



NSW GOVERNMENT  
**Department of Planning**

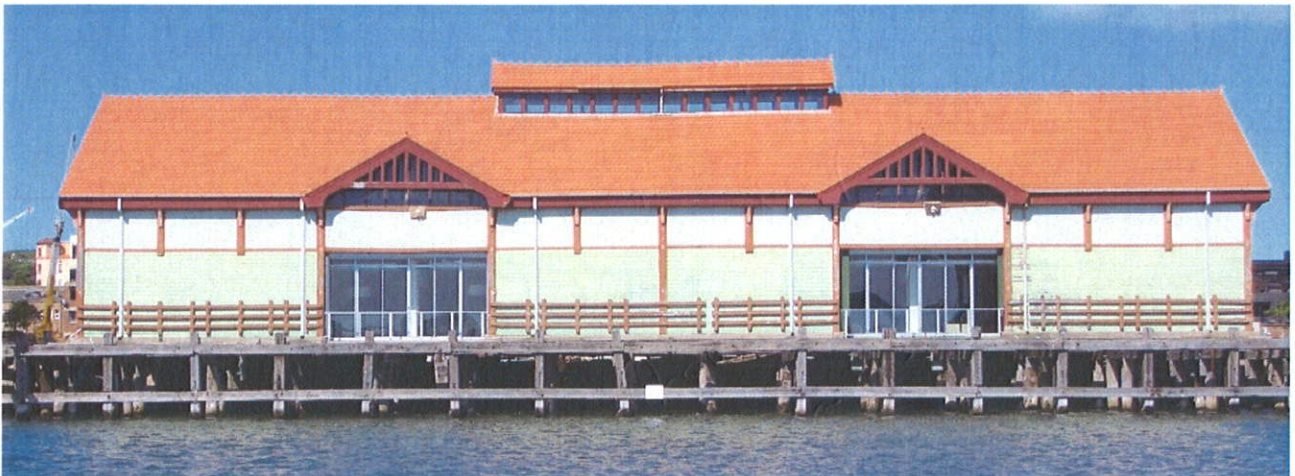
***Lee Wharf Building C***  
**Honeysuckle Drive, Newcastle**

**Proposed by the Caverstock Group Pty Ltd**

**Modification MP05\_0007 MOD 1**

Modification of Minister's Approval under Section 75W of  
the *Environmental Planning and Assessment Act 1979*

January 2009



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## 1. EXECUTIVE SUMMARY

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An application was submitted by the Caverstock Group Pty Ltd (the Proponent) on 30 October 2008, seeking to modify the Part 3A approval pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). The application MP05\_0007 relates to the Lee Wharf Building C, Honeysuckle Drive development and was approved by the Minister for Planning on 9 July 2008. The proposal comprised the following:

### Adaptive reuse of Lee Wharf Building C

- Refurbishment of the existing single storey structure for the purposes of a hotel and restaurant use of approximately 1,066m<sup>2</sup> comprising 711m<sup>2</sup> at the ground floor level and 355m<sup>2</sup> in a mezzanine level;
- Construction of new timber decks to the south and open deck to the north (324m<sup>2</sup> in total) with outdoor seating for up to 120 chairs and 20 tables (operating hours for the deck area to be restricted to 10pm);
- Gaming room fronting the entry deck at the southern entrance;
- Maximum number of 150 patrons;
- Associated signage on the south elevation, and east and west facades; and
- A loading bay adjacent to the western side of the building, accessed from Honeysuckle Drive via a service road to be located between Buildings A3 and A4/A5.

The approved trading hours are as follows:

- Monday to Thursday: 10.00am – 11.00pm
- Friday and Saturday: 10.00am – 12.00am (reduced from original proposed closing time of 1.00am)
- Sunday: 10.00am – 10.00pm

The original estimated project cost of the development was \$6.5 million. Key issues considered in the Department's assessment of the application included the following:

- Environmental, Social and Economic Impacts
- Built form, Urban Design and Landscaping
- Public/private domain relationship
- Public foreshore access
- Impact on Newcastle Port
- Heritage
- Amenity
- Traffic impacts

The Proponent is seeking to modify the existing approval to permit the following changes:

- 1) Deletion of the part of **Condition A6 (2)** which seeks to restrict the hours of operation for the outdoor deck; and
- 2) Deletion of **Condition G1** which limits the maximum number of patrons (150) permitted in the building.

The Department has concerns regarding the proposed extension to the hours of operation of the outdoor deck area and therefore does not agree to the modification request. The second part of the modification is seen to be minor and will not result in amenity impacts to the surrounding properties.

## 2. THE SITE

The subject site is located to the north of Honeysuckle Drive and is within the local government area of the City of Newcastle Council. The subject site also forms part of the Honeysuckle Development Corporation precinct (HDC precinct), which comprises 50 hectares of land along the Newcastle Harbour directly north of Newcastle CBD. Newcastle Harbour and the steel works form the northern backdrop to the HDC precinct.

Lee Wharf Building C and the public foreshore promenade are located directly north of the approved Stage 3 Buildings A3, A4/A5 and A6. Lee Wharf Building C occupies the north-western part of Lot 1 in DP 1111305.

The site is owned by Honeysuckle Development Corporation and comprises a total area of approximately 6,923m<sup>2</sup>. The site is bounded by Newcastle Harbour to the north, mixed use/residential development to the south and existing mixed use/residential development to the east and undeveloped land to the west (see Figure 1 – site location).

The site is currently inaccessible to the public and forms part of the larger redevelopment of the HDC precinct within the wider ongoing renewal and revitalisation of inner city Newcastle.

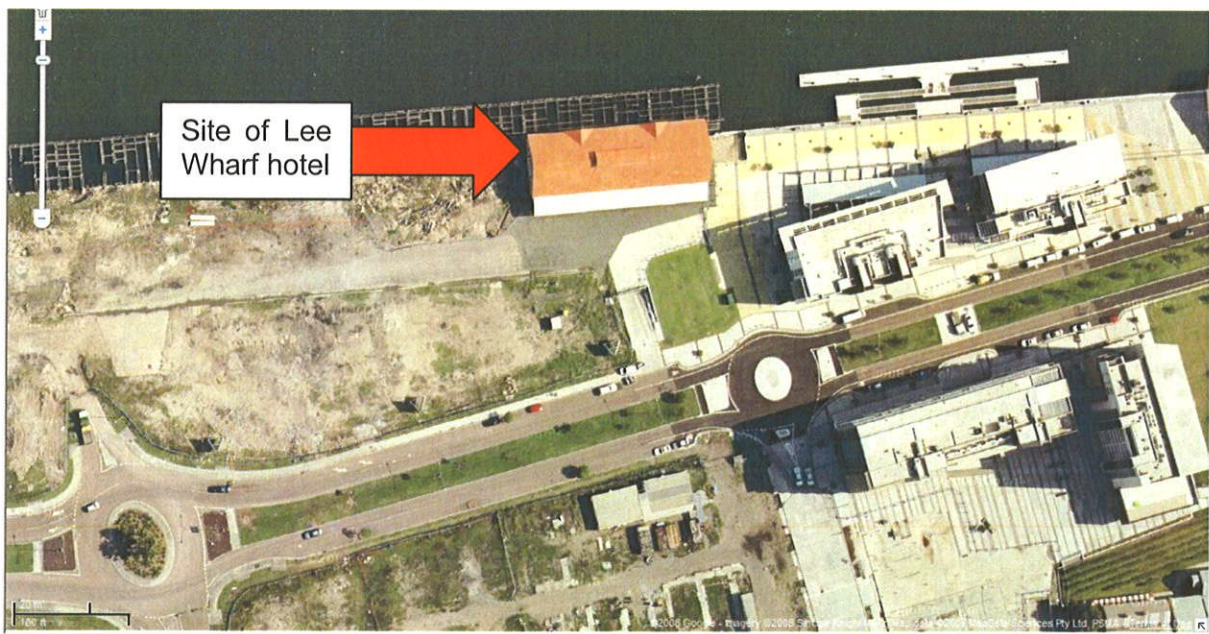


Figure 1: Aerial view of the site and surrounding properties



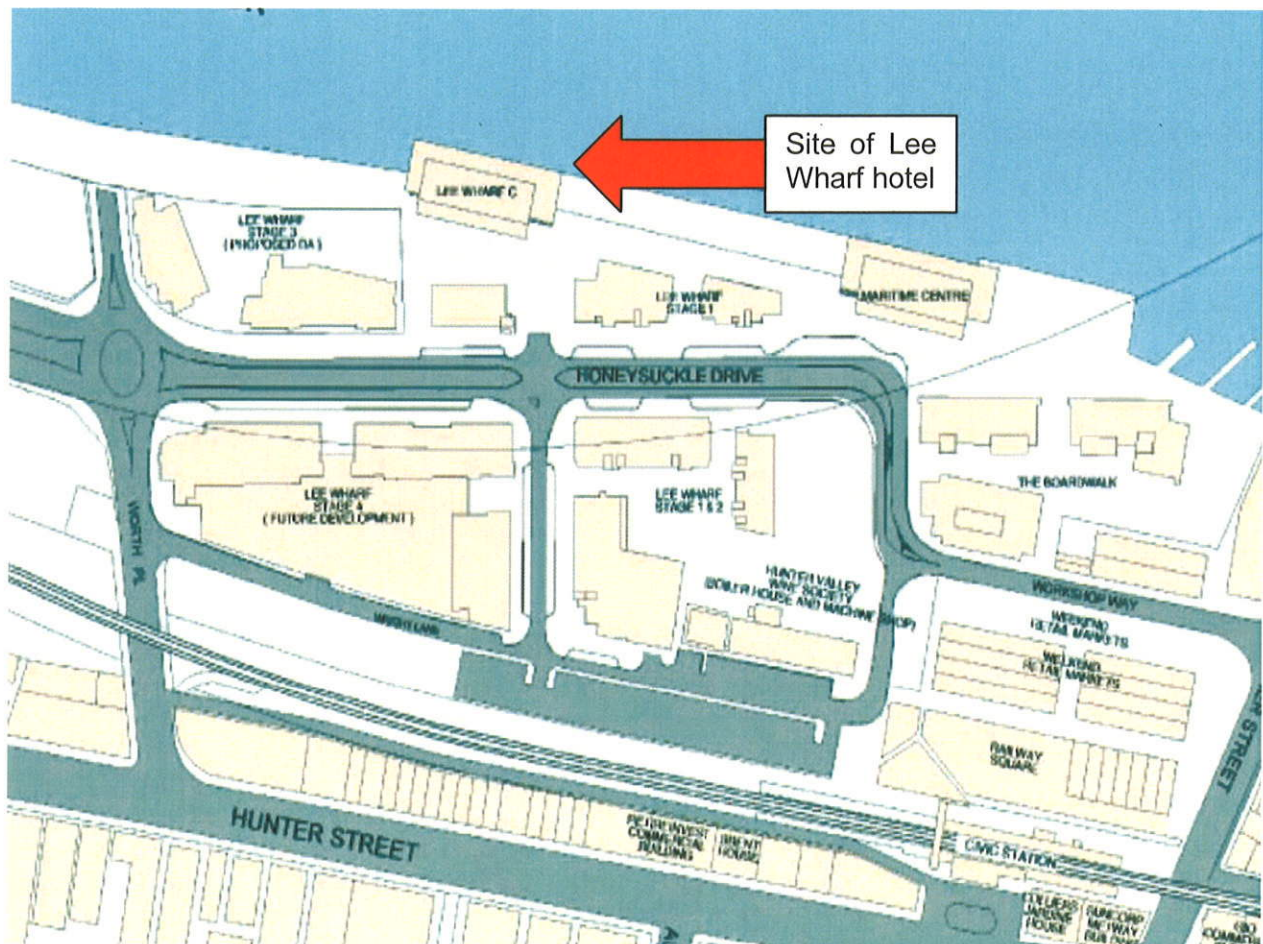


Figure 2: The subject site

### 3. MAJOR PROJECT APPROVAL

#### 3.1 PROJECT APPLICATION MP 05\_0007

On 9 July 2008, the Minister for Planning approved the Major Project 05\_0007 for the construction of the Lee Wharf Development, in accordance with section 75J(2) of the EP&A Act.

A copy of the approval is at **Tag B** and a copy of the original report is at **Tag C**.

### 4. DESCRIPTION OF PROPOSED MODIFICATIONS

#### 4.1 PROPOSED MODIFICATIONS

On 20 October 2008, the Caverstock Group (the Proponent) lodged the subject application to modify MP 05\_0007 (**Tag D**), pursuant to section 75W of the EP&A Act. The proposed modifications to the approved project include:

The deletion of Condition A6(2) which states:-

- *The outdoor deck area is to operate between the hours of 10:00AM and 10:00PM seven (7) days a week. No patrons are permitted in this area after 10:00PM.*

The deletion of Condition G1 which states:-

- *The maximum number of patrons permitted on the premises at any one time is 150 persons.*

## 4.2 JUSTIFICATION FOR PROPOSED MODIFICATIONS

The Proponent provides the following justification for the modification application:

- The proposed modifications are requested *"on the basis that the conditions are unnecessary, impractical and render the approved development commercially unviable."*
- The restriction on the number of patrons is suggested to be based on an incorrect assumption in section 3.1 of the Director General's assessment report that applicant requested a maximum number of 150 persons be permitted on the premises.
- Further calculations reveal that 500 persons, and not the originally suggested 100 patrons, would in fact need to be present on the outdoor deck area in order to breach the noise criteria at nearby residential receivers.

## 5. STATUTORY CONTEXT

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### 5.1 MODIFICATION OF A MINISTER'S APPROVAL

The modification application has been lodged with the Director General pursuant to section 75W of the EP&A Act, which provides for the modification of the Minister's approval, including revoking or varying a condition of the approval, or imposing an additional condition of the approval.

Under section 75W(2), the Minister's approval for a modification is not required if the project, as modified, will be consistent with the existing approval under this Part. In this instance the changes to the project (as listed above) required an application to modify the approval, as they involve changes to specific conditions.

### 5.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRs)

Section 75W(3) of the Act provides that the Director General may notify the Proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the Proponent of DGRs for the proposed modification, as sufficient information was provided to the Department to consider the application.

## 6. CONSULTATION AND EXHIBITION

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Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition.

Under section 75X(2)(f) of the Act, the Director General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

The Department is of the opinion that the requested increase in the number of patrons allowed is reasonable given the availability of parking in the area and the size of the premises. Therefore it is not seen to be necessary to inform local residents of the proposed increase. Also the Department is not supporting the proposed extension to the operating hours of the outdoor deck which could have had a negative impact on nearby residents.

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## 7. CONSIDERATION OF PROPOSED MODIFICATIONS.

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### 7.1 DELETION OF CONDITION A6 (2) – HOURS OF OPERATION;

This part of Condition A6 was included in the approval in order to protect the acoustic amenity of the nearest residential properties from noise generated by patrons utilising the outdoor deck area as well as outdoor plant equipment. The basis for the 10pm closure comes from DECC criteria whereby it is appreciated that excessive noise levels potentially interfere with local resident's sleep.

The nearest residential properties are situated approximately 40-50m away, directly above commercial properties reflecting the mixed use nature of the overall development. The DG's assessment report (5.5.1) states that, *"noise control measures are recommended to be implemented, and a condition of the application will require a restriction to the hours of use for the outdoor deck area whereby all patrons must be cleared by 10pm."*

The proponent states that a Plan of Management (required by Condition G4) for the hotel will ensure that acoustic barriers 1500mm - 1800mm above the outdoor deck area are installed as well as, on leaving the premises patrons will be gathered into the entry area or lounge. The effect of these acoustic barriers however cannot be demonstrated at this stage in terms of their ability to prevent noise from disturbing nearby residents travelling from the outdoor deck.

The modification application states that further information has been sought from the proponent's acoustic consultant (Reverb Acoustics). The findings of the consultants report (dated 11 August 2008) reveal that initial noise impacts in the outdoor area assumed that up to 100 patrons would occupy the outdoor area where in fact further calculations reveal that 500 patrons would need to occupy the outdoor area at the same time to exceed the criteria at the necessary residential receivers. The outdoor area is 380m<sup>2</sup>, which the Building Code of Australia (BCA) limit would be 380 patrons. The Department is not able to predict at this stage whether the noise generated by patrons of the outdoor deck will be detrimental to the residential amenity of nearby residents.

The letter (dated 26 September 2008) from Lee Wharf Developments which accompanied the modification request states that none of the other existing restaurants in the Honeysuckle precinct have a restriction on their outdoor dining and they happen to be located closer to residential properties and in some case are directly below them. The letter also states that if the eastern and western ends of the outdoor deck have limited hours of use it would protect neighbours from any negative acoustic impacts.

The additional information from the acoustics consultant also states that Liquor Administration Board's Standard Noise Conditions apply due to the fact that the Lee Wharf hotel is a licensed premises.

On review it has not been satisfactorily justified to the Department that an extension to the trading hours would not result in a negative impact on the amenity of nearby residential properties. By extending the operational hours of the outdoor deck area as well as removing the limit on the number of patrons, a real risk is posed in terms of exceeding reasonable noise levels. Solely relying on noise criteria in the conditions of consent could lead to difficulties with regard to enforcement action.

Once the use commences operation, if it can be demonstrated that the use of the outdoor deck area by a larger number of persons does not create an unacceptable level of noise, it may be possible to trial an extension to the operational hours of the deck area.

In this regard the Department does not support the deletion of this part of the condition.

## **7.2 DELETION OF CONDITION G1 – MAXIMUM NUMBER OF PATRONS PERMITTED ON THE PREMISES**

The intention of this condition was to control the level of parking and protect the local amenity.

The modification application states that from the outset the suggestion that the proponent applied for a maximum of 150 patrons is incorrect. According to BCA Part D1.13 the premises could accommodate approximately 1,000 patrons based on 742m<sup>2</sup> total public floorspace. Whilst the estimate of 1,000 patrons is considered an exaggeration the Department is in agreement that the establishment could easily cater for more than 150 patrons based on the floorspace.

The letter (dated 26 September 2008) from Lee Wharf Developments requests the deletion of this Condition on the basis that, *"150 patrons would sparsely populate the premises with the effect being a lifeless and un-attractive development"* which would be counterproductive in terms of an urban renewal project. The Department considers that given the floorspace of 742m<sup>2</sup>, a limit of 150 patrons would indeed create a sparsely populated establishment.

The 150 patrons, referred to in the Director General's Environmental Assessment Report, creates a parking demand of 35 spaces at the busiest time of the day, which is the evening period. There are approximately 265 available parking spaces within the vicinity of the hotel. The hotel is within close proximity to Newcastle CBD and public transport services which therefore reduces the demand for on site parking. The letter dated 29 August 2008 from the consultant who submitted the original Parking Assessment report, John Coady Consulting, states that *"there is no need to limit hotel patronage on parking grounds."*

With the location of the hotel being relatively well connected to Newcastle CBD through public transport and an abundance of available parking in the area, it is considered that an increase number of patrons can be accommodated when viewed from a parking perspective.

The Department considers that the hotel can cater for an increased level of patronage due to its size and location, which are comparable to other licensed premises in Newcastle. The Department is in agreement with the applicant, that the number of patrons need not be limited on the grounds that there is sufficient parking provision to accommodate the extra persons and therefore supports the proposed modification to delete Condition G1.

## **8. CONCLUSION**

Under section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. This report describes the Department's assessment of the requested modifications and supporting documentation as provided by the Proponent, and recommends part approval of the application to allow patron numbers to be determined under the BCA. However the proposal to allow users of the outdoor deck area is not supported and consequently this aspect of the application is refused.

It is considered that the proposal, as modified, achieves the same objectives as assessed for the originally approved development under Major Project 05\_0007 and does not alter the overall nature, need or justification of the approved project.



## 9. RECOMMENDATION

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It is recommended that the Minister for Planning:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, subject to conditions, under Section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- (c) **Sign** the attached Instrument of Modification (**Tag A**).

**Prepared by:**

  
James Kirby  
Planner, Urban Assessments

**Endorsed by:**

 30/1/2009  
Shayne Watson  
Planning Assessment Manager, Urban Assessments

 30/1/2009  
Michael Woodland  
Director, Urban Assessments

Red 20/2/09

 20/2/09  
Jason Perica  
Executive Director  
Strategic Sites and Urban Renewal