Roof design

Roof treatments are integrated into the building design and positively respond to the street.

- The roof treatment includes rooftop terraces, including landscaping and pergolas. This adds visual interest to the roof form.

4O Landscape design

Landscape design is viable and sustainable.

Landscape design contributes to the streetscape and amenity.

- Landscaping includes a mixture of native and non-native plants and trees.
- Planting and furniture is provided on the rooftop communal area to Building B.
- Planting is provided around the site, in the through-site links and green roofs.
- Plants have been selected for their hardiness and ability to be maintained.

4P Planting on structures

Appropriate soil profiles are provided.

Plant growth is optimised with appropriate selection and maintenance.

Planting on structures contributes to the quality and amenity of communal and public open spaces.

- Appropriate soil profiles are provided for planting on slabs.
- Selected plants are tolerant for growing in planters and on rooftops.
- Planting contributes to the quality and amenity of communal open space and the public domain.

4Q Universal design

Universal design features are included in apartment design to promote flexible housing for all community members (Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guidelines silver level universal design features)

A variety of apartments with adaptable designs are provided.

Apartment layouts are flexible and accommodate a range of lifestyle needs.

- All apartments incorporate the Liveable Housing Guidelines silver level universal design features.

- The proposed development provides a total of 9 adaptable dwellings.

- Apartments facilitate open plan living, suitable to accommodate a range of lifestyle needs.

4S Mixed use

Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.

Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.

- The development provides nine retail tenancies, addressing Honeysuckle Drive and the foreshore. Active frontages are provided to the foreshore with direct access to the ground floor terraces.

- Residential circulation areas are clearly defined and access to communal open space is provided.

4T Awning and signage

Awnings are well located and complement and integrate with the building design.

- Awnings are provided to the foreshore and integrate with the building design.

4U Energy efficiency

Development incorporates passive environmental design.

Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.

Adequate natural ventilation minimises the need for mechanical ventilation.

- The development meets BASIX water, thermal and energy efficiency targets.
- Buildings and apartments have been orientated to maximise solar access and achieve natural ventilation.

4V Water management and conservation

Potable water use is minimised.

Urban stormwater is treated on site before being discharged to receiving waters.

Flood management systems are integrated into site design.

- Water efficient fittings and appliances will be installed.
- A Stormwater Management Strategy has been prepared, which considers the water sensitive design initiatives such as rainwater tanks, harvested roof areas and management of overflow.
- A Flood Impact Assessment has been carried out.

4W Waste management

Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.

Domestic waste is minimised by providing safe and convenient source separation and recycling.

- Waste storage is provided at ground floor and basement level with waste chutes proposed.
- The EIS included a Waste Management Plan, which detailed separate waste and recycling containers will be provided for residential use and retail use.
- Residential waste will be managed by Council.

4X Building maintenance

Building design detail provides protection from weathering.

Systems and access enable ease of maintenance.

Material selection reduces ongoing maintenance costs.

- The buildings have been appropriately designed to allow ease of maintenance.
- The materials are robust.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The site is located on land in which the NLEP 2012 applies. The Department's assessment of the proposed development against the provision of the NLEP 2012 is provided in **Table 7**.

Table 7 | Department's consideration of the Newcastle Local Environmental Plan 2012

Relevant section	Department's consideration	Compliance
2.2 Zoning of land to which Plan applies and land use table Land is within the zones shown on the Land Zoning Map.	The proposed development is on land zoned B4 mixed use, commercial and shop top housing are permitted within the zone.	Yes
4.3 Height of buildings The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.	The proposed development exceeds the maximum height shown on the Height of Buildings Map.	No, refer to Section 6.2.2 of this report and Appendix E
4.4 Floor space ratio The maximum floor space ratio for a building is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.	The proposed development exceeds the maximum floor space ratio as shown on the Floor Space Ratio Map.	No, refer to Section 6.2.3 of this report and Appendix E
4.6 Exceptions to development standards Development consent may, subject to this clause, be granted for development even though the development would contravene a development	The Application has submitted a variation request for clause 4.3 and 4.4 under the provisions of clause 4.6. Refer to Appendix E .	Yes, refer to Appendix E .

standard imposed by this or any other environmental planning instrument.

5.10 Heritage conservation	A Heritage Assessment was submitted with the application. OEH have reviewed the HA and confirmed that the proposed development will not impact upon any built, landscape or Aboriginal heritage.	Yes
Development consent is required for any of the following: 2a) demolishing, moving, or altering the exterior of any heritage item or Aboriginal object 2c) disturbing or excavating an archaeological site 2d) disturbing or excavating an Aboriginal place of heritage significance 2e) erecting a building on land on which a heritage item is located, or on which an Aboriginal object is located.		
6.1 Acid sulfate soils	The site is identified as having potential Class 3 acid sulfate soils. An Acid Sulfate Soils Management Plan was submitted with the application and has been considered in Section 6.8 of this report.	Yes
6.2 Earthworks	The proposed development seeks approval two levels of basement and associated earthworks. A Groundwater Inflow Analysis (GIA) and Geotechnical Investigation (GI) were submitted with the EIS. The GIA report indicates that widespread lowering of the unconfined quiver is unlikely, and the GI provides a range of recommendations on geotechnical matters, including excavation support, water levels, dewatering, footings, and soil aggressiveness for construction. The Department considers earthworks can be suitably managed through conditions of consent.	Yes
7.5 Design excellence	The Department considers the proposed development achieves	Yes

The consent authority is to consider that the design excellence as addressed in development exhibits design excellence. **Section 6.2.1** of this report.

Appendix D – Community views for draft notice of decision

Issue	Consideration
Height - Building height and non-compliance with the NLEP 2012. - Overlooking - Overshadowing	- The proposed 13.9 m variation to the northern section of the site will not result in any significant additional overshadowing to the south or result in any view loss, noting this portion of the site is located forward the southern part of the site. - The Department acknowledges that in isolation the proposed 13.9 m variation is numerically significant, however the Department is satisfied that the proposed variation of the height control is appropriate when viewing the proposed building height as a transitional element of the building in the context of the varied height controls that apply to the site. - The Government Architect NSW and UDCG support the proposed built form with the UDCG noting the proposed height distribution over the site achieves a better urban design outcome than the planning guidelines suggest. - The arrangement and variation is also consistent with the approved built form at the adjoining property to the west at 50 Honeysuckle Drive, Newcastle. - In regard to the 3.9 m variation associated with level 7 and the rooftop elements of Building A and B, the Department considers this is a minor 16% variation. The proposed development has also demonstrated it will not have any significant additional impacts in terms of visual privacy and overshadowing (Section 6.3) to neighbouring properties or the public domain and is consistent with the built form objectives for the site in the context of the Honeysuckle Precinct.
GFA Calculation of Gross Floor Area is to include the additional car spaces proposed (beyond what is required under the DCP), resulting in a GFA non-compliance	- While not originally calculated, the Applicant has included additional car parking as part of the overall GFA. - As the car parking is in the basement it would not contribute to any additional visual bulk or massing impacts.
Operation of pavilion Further information is required regarding the use and operational details of the proposed pavilion and ground floor retail uses.	- Council requested further information regarding the use and operational details of the proposed pavilion and ground floor retail uses. - The Applicant noted that any impacts from future retail uses can be managed through the regulatory and compliance powers of Council after the commencement of operation. - Council requested the use is addressed through the imposition of appropriate conditions of consent. <i>Recommended Conditions/Response</i>

Conditions include:

- No consent is granted for the use of the retail premises, including the pavilion and outdoor seating areas.
- Separate DAs for the fitout and operation of these premises are to be lodged with Council.

Urban design

- The proposal is to respond to the design issues raised by the City of Newcastle Urban Design Consultative Group (UDCG).

- The Applicant provided an amended Design Statement that included further renders showing how the proposed building will appear from different viewpoints and how the rooftop space will operate.
- GANSW noted and accepted the additional information, providing support for the proposed development.

Flooding

- Council provided recommendations for flood management.

- The site is located within the Cottage catchment and is affected by stormwater flooding and riverine flooding. A revised Flood Risk & Impact Assessment (FRIA) was been provided that reviews existing flood studies and outlines flood risks to the site, including the assessment of flood impacts arising from the proposed development.
- Council provided support for the revised FRIA and consider the flood planning has been satisfactorily addressed subject to conditions of consent.
- The Department considers the proposed development will not result in any adverse impacts with regards to flooding, including risks to the proposed development or impacts to the surrounding area subject to conditions of consent.

Recommended Conditions/Response

Conditions include:

- All stormwater runoff from the proposed development is to be managed in accordance with the requirements of the NDCP 2012.
- On site refuge is to be provided for the propose development and the minimum refuge level is to be the Local Catchment Flood Level RL 4m.
- Floor Emergency Response Plan is to be prepared.

Contamination

- Council recommended a condition of consent to impose the recommendations contained within the contamination consultant reports.

- The application is supported by a RAP, Site Audit Statement and Contamination Assessment that will manage contamination on site.
- The Department considers the proposed development is suitable for the site after remediation (consistent with the RAP and RAP Addendum and site audit statements), and the land will be remediated before it is used for retail and residential uses.

Recommended Conditions/Response

Conditions include:

- Prepare a RAP Addendum and obtain a Site Audit Statement issued by EPA accredited site auditor.
- All remediation works to be undertaken in accordance with RAP, RAP Addendum.
- Site Validation at the completion of works.

Noise

- Council recommended a condition of consent to impose the recommendations contained within the Acoustic Assessment prepared by Muller Acoustic Consulting, dated July 2018.

- The Department considers any potential noise impacts can be managed through the recommended conditions of consent contained with the Acoustic Assessment.

Recommended Conditions/Response

Conditions include:

- The proposed development is to be carried out in accordance with the recommendations contained within the Acoustic Assessment.
- Plant and equipment to have a maximum noise emission of background plus 5dBA, and no greater than the background noise level between 12 midnight and 7 am, consistent with the Industrial Noise Policy.

Excavation

- Council recommended a condition of consent to require an Excavation Management Plan and Dewatering Management Plan.

- The proposed development involves the excavation of approximately 6.6 m to accommodate two levels of basement.
- A Groundwater Inflow Analysis (GIA) submitted with the EIS advised widespread lowering of the unconfined aquifer is unlikely. The results suggest that a change in groundwater head of up to about 1 m is expected at a distance of 5 m to 10 m from the perimeter wall.
- The Department of Industry (DoI) advised that a temporary groundwater extraction licence is to be obtained by the Natural Resource Access Regulator, within the Department of Industry – Lands and Water.
- The Department is satisfied groundwater impacts can be appropriately managed subject to conditions of consent.

Recommended Conditions/Response

Conditions include:

- Authorisation to extract groundwater is to be obtained.
- The building is to be designed so that it does not take up groundwater post-construction.
- Drainage surrounding the watertight structure is to be of non-corrosive construction methods and materials.
- Preparation of a Groundwater Management Plan and Dewatering Plan.

Appendix E – Exceptions to development standards

Floor Space Ratio

The proposed development seeks a variation to the maximum floor space ratio as prescribed by clause 4.4 of the Newcastle Local Environmental Plan 2012. Clause 4.4 of the NLEP 2012 requires the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Map. The site contains a split floor space ratio comprising a maximum of 2:1 and a maximum of 2.5:1 as shown in **Figure 1**.

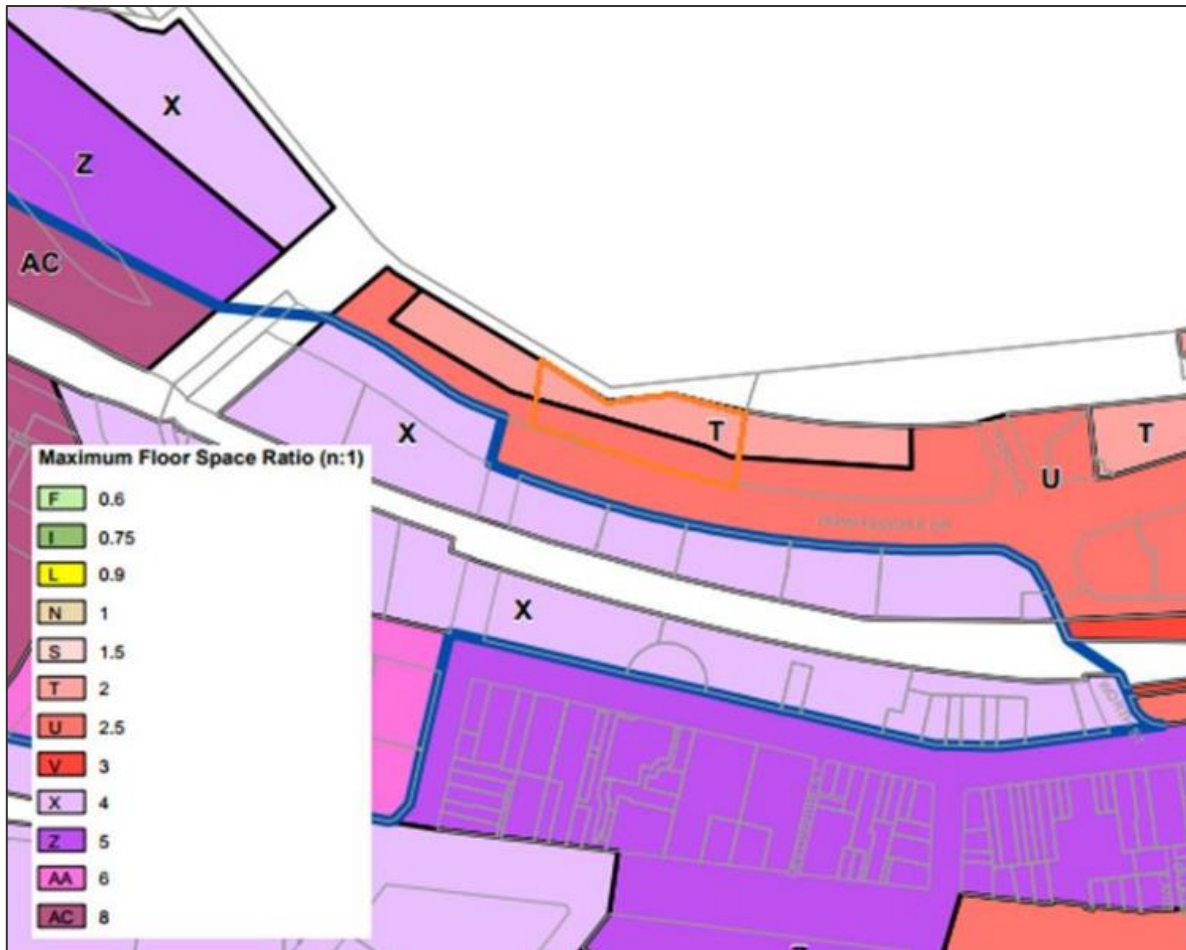


Figure 1 | Floor space ratio extracted from the NLEP 2012 (Source: Applicant's EIS).

The development proposes a variation to the floor space ratio for the Southern frontage (37%) and overall of 6.2% therefore does not comply with this control (**Table 1**).

Clause 4.6(2) of the NLEP 2012 permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. In consideration of the proposed variation, clause 4.6 requires the following:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the Applicant has prepared a written request to vary the floor space ratio (**Appendix B**).

Table 1 | Floor Space Ratio variation

Location	Permissible FSR	Permissible GFA	Proposed GFA	Proposed FSR	% non-compliance
Northern frontage	2:1	5,052 m ²	Above ground = 2,554 m ²	0.51:1	Complies
			Above ground including basement = 3,293 m ²	0.65:1	Complies
Southern frontage	2.5:1	6,662.5 m ²	9,122 m ²	3.42:1	37%
Overall	2.25:1	11,714 m²	12,415 m²	2.39:1	6.2%

The development proposes a variation to the floor space ratio for the Southern frontage (37%) and overall of 6.2%, and therefore does not comply with this control.

Clause 4.6(2) of the NLEP 2012 permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. In consideration of the proposed variation, clause 4.6 requires the following:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the Applicant has prepared a written request to vary the floor space ratio (**Appendix B**).

Clause 4.6(4)(a) requires the consent authority to be satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The Department has considered the proposed exception to the height of buildings development standard under clause 4.6, applying the tests arising from *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (as

summarised by *Gabriel Stefanidis v Randwick City Council* [2017] NSWLEC 1307) and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

1. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone,

The objectives of the B4 Mixed Use zone are as follows:

- to provide a mixture of compatible land uses.
- to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- to support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The Department is satisfied that the proposed development is consistent with the objectives of the B4 Mixed Use zone in NLEP 2012, as:

- the proposed development includes a mixture of compatible land uses comprising residential and ground floor retail in an area identified for mixed uses, within the Honeysuckle Precinct.
- the site is well located with proximity to existing pedestrian and cycle links, bus stops and the light rail line under construction
- the site supports the Newcastle CBD and Honeysuckle Precinct by providing a mixed-use development with residential accommodation in proximity to business, commercial and entertainment uses.

2. Is the consent authority satisfied the proposed development will be consistent with the objectives of the standard,

The objectives of the floor space ratio standard are:

- a) to provide an appropriate density of development consistent with the established centres hierarchy,
- b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

The Department is satisfied that the proposed development is consistent with the objectives of the floor space ratio standard of the NLEP 2012, as:

- the proposed floor space ratio complies with the maximum for the overall site and therefore is consistent with the allowable density for the overall site.
- the proposed development has gone through design review and has demonstrated design excellence. Therefore, the Department considers the proposed built form, including the building density, bulk and scale will make a positive contribution towards the desired built form.
- the proposed built form is also consistent with the approved development at 21 Honeysuckle Drive, which also varied the floor space ratio. Therefore, this development will be consistent with the established development fronting the foreshore.
- There are no significant additional environmental impacts including overshadowing or visual privacy.

3. Has the consent authority considered a written request that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and they are satisfied that the matters required to be demonstrated have adequately been addressed.

The Applicant demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, having regard to the five tests outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. It establishes that compliance with the development standard is unreasonable or unnecessary

in the circumstances, as the proposed development achieves the objectives of the standard and accordingly justifies the variation to the FSR control, meeting the first test outlined in Wehbe.

The Department supports the Applicant's conclusions that the proposed development achieves the objectives of the standard. Compliance with the development standard is unnecessary in this case as the objectives of the FSR standard are still achieved and unreasonable as no purpose is served by requiring strict compliance.

Having considered the Applicant's written request, the Department is satisfied that the Applicant has adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard and with the Court the matters required to be demonstrated have adequately been addressed.

The Applicant's written request justifies contravention of the development standard on the following environmental planning grounds:

- the design is consistent to development in the immediate vicinity, in particular the adjoining site at 50 Honeysuckle Drive in context with height, scale, bulk and proportions.
- the exceedance will not result an unreasonable amount of shadowing, beyond a compliant development.
- the proposed development has been subject to a design excellence process has ensued to arrive at the form and massing for the site, which has been tested and optimised to create a superior outcome for the public domain and for its appropriateness in context.

Having considered the Applicant's written request, the Department is satisfied the Applicant has adequately addressed there are sufficient environmental planning grounds to justify the contravention of the development standard and the matters required to be demonstrated have adequately been addressed.

Building Height

The proposed development seeks a variation to the maximum building height as prescribed by clause 4.3 of the *Newcastle Local Environmental Plan 2012*. Clause 4.3 of the NLEP 2012 requires the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The site contains a split height of building requirement comprising a maximum of 24 m and a maximum of 14 m as shown in **Figure 7 (Section 6)**.

The proposed development seeks a variation to the maximum building height (**Table 2**) relating to the following:

- southern section: level 7 and rooftop elements (lift, stair and pergola) exceed the overall maximum building height control by a maximum of 3.7 m.
- northern section: up to 27.9 m which exceeds the maximum height of 14 m by 13.9 m.

Table 2 | Height of building variation

Location	Permissible building height	Proposed max. building height	Variation	% non-compliance
Northern section	14 m	27.90	13.9 m	99%
Southern section	24 m	27.90	3.9 m	16%

Clause 4.6(2) of the NLEP 2012 permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. In consideration of the proposed variation, clause 4.6 requires the following:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In accordance with clause 4.6(3) the applicant has prepared a written request to vary the height of buildings **(Appendix B)**.

Clause 4.6(4)(a) requires the consent authority to be satisfied that:

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The Department has considered the proposed exception to the height of buildings development standard under clause 4.6, applying the tests arising from *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (as summarised by *Gabriel Stefanidis v Randwick City Council* [2017] NSWLEC 1307) and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

1. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone,

The objectives of the B4 Mixed Use zone are as follows:

- to provide a mixture of compatible land uses.
- to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- to support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The Department is satisfied that the proposed development is consistent with the objectives of the B4 Mixed Use zone in NLEP 2012, as:

- the proposed development includes a mixture of compatible land uses comprising residential and ground floor retail in an area identified for mixed uses, within the Honeysuckle Precinct.
- the site is well located with proximity to existing pedestrian and cycle links, bus stops and the light rail line under construction
- the site supports the Newcastle CBD and Honeysuckle Precinct by providing a mixed-use development with residential accommodation in proximity to business, commercial and entertainment uses.

2. Is the consent authority satisfied the proposed development will be consistent with the objectives of the standard,

The objectives of the height of buildings standard are:

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
- (b) to allow reasonable daylight access to all developments and the public domain.

The Department is satisfied that the proposed development is consistent with the objectives of the height of buildings standard of the NLEP 2012, as:

- the proposed height allows the public domain area fronting the site to be increased. This is considered an improved outcome, positively contributing to the foreshore promenade.
- There are no additional environmental impacts including overshadowing and visual privacy.

3. Has the consent authority considered a written request that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and they are satisfied that the matters required to be demonstrated have adequately been addressed

The Applicant demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, having regard to the five tests outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. It establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances, as the proposed development achieves the objectives of the standard and accordingly justifies the variation to the height control, meeting the first test outlined in *Wehbe*.

The Department supports the Applicant's conclusions that the proposed development achieves the objectives of the standard. Compliance with the development standard is unnecessary in this case as the objectives of the height standard are still achieved and unreasonable as no purpose is served by requiring strict compliance.

Having considered the Applicant's written request, the Department is satisfied that the Applicant has adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard and with the Court the matters required to be demonstrated have adequately been addressed.

The Applicant's written request justifies contravention of the development standard on the following environmental planning grounds:

- if made to strictly comply with clause 4.3, there would be no additional benefit to the streetscape or public domain in the local area.
- potential view loss toward the harbour as a result of the additional height of the proposed development has been compensated and is considered reasonably justified by the incorporation of through-site links within the development.
- whilst exceeding the building height standard for the site, the proposed development still contributes positively to the locality incorporating through-site links, which enable view sharing, pedestrian connectivity and built form relief.
- the design is consistent to development in the immediate vicinity, in particular the adjoining site at 50 Honeysuckle Drive in context with height, scale, bulk and proportions.

- the exceedance will not cause an unreasonable amount of shadowing when compared to a compliant development.
- the proposed development has been subject to a design excellence process has ensued to arrive at the form and massing for the site, which has been tested and optimised to create a superior outcome for the public domain and for its appropriateness in context.

Having considered the Applicant's written request, the Department is satisfied the Applicant has adequately addressed there are sufficient environmental planning grounds to justify the contravention of the development standard and the matters required to be demonstrated have adequately been addressed. The Department therefore concludes that the Applicant's written request adequately addresses the matters required to be demonstrated under clause 4.6 of the NLEP 2012 and the proposed development will be in the public interest because it is consistent with the objectives of the building height standard and the objectives for development within the zone.

Appendix F – Recommended instrument of consent

The recommended conditions of consent can be found on the Department of Planning and Environment's website as follows.

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8999