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Department of Planning, Industry and Environment
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Clause 4.6 Variation Statement

RE: Development Application for a Mixed Use development at 42 Honeysuckle Drive, Newcastle NSW 2300

1 INTRODUCTION

The development to which this State Significant Development (SSD) application relates, is for construction of a mixed-use development comprising an eight (8) level hotel with 179 rooms and a nine (9) storey commercial office building including ground floor retail premises and internal carpark, at 42 Honeysuckle Drive, Newcastle, NSW 2300.

The SSD seeks approval for the following:

- + Construction and use of a building which has a three (3) storey podium from which a high quality five (5) storey commercial tower sits upon and connects to the seven (7) storey hotel component, as follows:
 - o Ground Floor café retail premises;
 - o Two (2) levels of commercial space within the podium;
 - o Seven (7) storey hotel spanning from Level One to Level Seven on the western side of the development, containing 179 rooms with guest facilities including gymnasium, bar, lounge area and library; and
 - o Commercial office spaces on the Eastern tower of the building sitting atop the podium and the small bar on level 3. The commercial tower spans from level five to level nine, with each office space containing washrooms and kitchen facilities.
- + Landscaping works including
 - o A courtyard located on Level Four which separates the commercial and hotel component and open to the sky;
 - o Ground Floor planting within site setback areas; and
 - o Planting on building façade including the southern façade facing the light-rail.
- + Associated 173 carparking spaces from the Ground Level to Level Four, as well as Ground Floor loading and servicing facilities; and
- + Ancillary works as detailed on the proposed Architectural drawings at Appendix C.

The proposal generally complies with the provision of the Newcastle Local Environmental Plan 2012 (NLEP 2012), with the exception of development standard exceedance related to height.

The development standard sought to be varied is contained in Clause 4.3 of the *Newcastle Local Environmental Plan 2012* (LEP 2012) which relates to building height.

An assessment of the variation is provided in the following pages in accordance with the requirements of Clause 4.6 of the LEP 2012. This variation has been prepared in accordance with the NSW Department of planning and infrastructure's publication "*Varying Development Standards: A Guide*" (August 2011), which identifies matters to be addressed in an application to vary a development standard.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying the development standards to achieve better outcomes for, and from, development.

It is considered that the proposed development is consistent with the desired future character of the area as established in Newcastle's Local Planning Strategy, Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036.

Overall, the proposed variation is considered reasonable on the basis that:

- + The proposed development meets the underlying intent of the controls and is a compatible form of development that does not result in unreasonable environmental amenity;
- + The proposed development is consistent with the objectives of the B3 Commercial Core Zone and the Newcastle City Centre objectives contained in Part 7 of the LEP 2012 (as the proposed development falls within the Newcastle City Centre);
- + The proposed development has been architecturally designed to minimise the overall bulk of the building, resulting in a built form that does not present an unacceptable visual affect;
- + A Design Review Panel (DRP) has reviewed the proposal and deemed "the revised form is an improvement on the previous schemes and is generally supported by the DRP. The revised maximum height and lower podium height can be supported by the DRP."
- + The additional building height resulting from the exceedance does not result in any significance impacts on adjoining properties, particularly with respect to overshadowing, loss of privacy and loss of views;
- + The site is physically separated from nearby Heritage Items and will not adversely impact on their heritage values; and
- + The development will further reinforce and cement the long-term viability of the Honeysuckle Precinct, providing high quality residential accommodation close to public transport.

2 SITE DETAILS

The site is located along Honeysuckle Drive and is currently an undeveloped lot, which is legally identified as Lot 22 DP 1072217 (refer to Figure 1). It has a total area of approximately 3,728m².

The site exists within the western end of the Honeysuckle Precinct in the Newcastle City Centre. The site is a regular quadrilateral configuration, its boundaries shared with public space on three sides, being Honeysuckle Drive (north), public reserve (west), Light Rail Corridor (south) and private land that supports a three-storey commercial building to the immediate east.

To the north of the site exists waterfront land and an open carpark known locally as Thorsby Carpark, both having a mixed-use zoning. To the west, land is undeveloped within a commercial core zoning; and to the east, land has been developed for commercial land uses with intermittent ground floor activation along Honeysuckle Drive. Directly east of the site is Hunter Water headquarters which is located within a three (3) storey development. Further east running along Honeysuckle Drive are further commercial premise ranging in height with the commercial building at the corner of Worth Place and Honeysuckle Drive reaching nine (9) storeys.

Bordering the south of the site is the newly developed Light Rail Corridor which connects the Newcastle Centre with the beaches. Further south of the light rail corridor are further commercial and retail premises.

Figure 1 – Cadastral Plan (Source: Six Maps)



3 STRATEGIC DIRECTION

3.1 STRATEGIC DIRECTION FOR NEWCASTLE LGA

Clause 1.2 of the NLEP 2012 outlines the aims of the NLEP 2012 and strategic development direction for the Newcastle Local Government Area (LGA). The following summary addresses each subclause and provides a comment in respect to the proposal.

(a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle

Comment: The proposal is sympathetic to the existing and desired future character of Honeysuckle and the City of Newcastle. The proposal is architecturally designed to respond to the surrounding context; in addition, the site is physically separated from nearby Heritage Items and will not adversely impact on their heritage value.

The proposal will contribute to the sense of place in the city centre and will reinforce the Newcastle City Centre, as an attractive destination for business investment and tourism. Furthermore, the proposed development is in keeping with the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 20036 strategic direction. Within the Hunter Regional Plan direction 3 states the need to revitalise the Newcastle City Centre and maintain Newcastle as being a leading metropolitan city for the region. The proposal is aligned with these aims and will help in achieving these objectives.

(b) To conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle

Comment: The proposed development has been designed in accordance with best practice ecologically sustainable development and architectural principles. The proposed finishes and materials have been selected based upon product lifespan to ensure the longevity of the development.

- (c) to contribute to the economic wellbeing of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth.*

Comment: The proposal will significantly contribute to the economic wellbeing of the community by providing construction jobs and operational jobs for both skilled and unskilled workers.

In addition, the proposal will contribute to strengthening the position of Newcastle as the leading metropolitan city in the area, with the proposal bring in investment opportunities with the commercial business spaces. The provision of large floor commercial plates will likely attract larger companies or government agencies, whilst the smaller floor plates in the podium will seek to attract creative and high-technology companies.

The proposal will also increase the cities tourism capacity, showcasing the Newcastle harbour to guests of the hotel. The first goal of the Hunter Regional Plan 2036 is for Newcastle to become the leading regional economy in Australia. This proposal will solidify Newcastle's reputation within the regional as the economic powerhouse for the Hunter and aid in achieving the stated goal.

- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency.*

Comment: The site is located with the Newcastle City Centre and is zoned B3 Commercial Core Zone; this zoning encourages a wide range of employment generating uses. The Site is also located in close proximity to public transport routes as well as Marketown Shopping Centre. The Newcastle Interchange, which provides access to the bus, light rail and train network is within a 400-metre walk from the Site.

- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial service*

Comment: Not relevant. The proposal does not seek consent for any residential components. Within the vicinity of the proposal there are several residential apartments, with the proposal improving possible access to employment opportunities.

The proposed commercial and hotel scheme is seen as a diversification from a residential offering which has been strong in Newcastle of the past 10-years.

- (f) To facilitate the development of building design excellence appropriate to a regional city.*

Comment: The proposed development has been architecturally designed by renowned architects Bates Smart and consists of a high quality, architecturally designed building that makes a positive contribution to the street frontage and built form along Honeysuckle Drive. The proposal architectural form has been carefully designed having due regard to the locality with on-going input from the DRP and Government Architects Office. It is considered that proposal demonstrates a high level of design excellence. The proposed built form will reflect the emerging contemporary character of Honeysuckle and is considered appropriate to a regional city.

4 EXCEPTION TO DEVELOPMENT STANDARDS

The Department of Planning and Infrastructure's public "Varying Development Standards: a Guide" (August 2011), states that:

The NSW planning system currently has two mechanism that provide the ability to vary development standards contained within environmental planning instruments:

- + Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP); and
- + State Environment Planning Policy No 1- Development Standards (SEPP1).

In this instance, SEPPP 1 does not apply as the NLEP 2012 is a Standard Instrument LEP. It is noted that the Guidelines do not identify any other mechanisms (such as a Planning Proposal) to vary a development standard.

4.1 CLAUSE 4.6

Clause 4.6 of the NLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better planning outcomes.

(1) The objectives of this clause are as follows:

(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development standards to particular development,

(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause

The proposal seeks to vary the height standards applicable to the site in the subject development application and does not introduce new controls across an area. The Clause 4.6 guidelines also state specifically when this clause is not to be used, namely:

"... in Rural or Environmental zones to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in the following SI zones: Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living."

Neither the site nor the proposal is included within these criteria and therefore, the use of Clause 4.6 to vary the height standard is appropriate in this instance.

4.2 LEGAL CONTEXT TO VARYING DEVELOPMENT STANDARDS

This justification has been prepared having regard to the important NSW Land and Environment Court judgements related to varying development standards, contained in the following guideline judgements:

- + Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46

- + *Wehbe v Pittwater Council* [2007] NSWLEC 827
- + *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five No 1)
- + *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (Four2Five No 2)
- + *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (Four2Five No 3)
- + *Moskovich v Waverley Council* [2016] NSWLEC 1015
- + *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7
- + *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Preston CJ)
- + *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097 (O'Neill C)
- + *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61
- + *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

Randwick City Council v Micaul Holding Pty Ltd [2016] NSWLEC 7 documents a decision of the Chief Judge of the Court in an appeal against a decision of Commissioner Morris to uphold a request under clause 4.6 of the Randwick LEP 2012 to vary development standards relating to the height and FSR of a building.

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston outlined the rationale for development standards, and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision Preston CJ noted:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Wehbe V Pittwater [2007] NSW LEC 827 also established the 'five-part test' to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- (1) *The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends;*
- (2) *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*
- (4) *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*
- (5) *A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Although *Wehbe* relates to SEPP 1 rather than a clause 4.6 request, the Courts have held that the same principles apply. In *Initial Action*, Chief Justice Preston at [16] explicitly notes that the five points in *Wehbe* are equally applicable to a

written request under clause 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

In *Initial Action* (2018) the Chief Judge also clarified the following, with respect to the 5-part Wehbe test (at [22]):

"These five ways are not exhaustive of the ways in which an applicant might demonstrate that 'compliance with a development standard is unreasonable or unnecessary'; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way."

Of particular relevance in this instance and relied upon by the applicant in this clause 4.6 variation request, is part 1, that

"the proposal, despite numerical non-compliance, [would] be consistent with the relevant environment or planning objectives".

In the decision of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, at paras 87-88, Chief Justice Preston has further clarified the correct approach to the consideration of clause 4.6 requests including that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not. Paragraph 88 of his decision Preston CJ noted:

"Clause 4.6 does not directly or indirectly establish this test. The requirement ...is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."

This reference is of particular significance in this instance as the proposal, while contravening the development standard, does not need to justify a better environmental planning outcome than a development that complies with the development standard.

The Court's recent decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097 (*O'Neill C*) usefully summarises the relevant tasks and tests under clause 4.6:

"The consent authority, or the Court on appeal, must be satisfied that the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6(3) and that the proposal will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4) of LEP 2014".

It can be seen that this is a two-part test. The first test only requires indirect satisfaction that the written request adequately addresses the matters it is required to address. Whereas the second test at 4.6(4) requires a positive finding that the development as a whole ('i.e. 'the proposal') is consistent with the objectives of the contravened development standard and of the zone.

The requirement to be 'consistent with' has been judicially interpreted. In the matter of *Moskovitch*, in the context of a clause 4.6 variation relating to height, the Commissioner accepted that:

"53. The threshold of "consistency" is different to that of "achievement". The term "consistent" has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* [2002] NSWLEC 224; (2002) 124 LGERA 147".

In that matter, it is relevant to note that the Court (O'Neill C) ultimately approved a height-non compliance despite the fact that it caused some view loss impacts. The Commissioner assessed those view impacts in qualitative and quantitative terms and found that they were reasonable in the circumstances, even though they were caused by a height non-compliance. This dispels the notion that any impact caused by a non-compliance with a development standard will be unacceptable. To the contrary, it supports the finding by Preston CJ In Initial Action (2018) at 87 that *"It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development"*.

In the Courts recent decision *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* Preston CJ of the LEC recently clarified the correct approach to determining a cl4.6 written request. Although the Developer had submitted a cl4.6 written request, the Commissioner's judgment and orders did not disclose any consideration of the request, and in particular whether she had formed the requisite opinions required by cl4.6.

In the absence of written reasons, and particularly where s34(3) of the LEC Act requires a Commissioner to set out in writing the terms of the decision, the Court inferred that the Commissioner had not formed the necessary opinions. If so, she lacked power to grant the Consent.

Clause 4.6 of Standard Instrument LEPs nevertheless allows for a consent authority to grant development consent if satisfied of the requirements of clause 4.6(4)(a):

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) The consent authority is 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*

In that matter, the requirement to address subclause (3) sufficient environmental planning grounds and how the proposed development is in the public interest whilst achieving the objectives of the standard is considered to have been met in this report.

5 DEVELOPMENT STANDARD TO BE VARIED

This section pertains to the “*Application form to vary a development standard*” by Newcastle City Council.

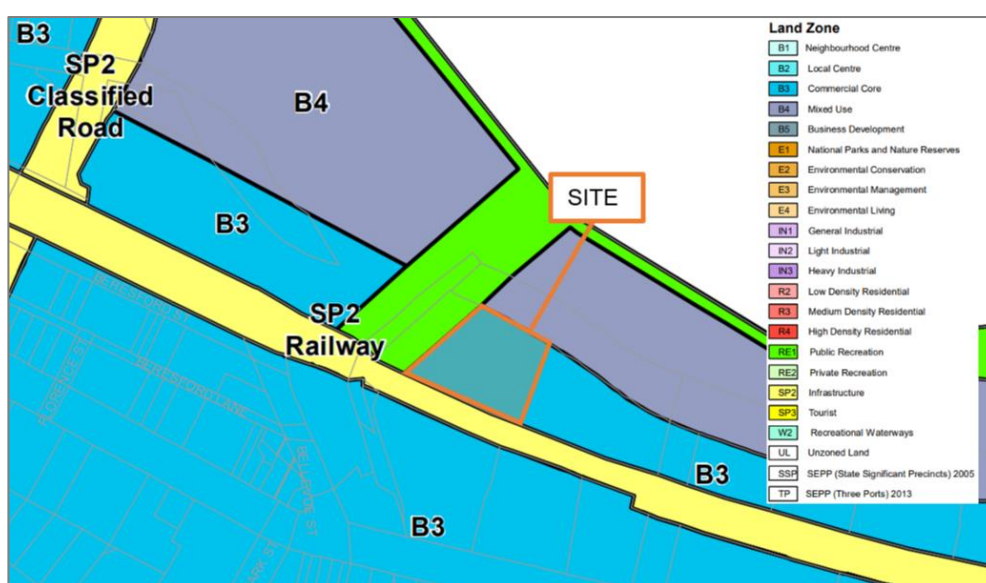
What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012

What is the zoning of the land?

The NLEP 2012 indicate that the Site is within the B3 Commercial Core zone, as illustrated in Figure 2

Figure 2 - Land Zoning Map Extract (LZN__004G)



What are the objectives of the zone?

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for commercial floor space within a mixed use development.
- To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.
- To provide for the retention and creation of view corridors.

Comment: The proposed mixed-use development is permissible within the B3 Commercial Core zone and is compatible within the surrounding context given the proximity other commercial premises. The proposal with its retail and business opportunities coupled with the hotel will be a suitable land use which serves the needs of the Greater Newcastle residents, as well as tourists.

The development will result in wide range of employment generating uses; including construction jobs and jobs during the operational phase for both skilled and unskilled workers. In turn, the proposal complies with the objective of increasing employment opportunities, with the retail, business and hotel premises all contributing to increased employment and therefore economic growth in the region.

This development will only strength Newcastle's role within the region, further ratifying it as the central hub for business and retail, while also showcasing the attractive features of Newcastle, with its close proximity to Newcastle Harbour.

What are the development standards being varied?

The building height development standard contained in Clause 4.3 of the NLEP 2012.

Are the standards to be varied a development standard

Yes, the standard is considered to be a development standard in accordance with the definition contained in Section 4(1) of the *Environmental Planning and Assessment Act 1979* and not a prohibition.

What are the objectives of the development standard?

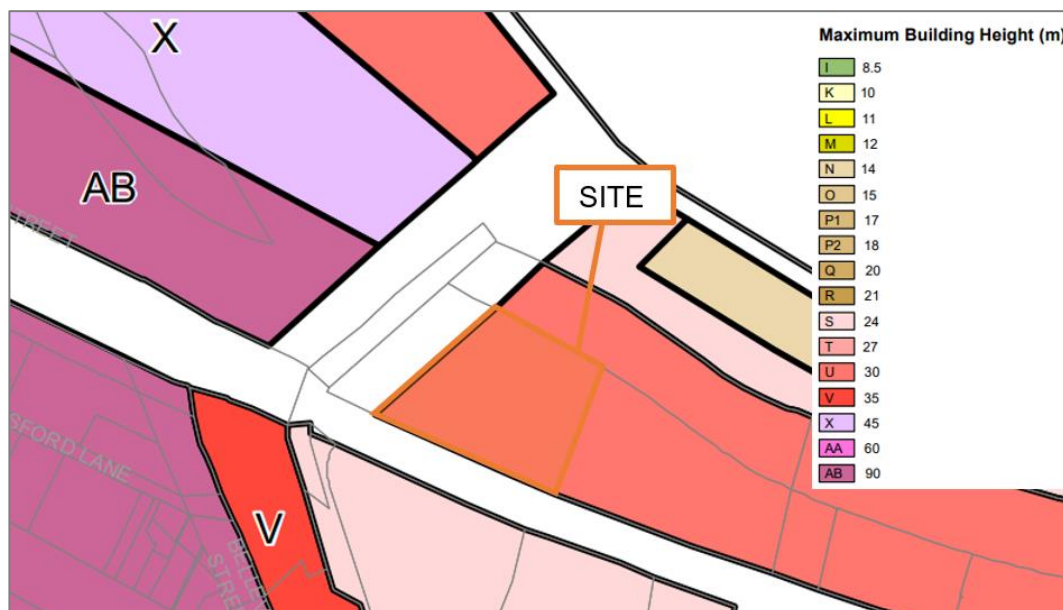
The objectives of Clause 4.3 – Height of Buildings are as follows:

- (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.*

What is the numeric value of the development standard in the environmental planning instrument?

The maximum height under the NLEP 2012 is 30 metres, as shown in Figure 3.

Figure 3 - Height of Building Map Extract (HOB_004G)



What is the proposed numeric value of the development standard in your development application?

The numeric value of the proposed development and percentage variation are detailed in the following table and Figure 4.

Clause	Control	Proposal	Variation
Clause 4.3 – Building Height	30m	<p>Building height of eastern commercial tower is 38.83m including plant</p> <p>Building height of eastern commercial tower is 34.83m at the Level 09 roof height</p> <p>Building height of western hotel tower is 31.455m including plant</p> <p>Building height of western hotel tower 29.38m excluding plant at the parapet level</p>	<p>8.83m (29.4%)</p> <p>4.83m (16.1%)</p> <p>1.455m (4.85%)</p> <p>Complies</p>

Note:

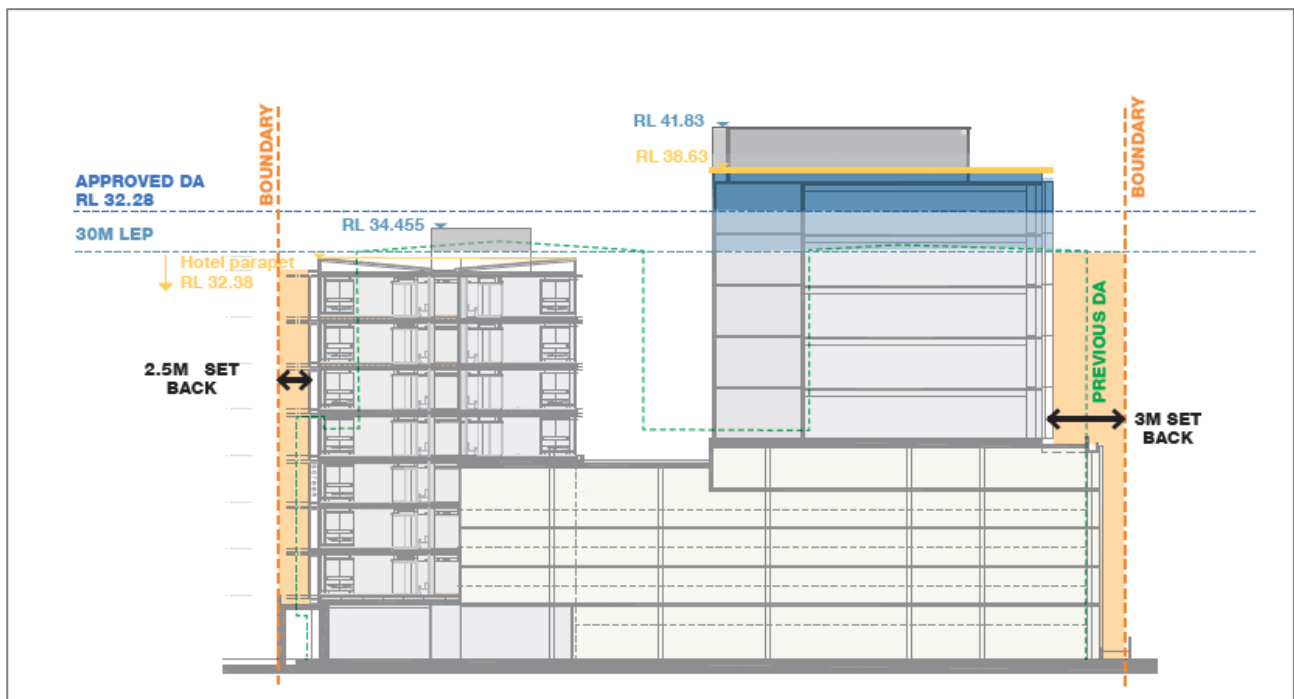
Newcastle LEP 2012 defines building height as the following:

building height (or ***height of building***) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Figure 4 - Height of Building Map Extract (Bates Smart)



6 JUSTIFICATION FOR THE CONTRAVENTION

This section addresses Section (3) and (4) of Clause 4.6 and justifies the contravention from development standard 4.3.

(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.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is 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

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

6.1 COMPLIANCE IS UNREASONABLE OR UNNECESSARY

As mentioned above, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the standard. This is one of the ways of demonstrating unreasonable or unnecessary as cited in paragraph 17 of Justice Preston's judgement (*Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*).

Clause 4.3 – Height of Building

The proposed development achieves the objectives of Clause 4.3:

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

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

From a design excellence perspective, the development has been reviewed by the DRP who commented "the revised form is an improvement on the previous schemes and is generally supported by the DRP. The revised maximum height and lower podium height can be supported by the DRP."

In comparison to the previously approved scheme, the form of the building above the podium is split into two towers, rather than one U-shaped plan form. As a result of the two towers, the proposal is read as two elements which breaks down the bulk and scale of the development and the two forms allows for an additional view corridor to the foreshore to be maintained through the site in comparison to the previous development.

The proposed development has been designed by Bates Smart and consists of a high quality, architecturally designed mixed use building, that splits into two towers, which will make a positive contribution to the West End of Newcastle. The proposed design response improves the potential for the Honeysuckle Precinct to achieve the strategic direction and goals mentioned throughout the Hunter Regional Plan, Greater Newcastle Metropolitan Plan, Newcastle Urban Renewal Strategy, Newcastle Urban Transformation and Transport Program and Newcastle Community Plan.

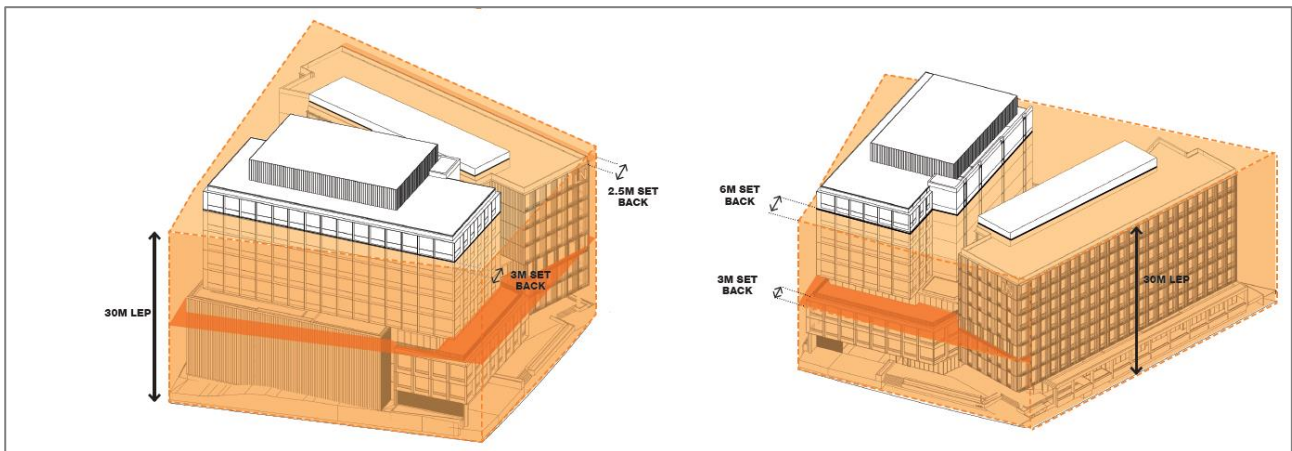
These strategies and plans focus on the revitalisation in Newcastle City Centre. The design enhances the vitality, identity and diversity of Newcastle City Centre through utilising an undeveloped Site, in the centre of the city which is located on Newcastle Harbour. The proposed development will assist in economic growth in the area, attracting consumers to the area, while also attracting tourists to the precinct.

As stated in Initial Action (2018) at 87 and 88, there is no requirement that the impacts be neutral or non-existent, rather the test is simply whether the objectives of the development standard are met.

The proposed development represents a compatible mixed-use development for the site and is consistent with the desired future vision for this area of the Honeysuckle Precinct to emerge as a revitalised mixed-use commercial precinct. By providing a mix of retail and office premises, located alongside other commercial premises including Hunter Water, Sparke Helmore Lawyers and GHD, the proposal will only further contribute to the economic growth and development of Honeysuckle.

Figure 5 illustrates the proposed height exceedance, as demonstrated the smaller hotel tower exceeds the height limit as a result of the plant and lift overrun, when measured to the hotel parapet the building is compliant with the height standard. Whilst the commercial tower exceeds the height limit predominant due to the plant and lift over-run, the commercial floor space above the height limit captures view to the harbour, Newcastle CBD and ocean. The provision this floor space captures the A-grade commercial office market which is limited in Newcastle CBD, this will ensure successful revitalisation and investment in the Newcastle area which is not limited to residential development.

Figure 5 – Height Exceedance (Source: Bates Smart)



To achieve realistic commercial floor to floor heights the parapet is at RL +37.83m which is 4.8m above the 30 metres set out in the DCP. Notably, this height is only 2m above the already approved DA scheme. The result of this balances the volumes of the development and generates a building hierarchy.

Given the high-density development proposed to the west of the site at 90m, the DRP and the Government Architect were generally very positive of the scheme and noted that they would be supportive of the increased height. The additional height acts as a transitional site between the existing development to the east of the site and the 90m height limit to the west as demonstrated in Figure 6.

Figure 6 – Surrounding Height Limits (Source: Bates Smart)



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

Reasonable daylight access is provided to all surrounding developments. Due to sensitive design and siting, the proposed height variation will not result in any detrimental impact to any neighbouring land uses, as illustrated in the shadow diagram provided at Figure 7 and Figure 8. The proposed development will not unreasonably overshadow the properties to the south or east; and will not cause significant overshadowing of the public domain.

The development is oriented to maximise solar access, privacy and ventilation. The design enables the hotel and commercial tower extended sunshine and extensive views.

The proposed development achieves the objective of the clause and therefore strict compliance with the 30m height standard of the site would be unreasonable, unnecessary, and would not achieve a greater planning or urban design outcome. As stated in Wehbe, the numerical development standards are not ends in themselves but means of achieving ends.

Figure 7 – Winter Solstice – June 21 Shadow Diagrams (Source: Bates Smart)

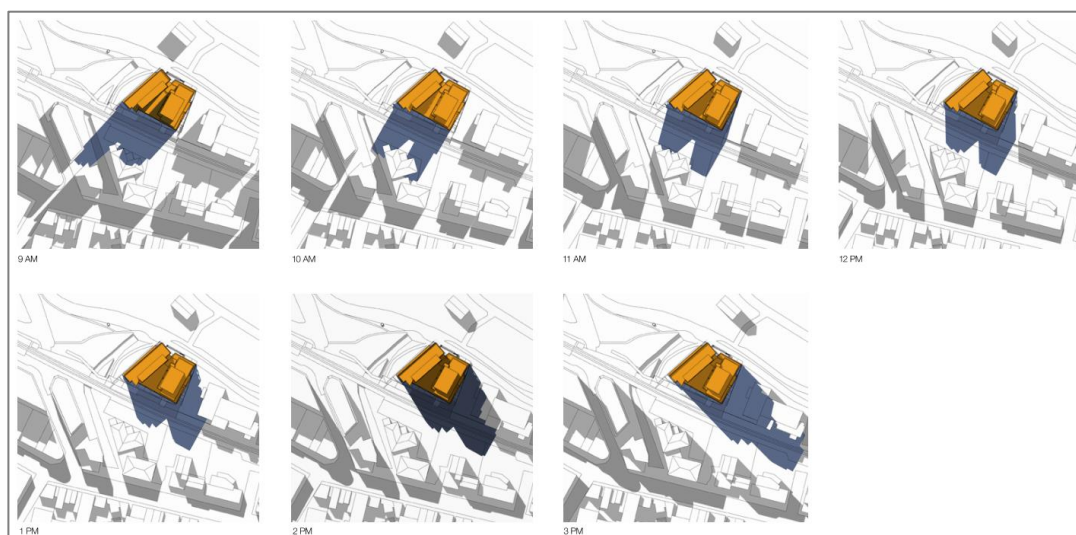
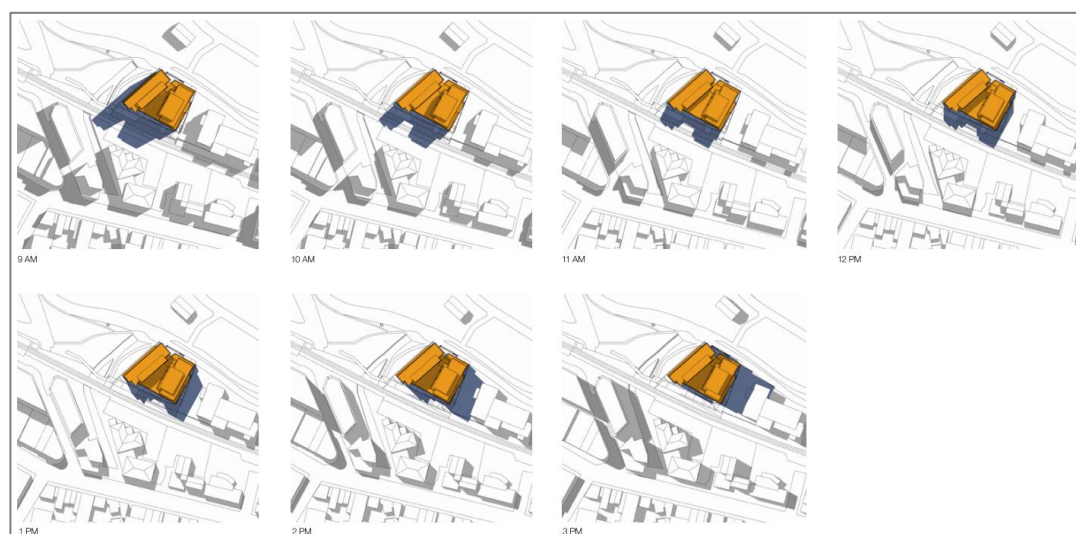


Figure 8 – Equinox – March 21 Shadow Diagrams (Source: Bates Smart)



Clause 7.1 – Additional Local Provisions – Newcastle City Centre

The proposed development achieves the objectives of clause 7.1 as follows:

(a) to promote the economic revitalisation of Newcastle City Centre,

The proposed development is in a highly sought-after location where employment opportunities abound. The proposed development will provide 1,000 jobs during the construction stage and result in 60 staff being employed to service the hotel and functioning of the commercial building. The provision the commercial floor space captures the A-grade commercial office market, which is limited in Newcastle CBD, this will ensure successful revitalisation and investment in the Newcastle area which is not limited to residential development.

Given the hotel accommodation component of this mixed-use development, many local businesses and shops will benefit from the increased tourist population accommodated on site. Marketown shopping centre will provide a hub for tourists and employees as there are a variety of services, goods and amenities available for everyday use. The proposed development will contribute toward the local economy in a positive manner, socially, economically and environmentally. The development of the site will assist in transforming the Honeysuckle precinct, providing high-quality commercial floor space and hotel accommodation. The commercial component will attract public and/ or private sector users into the revitalised Newcastle City Centre.

(b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,

The proposed development will strengthen Newcastle City Centre's regional position, specifically by providing high-quality commercial floor space in close proximity to the Newcastle Interchange and City Centre, enabling workers easy travel access from surrounding inner city areas, and the broader Central Coast and Hunter Regions.

The commercial floor space will encourage employment and economic growth consistent with Outcome 4 of the Greater Newcastle Metropolitan Plan - Improve connections to jobs, services and recreation. The proposal will continue to support Newcastle remaining a great place to live and work with fast, efficient and reliable transport options.

(c) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population

The proposed development will improve the vitality, identity and diversity of Newcastle City Centre by developing vacant and dormant land on one of the few remaining inactive lots along the Newcastle Harbour and provide a mixed-use development that facilitates a variety of tourist accommodation, retail and commercial spaces. The proposal has been architecturally designed by Bates Smart and responds to the existing heritage context and future vision for Honeysuckle.

(d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City

The proposed development is compatible with this objective as it will encourage employment growth during both construction stage and operational stage. The design of the development integrates architectural features that reflect the historical context of Newcastle whilst providing a high-quality development with complementary finishes to the locality and the proposed mix of uses will enhance activity during the day time and evening. The design and location will attract recreational and tourism opportunities through the retail precinct and active streetscape in which the design has proposed. This development seeks to ensure the city centre is a safe and attractive place for locals and visitors.

The proposed development represents a compatible mixed-use development for the site and is consistent with the desired future vision for this area of the Honeysuckle Precinct to emerge as a revitalised commercial precinct. By providing a mix of retail and office premises, and tourism accommodation located along the picturesque Newcastle harbour, it will enhance the economic success of the Newcastle City Centre.

(e) to facilitate the development of building design excellence appropriate to a regional city,

Since the original design, DOMA have reviewed the approved scheme and in response to current market trends have increased the size of the hotel and revised the residential use to commercial office space. The proposal has been amended to accommodate the change in brief while seeking to remain consistent with the original design intent.

With that in mind it is proposed that the revised SSD application follow similar Design Review Panel process to that of the following the previously approved SSD. This direction was supported by the Government Architects on the 11 November 2019 at a briefing meeting between the project team and the Government Architect. The project team presented to the Government Architect; at this meeting it was decided that the establishing a Design Review Panel (DRP) was the most appropriate way forward.

DOMA have worked collaboratively with the DRP throughout the process and met on 27 November 2019 for a formal presentation, the DRP comprises of the following representatives:

- + Lee Hillam – Dunn & Hillam Architects
- + Dr Philip Pollard – Amenity Urban & Natural Environments / Newcastle City Council's Urban Design Consultative Group Professor
- + Sue Anne Ware - Head of School, Architecture and Built Environment, University of Newcastle

Upon conclusion of the DRP briefing, it was agreed that it is not necessary to review this project again prior to the SSD submission, as the DRP are satisfied that the project can proceed to SSD stage. The Design Excellence Strategy was prepared and provided to the Government Architect prior to the submission of this SSD.

DRP has reviewed the proposal and deemed "the revised form is an improvement on the previous schemes and is generally supported by the DRP. The revised maximum height and lower podium height can be supported by the DRP." The proposal has taken advantage of the existing design teams' extensive knowledge of the site and brief, which has led to a high quality design outcome for the site.

(f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,

The proposal remains consistent with these objectives through incorporation of suitable water management practices, minimising erosion and sedimentation associated with the site works; maintaining water quality; maintaining pedestrian links; contributing to the facilitation of alternative transport activity; increasing amenity in and around Honeysuckle and the Newcastle Interchange, which is within walking distance of the site; providing an active streetscape and landscaped, communal spaces to serve the hotel guests and employees on site.

(g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,

The site is not identified as being located within an environmental sensitive area. The site is located within a heritage conservation area. A Heritage Impact Assessment has been prepared by a qualified heritage consultant and is provided at Appendix J of the EIS. The report assesses the heritage impact of the proposed works and finds the proposal is acceptable.

The proposed development responds to the heritage significance of surrounding items, incorporating sympathetic materials and colours into the proposed development.

(h) to help create a mixed-use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike

The proposed development has been carefully designed to consider Crime-prevention through environmental design (CPTED) principles. Depending on the nature of the retail service there is the potential for late evening, night-time trading and this can assist with the public domain surveillance. During the day, the commercial tenancies and hotel will be active, as well as the streetscape and urban plaza, which will help facilitate safety for the local population and visitors.

Overall, it is considered that in this instance the proposed development meets the objectives of Part 7 and Clause 4.3 and strict application of the development standards for maximum height is unreasonable, unnecessary, and would not achieve a greater planning or urban design outcome.

6.2 SUFFICIENT ENVIRONMENTAL PLANNING GROUND TO JUSTIFY CONTRAVENTION

Clause 4.6 requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. The above assessment demonstrates that the resultant environmental impacts are satisfactory. If made to strictly comply with Clause 4.3, there would be little if any additional benefit to the streetscape, neighbouring properties and the local area. The variation will enable a high quality, architecturally designed mixed-use development to be provided in the Newcastle City Centre. It is considered that the objectives of Clause 4.3 have been met and there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

The proposal provides a level of non-residential uses that are appropriately scaled to respond to the key location. The building mass of both the podium and commercial tower reinforces the street wall heights and addresses the public street from ground level up to the upper level setback. The podium height and setback for the Level 03 terrace and bar responds to the streetscape and achieves alignment with the neighbouring buildings to the east. In comparison to the previously approved scheme, the form of the building above the podium is split into two towers, rather than one U-shaped plan form. As a result of the two towers, the proposal is read as two elements which breaks down the bulk and scale of the development and the two forms allows for an additional view corridor to the foreshore to be maintained through the site in comparison to the previous development.

Conversely, as demonstrated in Figure 6, to the west of the site the maximum building height standard increases significantly to 90m. The proposed height exceedance responds to the 90m height limit to the west and provides a transition between the Hunter Water building, the proposal development and any future development to the west. Given this variance in the LEP height limits between the site, the DRP panel and the Government Architect were generally very positive of the scheme and noted that they would be generally supportive of the height increase.

Comparatively commercial floor to floor height are greater than residential developments. To achieve a realistic commercial floor to floor height the parapet is at RL 37.83 which is 4.8m above the 30 metres set out in the DCP. Notably, this height is only 2m above the already approved DA scheme. This balances the volumes of the development and generates a building hierarchy.

As demonstrated in Figure 5 the proposed height exceedance, the proposed height exceedance for the hotel element relates only to the plant and lift overrun and the commercial tower exceeds the height limit predominant due to the plant and lift over-run. The commercial floor space above the height limit captures view to the harbour, Newcastle CBD and ocean, and ensures that the space captures the A-grade commercial office market which is limited in Newcastle CBD. The proposal will ensure successful revitalisation and investment in the Newcastle area, diversifying from the previous demand for residential development.

6.3 PUBLIC INTEREST

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

The proposed development's ability to meet the objectives of the development standards sought to be varied are discussed at length in Section 6.1 of this variation justification report. It is clear from this discussion that the public interest will be

well served by the proposed development's attainment of the objectives of the development standard which is sought to be varied.

The proposed development will also provide a number of significant other public benefits. The proposal will create 1,000 jobs during construction stages, whilst also providing 60 employment opportunities during operation. In addition, the provision of A-grade commercial office space will provide investment opportunities for businesses, of which are limited in Newcastle CBD, and in turn provide additional employment generating floor space. Further, the Section 7.12 development contributions are likely to be approximately \$ 1,338,264.65, which will have a significant benefit to the community.

The proposed development is considered to be contributory toward the local economy as it proposes an active streetscape which will be a social gathering node flanked by retail, commercial and tourist accommodation uses. The proposed development will contribute to the economic wellbeing of the community in a socially and environmentally responsible manner.

The proposed development includes commercial space, generating an active streetscape and the opportunity for small and large businesses to utilise the building as offices. The proposed development has excellent access to public transport, with bus routes, light rail and heavy rail located within close proximity and pedestrian links and cycle routes either via Hunter Street and King Street. With ample access to alternative transport modes, the proposed development provides a mixed land use in the revitalised area of Newcastle's West End, seeking to support alternative transport with extensive bike storage on-site. With ample alternative transport options in close proximity, the proposed development seeks to reduce travel demand and private motor vehicle dependency in line with this aim.

Overall, it is reasonable to consider that the proposed development is in the public interest as it achieves the objectives of the B3 zone, Part 7, Clause 7.5(6) and Clause 4.3.

7 CONCLUSION

This Clause 4.6 Variation to Development Standard submission has been prepared in response to numerical non-compliance with the development standard for Clause 4.3 – Height of Buildings in LEP 2012. The extent of non-compliance is considered acceptable in the context of the site given the type, location and scale of the development proposed.

The proposed development is consistent with the desired future character envisioned for the Honeysuckle Precinct. The variation sought to height will not result in any undue impacts on adjoining properties particularly with regard to overshadowing, loss of privacy and loss of views.

The variations allow for the orderly and economic use of the land in an appropriate manner, whilst allowing for a better outcome based on planning merit and public benefit. Further, the proposal will not result in any unreasonable impact on amenity or any significant adverse environmental impacts as a result of the variation. The design has evolved after a design excellence process that involved testing and amending the design to achieve the most appropriate massing of development for the site.

The consent authority can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is therefore requested that development consent be granted for the proposed development.

Yours sincerely



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