



# 42 Honeysuckle Drive Newcastle

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State Significant Development Assessment  
SSD 10378

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# Glossary

| Abbreviation               | Definition  |
|----------------------------|---|
| <b>AHD</b>                 | Australian Height Datum   |
| <b>Applicant</b>           | DOMA Holdings (Honeysuckle) Pty Ltd                               |
| <b>CBD</b>                 | Central Business District   |
| <b>CIV</b>                 | Capital Investment Value  |
| <b>Council</b>             | City of Newcastle Council   |
| <b>Department</b>          | Department of Planning, Industry and Environment                  |
| <b>EESG</b>                | Environment, Energy and Science Group                             |
| <b>EIS</b>                 | Environmental Impact Statement                                    |
| <b>EP&amp;A Act</b>        | Environmental Planning and Assessment Act 1979                    |
| <b>EP&amp;A Regulation</b> | Environmental Planning and Assessment Regulation 2000             |
| <b>EPI</b>                 | Environmental Planning Instrument                                 |
| <b>ESD</b>                 | Ecologically Sustainable Development                              |
| <b>GA NSW</b>              | Government Architect NSW  |
| <b>GFA</b>                 | Gross Floor Area  |
| <b>HCCDC</b>               | Hunter & Central Coast Development Corporation                    |
| <b>HURP</b>                | Honeysuckle Urban Renewal Precinct                                |
| <b>ISEPP</b>               | State Environmental Planning Policy (Infrastructure) 2007         |
| <b>LEP</b>                 | Local Environmental Plan  |
| <b>Minister</b>            | Minister for Planning and Public Spaces                           |
| <b>NDCP 2012</b>           | Newcastle Development Control Plan 2012                           |
| <b>NLEP 2012</b>           | Newcastle Local Environmental Plan 2012                           |
| <b>Planning Secretary</b>  | Secretary of the Department of Planning, Industry and Environment |
| <b>RMS</b>                 | Roads and Maritime Services, TfNSW                                |
| <b>RtS</b>                 | Response to Submissions   |

|                 |   |
|-----------------|---|
| <b>SEARs</b>    | Planning Secretary's Environmental Assessment Requirements                |
| <b>SEPP</b>     | State Environmental Planning Policy                                       |
| <b>SEPP 55</b>  | State Environmental Planning Policy No 55 – Remediation of Land           |
| <b>SRD SEPP</b> | State Environmental Planning Policy (State and Regional Development) 2011 |
| <b>SSD</b>      | State Significant Development   |
| <b>TfNSW</b>    | Transport for NSW   |
| <b>the site</b> | 42 Honeysuckle Drive, Newcastle NSW 2300 (Lot 22 DP 1072217)              |

# Executive Summary

## Introduction

This report provides an assessment of a State Significant Development application (SSD 10378) seeking approval to construct a mixed-use development at 42 Honeysuckle Drive, Newcastle. The proposal comprises a common three storey podium with a separate (six storey) office tower and (six storey) hotel tower. The development comprises six floors of commercial office space, 187 hotel rooms, a bar and outdoor terrace, gym facilities, 177 space car park and landscaping.

The Applicant is DOMA Holdings (Honeysuckle) Pty Ltd and the site is located within the Newcastle City Council local government area. The Minister for Planning and Public Spaces is the consent authority for the application.

Development consent has previously been granted on the site (SSD 8440) for a part 9-storey and part 10-storey mixed-use development comprising ground floor retail, 148 room hotel with seven serviced apartments and 52 residential apartments. Due to a changing market demands, residential apartments are no longer a desired outcome for the site, and the subject SSD seeks to replace this previous approval.

## Engagement

The Department publicly exhibited the application for 28 days from Wednesday 18 March to Tuesday 14 April 2020. In response to the exhibition, the Department received 12 submissions, comprising nine submissions from government agencies, a submission from Newcastle Council, and two public submissions objecting to the proposal.

Key issues raised in public submissions related to amenity impacts, bulk and scale and construction impacts.

In response to issues raised in submissions, the Applicant submitted a Response to Submissions report which provided additional information, justification and amended plans for the proposal. A revised response to submissions and additional information was submitted in response to further comments provided by Council, particularly in respect to the basement height and waste removal.

## 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* (EP&A Act), the issues raised in the submissions and the Applicant's response.

The key issues associated with the proposed development are built form, visual and amenity impacts, car parking and traffic congestion.

The Department has carefully considered the proposal as well as the issues raised in submissions and is satisfied the proposal is acceptable for the following reasons:

- the proposal is consistent with the objectives of the Hunter Regional Plan 2036, Greater Newcastle Metropolitan Plan 2036 and the Newcastle Urban Renewal Strategy 2014 as it would provide tourist and commercial facilities in an accessible location within the Newcastle city centre
- the proposal achieves design excellence, in supported by the Government Architect's office and positively contributes to the renewal of the Honeysuckle Precinct
- the height and scale of the proposal appropriately relates to the existing site context and surrounding features and would not result in any unreasonable amenity impacts
- the design of the building incorporating two towers breaks down the bulk and scale of the building and allows for an additional view corridor to the foreshore through the middle of the site
- it would not result in any significant traffic impacts and is located in a highly accessible location adjacent to the light rail
- appropriate mitigation and protection measures would be implemented to address flooding impacts
- it is expected to create approximately 1,000 construction jobs and approximately 60 ongoing operational jobs
- all other issues have been appropriately addressed by recommended conditions of approval.

## Conclusion

The Department is satisfied the proposed development would result in a positive contribution to the Honeysuckle Precinct. The Department supports the modified design of the proposal and considers the minor height noncompliance to be acceptable.

The Department is also satisfied the proposed development is consistent with the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036 and it would result in a number of public benefits including, the provision of additional housing close to excellent amenities and services, public domain improvements, site through links and up to 1000 construction jobs and 60 ongoing jobs within Newcastle.

The Department's assessment concludes the site is suitable for the proposed development and the proposal is in the public interest. The Department consider the potential impacts can be mitigated and would not result in any adverse impact to the visual amenity of the local area.

The Department therefore recommends the application be approved, subject to conditions.

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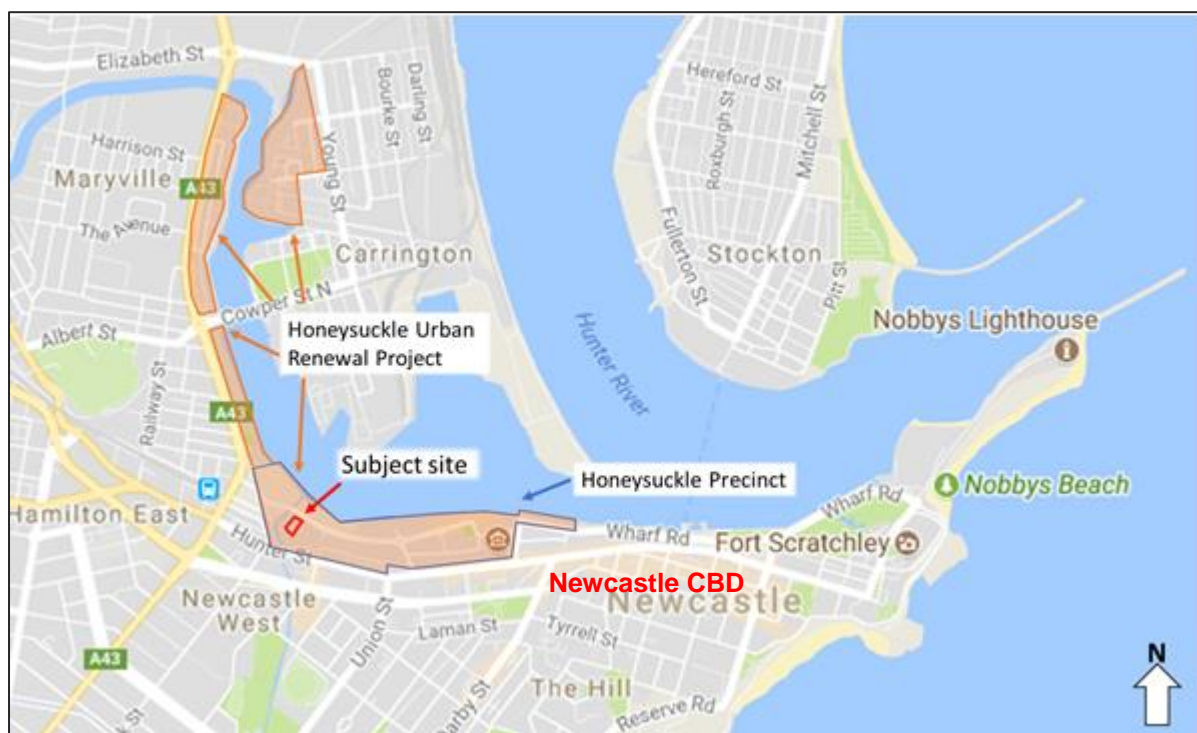
# 1 Introduction

DOMA Holdings (Honeysuckle) Pty Ltd (the Applicant) seeks approval for the construction of a mixed-use development at 42 Honeysuckle Drive, Newcastle (the site) which would include a nine-storey hotel (187 rooms) and a nine-storey commercial office building, ground floor cafe, gym bar, parking and landscaping.

## 1.1 Site context

The site forms part of the Honeysuckle Precinct within the broader Honeysuckle Urban Renewal Project (HURP) in the City of Newcastle Council (Council) local government area (LGA).

The site is located within the western end of the Honeysuckle Precinct (**Figure 1**).



**Figure 1 | Honeysuckle Precinct Map** (base source: Google Maps)

## 1.2 The site

The site is located at 42 Honeysuckle Drive, Newcastle, and is legally defined as lot 22 in deposited plan 1072217 (**Figure 2**).



**Figure 2 | Site Map** (base Source: Nearmap)

The site is irregular in shape with an area of 3,728 m<sup>2</sup> and is relatively flat. It fronts Honeysuckle Drive, which is currently undergoing road widening and realignment works. The site also has frontage to a public reserve and the Newcastle light rail corridor.

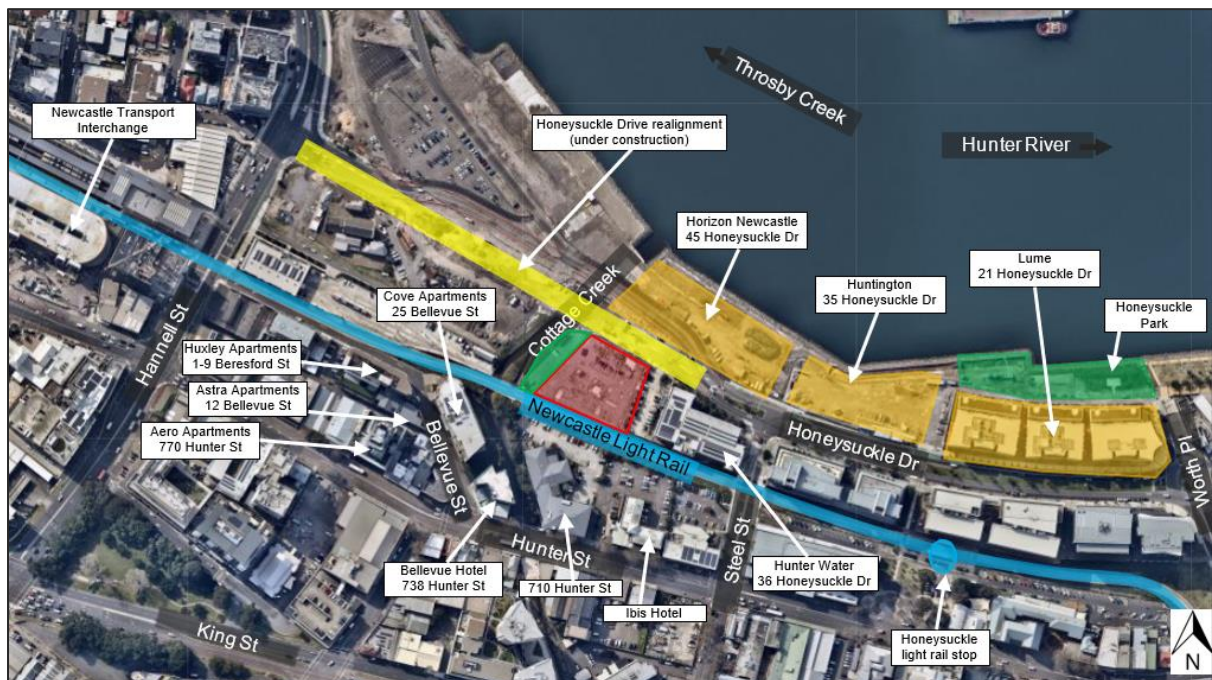
Earthworks associated with a previous development consent (SSD 8440) have commenced at the site (**Figure 3**).



**Figure 3 |** Photograph of the earthworks undertaken at the site (base Source: EIS)

### 1.3 Surrounding Site Context

The surrounding area is dominated by a range of residential, retail and office developments with varying building heights between 8 and 15 storeys. The immediate site context is shown in **Figure 4**.



**Figure 4 |** Site context (base source: Nearmaps)

## 2 Project

The proposal seeks approval for the construction and use of a nine storey mixed use building comprising hotel accommodation, retail premises, commercial office space and associated car parking and landscaping. The key components of the application are outlined in **Table 1**. The proposed works are shown at **Figures 5 and 6**.

**Table 1 | The key components of the proposal**

| Aspect                        | Description   |
|-------------------------------|---|
| <b>Built form</b>             | <ul style="list-style-type: none"> <li>• nine storey building, comprising of a 3 storey podium, with two 6-storey towers above.</li> <li>• building form above the podium level is split into two towers being the eastern tower which contains the commercial component of the development (commercial tower) and a western tower which contains the hotel component of the development (hotel tower)</li> </ul>   |
| <b>Building Use</b>           | <p>Building uses include:</p> <ul style="list-style-type: none"> <li>• hotel accommodation with 187 rooms, including ancillary guest facilities comprising of a gymnasium, hotel lounge/library, and a licensed bar with an outdoor terrace</li> <li>• commercial premises</li> <li>• café with outdoor dining area</li> <li>• above ground car parking to service the commercial and hotel uses.</li> </ul>  |
| <b>Gross Floor Area (GFA)</b> | <p>A total GFA of 11,816 m<sup>2</sup> and a floor space ratio of 3.17:1. The floor area associated with key uses of the building include:</p> <ul style="list-style-type: none"> <li>• commercial/office premises – 5,442 m<sup>2</sup></li> <li>• hotel accommodation – 5,929 m<sup>2</sup> including: <ul style="list-style-type: none"> <li>▪ licensed bar– 240 m<sup>2</sup></li> <li>▪ hotel lounge/library– 240 m<sup>2</sup></li> </ul> </li> <li>• gymnasium area – 370 m<sup>2</sup></li> <li>• café area – 77 m<sup>2</sup></li> </ul>   |
| <b>Access and Parking</b>     | <p><u>Access</u></p> <ul style="list-style-type: none"> <li>• Vehicular access to the site from Honeysuckle Drive</li> <li>• Pedestrian access from Honeysuckle Drive and from the public reserve</li> </ul> <p><u>Service and Delivery Vehicles</u></p> <ul style="list-style-type: none"> <li>• a loading bay to accommodate one medium rigid vehicle up to 4.2 m in height</li> <li>• collection of waste to occur on-site and conducted by a private waste contractor from the loading bay</li> <li>• deliveries to occur on-site from the loading bay</li> </ul> <p><u>Parking</u></p> <ul style="list-style-type: none"> <li>• Provision of 177 car parking spaces (including 12 accessible spaces) comprising: <ul style="list-style-type: none"> <li>▪ 44 spaces for the hotel including ancillary uses</li> <li>▪ 68 spaces for the commercial premises</li> </ul> </li> </ul> |

- 65 unallocated spaces
- Provision of 6 motorcycle parking spaces

Bicycle parking:

- Provision of 50 bicycle spaces including end-of-trip facilities, comprising:
  - 35 spaces for the commercial premises
  - 9 spaces for the hotel including ancillary uses
  - 6 spaces for visitors

Pick up/drop off

- The upgrade of Honeysuckle Drive will include a 12m long on-street loading zone to accommodate up to and including medium/heavy rigid vehicles. The Applicant is seeking separate approval from Council for a taxi/ride share zone within the loading zone to allow for the drop-off and pick-up of passengers.

|                                 |  |
|---------------------------------|--|
| <b>Hours of operation</b>       | <p>The proposed hours of operation are:</p> <ul style="list-style-type: none"> <li>• hotel including ancillary uses of gymnasium and hotel lounge/library – 24 hours, 7 days a week</li> <li>• hotel bar and terrace – 6.00 am to midnight, Monday to Saturday and 6.00 am to 10.00 pm on Sunday</li> <li>• commercial premises – 24 hours, 7 days a week</li> <li>• loading dock – 7.00 am to 10.00 pm, 7 days a week</li> </ul>                  |
| <b>Signage</b>                  | A building identification sign on the northern facade of the upper most storey of the hotel tower  |
| <b>Landscaping</b>              | <p>Landscaping works including:</p> <ul style="list-style-type: none"> <li>• landscaping within the setback areas on the ground floor</li> <li>• landscaped planters above the hotel awning on level one</li> <li>• landscaped planters within the bar terrace on level three</li> <li>• a landscaped terrace area on level three</li> <li>• a landscaped courtyard on level four</li> <li>• green wall planting on the southern façade</li> </ul> |
| <b>Earthworks</b>               | <p>Structural foundations for the proposal would consist predominately of existing foundations constructed as part of the previous development under SSD 8440 which will be adopted to the new layout.</p> <p>Any new foundations, would be constructed using driven/displacement piles.</p>   |
| <b>Employment</b>               | <ul style="list-style-type: none"> <li>• 1,000 construction jobs and 60 operational jobs</li> </ul>  |
| <b>Capital Investment Value</b> | <ul style="list-style-type: none"> <li>• \$44,608,821.51</li> </ul>  |



**Figure 5 | Proposed scheme (source: RtS)**

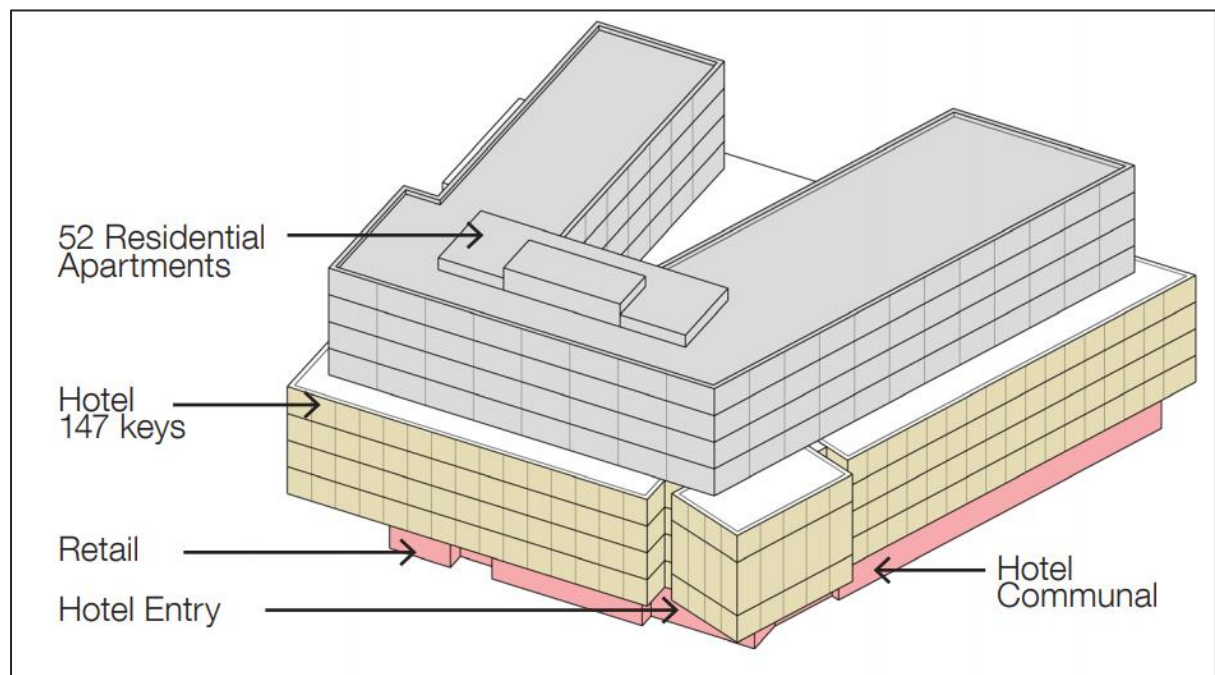


**Figure 6 | Proposed scheme (base source: RtS)**

## 2.1 Related development

On 22 June 2018, development consent (SSD 8440) was granted for a mixed-use development at the site (**Figure 7**). The consent permitted a part 9-storey and part 10-storey mixed-use development comprising:

- ground floor retail premises
- 148 room hotel with 7 serviced apartments
- 52 residential apartments
- 234 car parking spaces including 25 public car parking spaces.



**Figure 7 |** The scheme approved under SSD 8440 (Source: EIS 8440)

The project was abandoned, due to a changing market demand, with residential apartments no longer a desired outcome for the site. It is noted that only earthworks, including regrading of the site and installation of piles have been completed under the consent.

## 3 Strategic context

### 3.1 Hunter Regional Plan 2036

Hunter Regional Plan (HRP) 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 proposal is considered consistent with the relevant goals and directions of the HRP 2036 as it would provide:

- economic benefits for local business, generated from staff, patrons of the retail premises, and tourists and visitors of the hotel
- additional employment opportunities through 1000 construction jobs and 60 on-going jobs associated with the hotel use
- active street uses including retail premises and a hotel lobby; and increased 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 (GNMP) 2036 seeks to deliver the vision of the HRP 2036 and sets out strategies and actions that will drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities. The proposed development supports the Plan by providing a hotel, commercial and retail development that supports the desired role of the West End and Civic Precincts.

### 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 proposed development supports the strategy by redeveloping the site for mixed use purposes that will provide for jobs and tourist accommodation in the city centre.

### 3.4 Greater Newcastle Future Transport Plan 2056

The Greater Newcastle Future Transport Plan (GNFTP) 2056 provides the overarching strategic transport network and vision to guide future transport planning for the Greater Newcastle area. The GNFTP 2056 seeks to facilitate increased liveability in Greater Newcastle through more sustainable travel behaviour.

It is expected many of the trips associated with the proposed development would make use of these public and active transport options. The proposal is therefore aligned with the GNFTP targets and would minimise car dependency in the Newcastle city centre.

## 4 Statutory Context

### 4.1 State significance

The proposal is classified as State significant development (SSD) under Section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the development has a capital investment value in excess of \$10 million on land identified as being within the Honeysuckle Precinct under clause 2 of Schedule 2 of State Environmental Planning Policy (State and Regional Development) 2011.

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation, the Executive Director, Regions, Industry and Key Sites, may determine the application as:

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

### 4.2 Permissibility

Under the Newcastle Local Environmental Plan 2012 (NLEP 2012), the site is zoned B3 Commercial Core. The proposal includes commercial premises and hotel accommodation. These land uses are permissible with development consent in the B3 Commercial Core 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. In summary, these matters include:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation)
- 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 these matters in its assessment of the project, as well as the relevant environmental planning instruments (EPIs) that apply to the proposal in **Section 6** and **Appendix C** of this report.

#### **4.4 Planning Secretary's Environmental Assessment Requirements**

The Department is satisfied that the EIS and RtS adequately address the Planning Secretary's Environmental Assessment Requirements (SEARs) to enable the assessment and determination of the proposal.

#### **4.5 Biodiversity Development Assessment Report**

Under section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act), SSD applications are "to be accompanied by a biodiversity development assessment report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values".

On 11 November 2019, the EESG determined that the proposed development is not likely to have any significant impact on biodiversity values and that a BDAR is not required. The Department supported EESG's decision and on 2 December 2019 determined that the application is not required to be accompanied by a BDAR as the site has been highly disturbed and does not contain any significant native vegetation or habitat for threatened species or communities.

## 5 Engagement

### 5.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application from Wednesday 18 March to Tuesday 14 April 2020 (28 days). The application was made publicly available on the Department's website and exhibited at Council.

The Department placed a public exhibition notice in the Newcastle Herald, Newcastle Weekly and the Newcastle Star on Tuesday 17 March 2020 and notified adjoining and surrounding landowners, Council and relevant Government agencies in writing.

All notification and public participation statutory obligations have been satisfied.

The Department has considered the comments raised in Council, government agencies' and public submissions during the assessment of the application (**Section 6**).

### 5.2 Summary of submissions

In response to the exhibition of the application, the Department received 12 submissions:

- nine submissions from government agencies providing comments
- a submission from Council providing comments
- two submissions from the public objecting to the proposal

### 5.3 Key issues – Government Agencies

The key issues raised by government agencies are summarised in **Table 2**.

**Table 2** | Government agency submissions to the exhibition of the application

| Government Agency                                     | Comments   |
|---|--|
| Ausgrid   | <ul style="list-style-type: none"><li>• advised construction works for connection of the site to the electrical network have been negotiated.</li></ul>  |
| Biodiversity and Conservation Division of DPIE        | <ul style="list-style-type: none"><li>• the test excavation results and the Aboriginal cultural heritage management plan shall be provided for review.</li><li>• the extent and depth of the development footprint for the proposal in comparison with the development footprint approved under SSD 8440 shall be provided for review.</li><li>• all critical electrical infrastructure shall be located above the flood planning level in accordance with Council's requirements.</li></ul> |
| Water and the Natural Resources Regulator within DPIE | <ul style="list-style-type: none"><li>• additional information is required to address site water balance including outlining water quantity and water source for the construction and operation of the development. If the detailed site water balance identifies a requirement for surface or groundwater take, a Water Access Licence (WAL) must be obtained</li></ul>   |

|  |  |
|--|--|
|  | <p>or a detailed assessment provided on how the works comply with any applicable WAL exemption in the Water Management (General) Regulation 2018.</p> <ul style="list-style-type: none"> <li>• a condition of consent is recommended if dewatering of the site is required.</li> </ul>   |
| <b>Government Architect NSW</b>          | <ul style="list-style-type: none"> <li>• raises concerns with the solar access impacts associated with the proposed height non-compliance.</li> <li>• solar access studies showing the shadows cast by the approved development in comparison to shadows cast by the proposal shall be submitted.</li> <li>• a redistribution of mass away from the southern parapet may be necessary to preserve solar access to the neighbouring site to the south.</li> </ul>   |
| <b>Licensed Premises Reference Group</b> | <ul style="list-style-type: none"> <li>• raises concerns with the proposed operating hours of the bar and associated outdoor terrace and recommends the operating hours be reduced from 6.00 am to midnight, 7 days a week to: <ul style="list-style-type: none"> <li>○ Bar: <ul style="list-style-type: none"> <li>6.00 am to midnight, Monday to Saturday</li> <li>6.00 am to 10.00 pm, Sunday</li> </ul> </li> <li>○ Outdoor terrace: <ul style="list-style-type: none"> <li>6.00 am to 10.30 pm, Monday to Saturday</li> <li>6.00 am to 10.00 pm, Sunday</li> </ul> </li> </ul> </li> <li>• conditions of consent are recommended in relation to closed circuit television, lighting, trading hours, patron capacity, plan of management and noise.</li> </ul>   |
| <b>Port Authority NSW</b>                | <ul style="list-style-type: none"> <li>• clarification is required on whether the proposal would obscure land-based navigational aids located within the Throsby Basin.</li> <li>• the acoustic assessment report does not consider the noise impacts arising from the 24/7 operation of the port. Conditions of consent are therefore recommended requiring verification be provided that the development has been designed and will be constructed to achieve the design noise levels noted in the acoustic assessment report, with regards to including port-related noise at the northern façade of the development. In addition, to ensure that design and construction has been successful in mitigating external noise, prior to an occupation certificate being granted, verification shall be provided that the development has achieved its required acoustic performance for all living/dining and sleeping areas.</li> </ul> |
| <b>NSW Subsidence Advisory</b>           | <ul style="list-style-type: none"> <li>• advised the conditions in the Notice of Determination dated 18 February 2020 remain applicable.</li> </ul>  |
| <b>Transport for NSW (RMS)</b>           | <p><u>Traffic</u></p> <ul style="list-style-type: none"> <li>• Honeysuckle Drive is a local road and Council is therefore the roads authority under the Roads Act 1993.</li> <li>• the intersection of Hannell Street and Honeysuckle Drive has been observed to operate poorly particularly in the afternoon peak. TfNSW does not consider that the modelling provided within the TIA has been adequately calibrated as the queuing regularly extends several hundred metres.</li> <li>• TfNSW have previously recommended to both Council and HCCDC that a study be undertaken to determine the impact of continuing intensification of the Honeysuckle catchment on the Hannell Street and Honeysuckle Drive intersection, and Hannell Street.</li> </ul>   |

- the upgrade of Honeysuckle Drive is underway which will increase vehicle storage on approach to the Hannell Street Traffic Control Signals (TCS), likely improving the operation of the TCS.
- TfNSW consider that the subject development will be a smaller contributor to the overall congestion than the remaining development sites along Honeysuckle Drive, and raise no objection to the proposal.
- TfNSW note that development within the Honeysuckle catchment may not be supported by TfNSW in future in the absence of adequate planning to mitigate the impact of the catchment intensification, and equitable funding mechanisms to resolve the impact on the intersection and Hannell Street.

#### Construction

- the Department should ensure that appropriate traffic measures are in place during the construction phase of the development to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.

#### Access

- the Department should have consideration for appropriate sight line distances in accordance with Section 3 of the Austroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections) and the relevant Australian Standards (AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.

#### **Transport for NSW**

##### Newcastle Light Rail

- excavation works adjacent to the Newcastle Light Rail corridor requires a detailed assessment and concurrent approval from TfNSW
- raised safety concerns during construction and operation phases of the proposal on the Newcastle Light Rail corridor
- the acoustic assessment report shall consider noise impacts arising from the operation of the Newcastle Light Rail, including tram pass-by and stabling/maintenance activities.
- conditions of consent are recommended in relation to managing and mitigating any construction and operation impacts arising from the development on the Newcastle Light Rail

## **5.4 Key issues – Council and Community**

### **5.4.1 Council Key Issues**

Council provided comments as summarised in **Table 3**.

**Table 3 | Summary of Council submission to the exhibition of the application**

#### **City of Newcastle**

Council does not object to the proposal but raises a number of matters:

##### Ancillary uses

- further justification to demonstrate how the proposed bar will function as an ancillary use of the hotel shall be provided

further justification to demonstrate how the operation of paid public parking (in excess of controls) is subordinate to the hotel and commercial use shall be provided. Council also sought to clarify if a third party

would operate the car park.

#### Newcastle Development Control Plan 2012

- it is requested that the proposal considers the NDCP 2012 in relation to the proposed built form and urban design.

#### Parking

- the deficiency in car parking is not supported, and it is recommended the design is amended to ensure compliance with the car parking rates under the NDCP 2012.
- the development has a deficiency of 15 bicycle spaces in accordance with the bicycle parking rates under NDCP 2012. Given the city centre location of the site and proximity to the harbour foreshore cycleway it is considered desirable that hotel guests have access to non-car modes of transport. It is therefore recommended more bicycle parking is provided.

#### Servicing

- vehicular turning paths to be provided for service vehicles accessing the basement
- the basement shall be redesigned to provide a 4.5 m height clearance, required for medium rigid vehicles under Australian Standard AS2890.2

#### Public domain works

- as noted under Condition B34 of Development Consent SSD 8440, the developer is to design and provide public domain works within the Honeysuckle Drive site frontage. Works include a raised pedestrian crossing in the vicinity of the existing refuge. It is recommended the proposal is amended to incorporate these works.

#### Flood management

- the proposal generally complies with the flood planning levels, however, the basement and parking area levels may need to be adjusted to allow for the required height clearance for medium rigid vehicles
- a flood refuge area is required within the development
- as the site adjoins a floodway (Cottage Creek), a flood risk management plan will be required. This can be addressed via a condition of consent.

#### Stormwater and groundwater management

- the concept stormwater management plan shall include rainwater tanks, to allow for the reuse of stormwater.

#### Contamination

- confirmation to be provided that the latest version of the remediation action plan was submitted.

#### Local infrastructure contribution

- A condition of consent is recommended to require the Applicant to pay a local infrastructure contribution prior to the issue of any construction certificate.
- the detailed cost report submitted with CIV report, shall be dated and signed to ensure the correct calculation of contributions payable under Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019.

#### Servicing and waste management

- an engagement agreement from a commercial waste collection provider shall be provided to demonstrate that the waste management services as detailed within the waste management plan are able to be conducted.

## **5.4.2 Community Submissions**

The Department received two public submissions objecting to the proposal, raising the following concerns and issues:

- impacts associated with the non-compliant height, including amenity impacts (loss of views and visual privacy) to Aero Apartments (770 Hunter Street)
- overshadowing of apartments to the south of the site
- visual privacy impacts to Astra Apartments (12 Bellevue Street)
- visual impact on the streetscape
- bulk and scale
- construction impacts including noise and dust disturbance.

## 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.

On 27 October 2020, the Applicant provided a Response to Submissions (RtS) (**Appendix A**) and on 16 December 2020 the Applicant provided further additional information, which included the following amendments and additional information:

- amendments to the building design including a reduction in gross floor area, reduction to the overall building height, revisions to the floor plan and layout, increase in number of hotel rooms and increase in car parking and bicycle parking spaces (**Table 4** and **Figure 8**)
- provision of further information including, an addendum to the traffic assessment report, a crime prevention through environmental design assessment, wind assessment letter, detailed view analysis, revised noise impact assessment, civil response letter, confirmation from a waste provider and an assessment of relevant provisions of the NDCP 2012.

**Table 4 | Comparison of EIS and RtS**

| Item                  | EIS                                      | RtS                                      | Change              |
|-----------------------|--|--|---------------------|
| <b>GFA</b>            | 12,510 m <sup>2</sup>                    | 11,816 m <sup>2</sup>                    | -694 m <sup>2</sup> |
| <b>FSR</b>            | 3.36:1                                   | 3.17:1                                   | - 0.19:1            |
| <b>Height</b>         | Commercial tower:<br>38.83 m (RL 41.830) | Commercial tower:<br>35.78 m (RL 39.580) | - 3.05 m            |
|                       | Hotel tower:<br>31.455 m (RL 34.455)     | Hotel tower:<br>33.70 m (RL 36.710)      | + 2.245 m           |
| <b>Hotel rooms</b>    | 179                                      | 187                                      | + 8 rooms           |
| <b>Car parking</b>    | 173 spaces                               | 177 spaces                               | + 4 spaces          |
| <b>Bicycle spaces</b> | 48                                       | 50                                       | + 2 spaces          |



**Figure 8 | Comparison between proposal EIS (left) and RtS (right) (Source: EIS and RtS)**

The Department made the RtS publicly available on its website and forwarded the RtS to Council and relevant government agencies for comment. The Department received comments from Council and four government agencies. See **Tables 5** and **6**.

**Table 5 | Summary of Council's submission to the RtS**

#### City of Newcastle

##### Car Parking

- the justification for the parking variation is considered reasonably justified and is accepted
- a breakdown of the parking allocation for each use is required the proposed bicycle parking is supported

##### Servicing

- the basement shall be redesigned to provide a 4.5 m height clearance, required for medium rigid vehicles under Australian Standard AS2890.2

##### Waste Management

- an engagement agreement from a commercial waste collection provider shall be provided to demonstrate that the waste management services as detailed within the waste management plan are able to be conducted.

##### On-Street Parking and Loading

- information about the provision of drop off and pick up spaces for the hotel is required
- any proposal to use on-street parking or loading is required to be approved by the Newcastle City Traffic Committee

##### Flood management

- the proposed floor levels generally comply with the DCP
- the vehicular access and parking floor levels may need to be adjusted to accommodate a 4.5m height clearance for the basement
- a flood refuge area is required within the development
- a Flood Risk Management Plan with provisions for a flood warning system is required

#### Stormwater and Groundwater Management

- The submitted concept stormwater management plan strategy generally complies with CN DCP.

#### Land Contamination

- The additional information has been assessed and the response to submissions has satisfied Council's concerns and clarified the correct Remedial Action Plan relating to the proposal.

#### Licensed Premises Reference Group

- Council is supportive of the above proposed hours of operation of the bar and terrace as outlined in the application, subject to compliance with the recommendations of the acoustic report, except for Sunday trading which it is recommended to close at 10:00pm.
- the Applicant should be provided an opportunity to respond to the management matters raised by the Newcastle Police
- the staggered patron numbers proposed as an alternative management measure is not supported.

**Table 6 | Summary of Government agency submissions to the RtS**

| Government Agency  | Comments  |
|--|---|
| <b>Water and the Natural Resources Regulator within DPIE</b>   | <ul style="list-style-type: none"><li>• advised that the RTS has been reviewed and no further comments are provided.</li></ul>  |
| <b>Government Architect NSW</b>  | <ul style="list-style-type: none"><li>• advised that previous concerns with the proposal have been addressed and no further design related comments are provided.</li></ul>   |
| <b>Transport for NSW and RMS</b>   | <ul style="list-style-type: none"><li>• on 23 March 2020, TfNSW reviewed the Environmental Impact Statement and Traffic Impact Assessment raised no objections to the proposal relating to the traffic impacts of the development.</li><li>• the applicant will be required to enter into a Rail Interface Agreement with the appropriate rail authority, in this case Keolis Downer as the current Light Rail operator, prior to any Construction Certificate being issued.</li><li>• The Certifying Authority must not issue the relevant Construction Certificate until written confirmation from TfNSW has been received confirming that this condition has been complied with.</li></ul> |
| <b>Heritage NSW – Heritage Division of the Department of Premier and Cabinet (Heritage Division)</b> | <ul style="list-style-type: none"><li>• advised all requirements regarding Aboriginal cultural heritage have been completed.</li></ul>  |

## 6 Assessment

The Department has considered the proposal, the issues raised in submissions and the Applicant's RtS. The Department considers the key issues associated with the proposal are:

- design excellence
- built form
- amenity (overshadowing, visual privacy, private views)
- transport, traffic, parking and access

Each of these issues are addressed in the following sections of this report. Other issues considered during the assessment are addressed in **Section 6.6**.

### 6.1 Design Excellence

Clause 7.5 of the NLEP 2012 requires the consent authority to be satisfied the development exhibits design excellence. Clause 7.5(3) specifies the matters the consent authority must consider in determining the design excellence of the development. These matters are addressed in **Appendix C**. The Department has also further considered these matters in detail within **Section 6.2** and **6.3**.

There is no requirement for a design competition or any other formal design excellence strategy under the NLEP 2012, however the Department's SEARs require the proposal to be informed by a design excellence strategy.

To ensure design excellence is achieved the design of the proposal was reviewed by the SDRP. The Applicant's design team met with the SDRP in November 2019 before lodging its EIS. The SDRP was broadly supportive of the design by Bates Smart and made a number of recommendations which were addressed as part of the EIS. The Department referred the application to the GA NSW, whose concerns regarding solar access and massing were satisfactorily addressed as part of the RtS.

The Department is satisfied the development exhibits design excellence as it:

- displays a high standard of architectural design with quality external materials including light and dark bronze coloured metal external finishes with the grid structure reflecting differences between uses while maintaining a consistent material palette that will reinforce the identity of the overall development
- will encourage activation and improve the amenity of the public domain through tree and garden planting and pavement improvements, and contributing to an active and vibrant street front
- will not impact on identified view corridors providing public views and sight lines to key public spaces, the waterfront, prominent heritage items or landmarks
- responds to sustainable building principles and best practice in environmental performance through ecologically sustainable building design elements including hotel room orientation for natural light, and aspect, active transport options, and building materials with good thermal mass
- creates an interface between the public and private domain on the ground floor, and an active ground level frontage to Honeysuckle Drive and the public domain of Cottage Creek
- minimises adverse environmental impacts and addresses pedestrian, cycle and vehicular access requirements.

The Department has also recommended a condition requiring the Applicant to ensure Bates Smart are engaged in the design documentation phase to ensure the integrity of the design is maintained through the construction phase to completion of the building works.

## 6.2 Built form

### Building height and massing

The proposed building height is nine storeys, with the eastern commercial tower reaching a maximum height of 35.78 m including plant and the western hotel tower reaching a maximum height of 33.70 m including plant. The proposal also seeks approval for 11,816 m<sup>2</sup> of GFA, which result in an FSR of 3.17:1. The site is subject to a maximum building height limit of 30 m and a maximum FSR of 4:1. As the proposal exceeds the height limit by 5.78 m, the Applicant submitted a written request to vary the building height control, in accordance with, clause 4.6 of NLEP 2012. The Department considers the Applicant's request to vary the building height control is reasonable and acceptable, as discussed in **Appendix D**.

The Department considers the bulk, scale and height of the proposal is acceptable as:

- the proposal fully complies with the FSR controls applying to the site
- the proposed maximum height was supported by the DRP
- the proposal is consistent with the desired future character for the Honeysuckle Precinct, which seeks to provide a substantial growth precinct
- the overall approach to massing and height has been refined and supported by GA NSW
- proposed building is highly articulated and visually interesting
- the form of the building above the podium is split into two towers, as a result the proposal is read as two elements which allows for an additional view corridor to the foreshore through the middle of the site and modulates and breaks down the scale and perceived bulk of the building
- the site is separated from nearby Heritage Items and would not adversely impact on heritage values
- the proposal would not result in any significant amenity impacts on surrounding properties as there would be negligible impacts arising from visual privacy, overshadowing or view loss.

As such, the Department is satisfied the height, bulk and scale of the proposal is not excessive and it appropriately relates to the existing site context and surrounding features and would not result in any unreasonable visual or amenity impacts.

## 6.3 Amenity Impacts

### Private Views

The proposal would result in overshadowing to Honeysuckle Drive road corridor and 36 Honeysuckle Drive. The key concern raised in public submissions was the impacts of the proposal on views towards the Hunter River from Aero Apartments (770 Hunter Street). In response to these concerns, the Applicant provided an analysis of the view impacts associated with the proposed development on existing buildings to the southeast and south-west of the site (**Figure 9**).



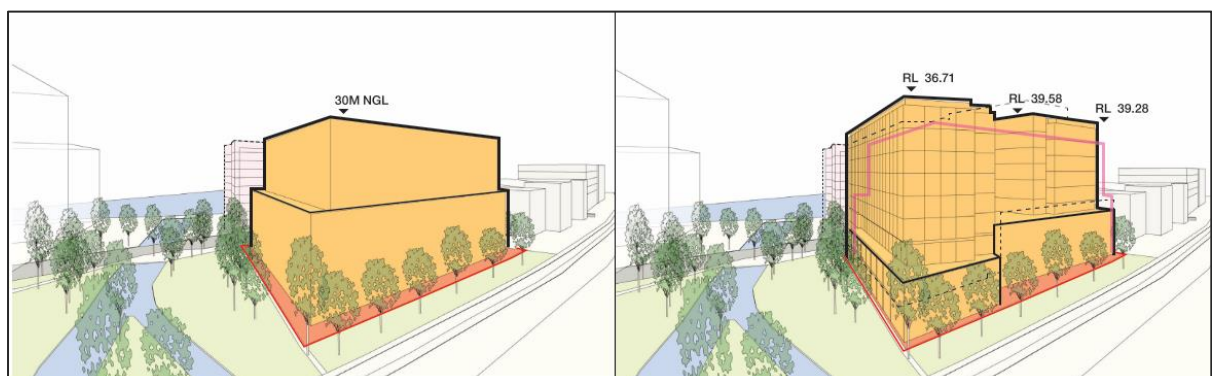
**Figure 9 | View locations (Source: RtS)**

To determine whether the proposed view loss impacts are reasonable, the Department has followed the four-step assessment process, in accordance with the principles established by *Tenacity Consulting Vs Warringah [2004] NSWLEC 140*. The steps/principles adopted in the decision are:

- Step 1: Assess what views are affected and the qualitative value of those views
- Step 2: Consider from what part of the property the views are obtained
- Step 3: Assess the extent of the impact (from 'negligible' to 'devastating')
- Step 4: Assess the reasonableness of the proposal that is causing the impact

#### Steps 1 to 3 - Cove Apartments, 25 Bellevue Street

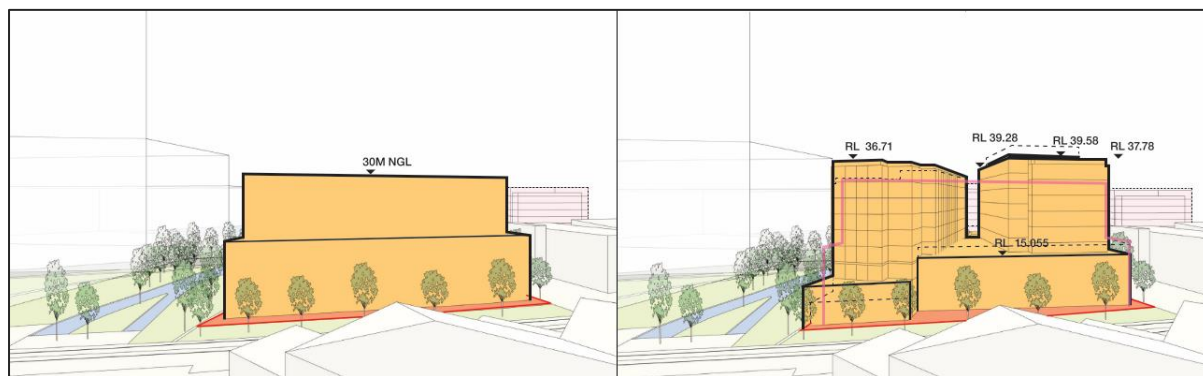
This is an eight storey residential flat building to the south west of the site. Views are obtained from north, north-east and east facing balconies and windows. The proposed development will obstruct the primary views of the main harbour towards the north-east. However, water views to the north encompassing Throsby Creek/Hunter River will be unaffected, even from balconies orientated northeast (**Figure 10**). The view impact is considered moderate.



**Figure 10 | View perspective – comparison between compliant envelope (left) and proposal (right) (Source: RtS)**

### Steps 1 to 3 - Bellevue Hotel, 738 Hunter Street

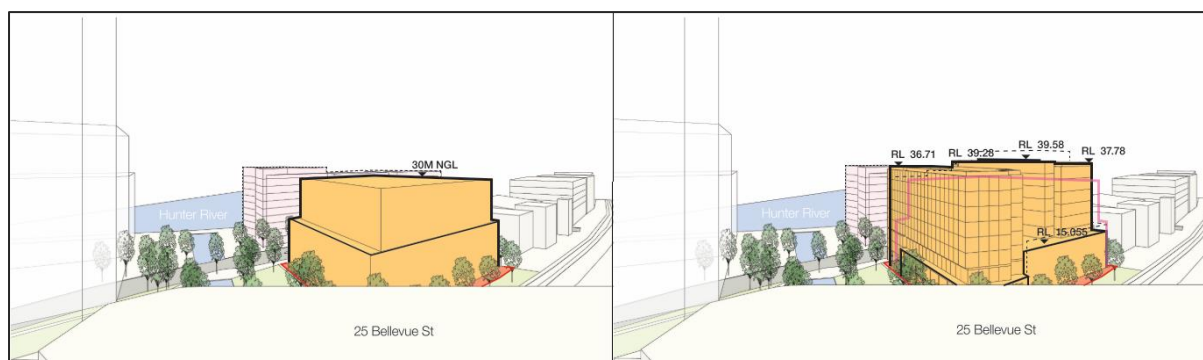
This is a two storey heritage listed building, with an eight storey residential development to the south of the site. Views are obtained from upper level north facing balconies and windows. The proposed development will obstruct the primary views of the main harbour towards the north-east. However, water views to the north encompassing Throsby Creek/Hunter River will be unaffected. The proposal increases the viewing access to the harbour between the towers, which an otherwise complaint envelope would not provide (**Figure 11**). The view impact is considered moderate.



**Figure 11 | View perspective – comparison between compliant envelope (left) and proposal (right)**  
(Source: RtS)

### Steps 1 to 3 - Huxley Apartments, 1-9 Beresford Street

This is a nine storey residential development to the south west of the site. Views are obtained from the balconies and windows on the lower levels. The proposed development will partially obstruct the primary views of the main harbour towards the north-east. However, these units already have obstructed views by the existing adjacent seven storey building. Water views to the north encompassing Throsby Creek/Hunter River will be unaffected by this proposal, even from balconies orientated northeast (**Figure 12**). The view impact is considered moderate.

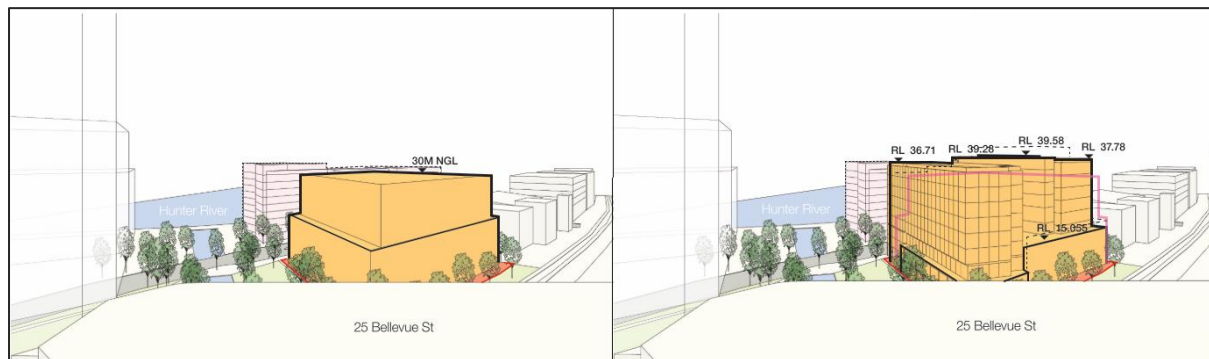


**Figure 12 | View perspective – comparison between compliant envelope (left) and proposal (right)**  
(Source: RtS)

### Steps 1 to 3 - Aero Apartments, 770 Hunter Street

This is a 15 story residential development and a four storey hotel to the south west of the site. Views are obtained from north, north-east and east facing balconies and windows from level eight and above, however these are already partially obstructed by the Lee 5 development. The proposed development will partially obstruct the views of the harbour from balconies. However, water views to

the north encompassing Throsby Creek/Hunter River will be unaffected, even from balconies orientated northeast (**Figure 13**). The view impact is considered moderate.



**Figure 13 | View perspective – comparison between compliant envelope (left) and proposal (right)**  
(Source: RtS)

#### Step 4 – the reasonableness of the proposal

The Applicant contends that despite the variation to the building height, the proposal is reasonable as partial views are maintained between building gaps and the view impacts are consistent with impacts that would be expected from the building height applying to the site.

The Department has reviewed the potential view impacts and considers the view impacts acceptable as:

- views currently enjoyed across the site rely on a borrowed amenity as they are as a result of the site being undeveloped. The building form up to the 30 m height limit is considered reasonable and an expected development for the site. While the Department acknowledges the adverse impact on views from surrounding properties, the preservation of existing views will unreasonably constrain the orderly development of the site.
- the Department has considered the areas of the building that do not comply with the 30 m height limit, as shown in **Figures 10 to 13**, and notes that the non-compliance with the building height development standard will have only limited view impacts on sky and not water or land, and do not result in excessive or unacceptable impacts on views from the neighbouring buildings nominated in **Figure 9**.
- the built form creates a view corridor through the site as shown in **Figure 11** allowing for some views to be maintained to the Hunter River

The Department therefore concludes the view impact of the proposal is reasonable and the minor areas of non-complying roof form will have negligible impacts on the views of the Hunter River from the neighbouring properties to the south.

#### **Visual Privacy**

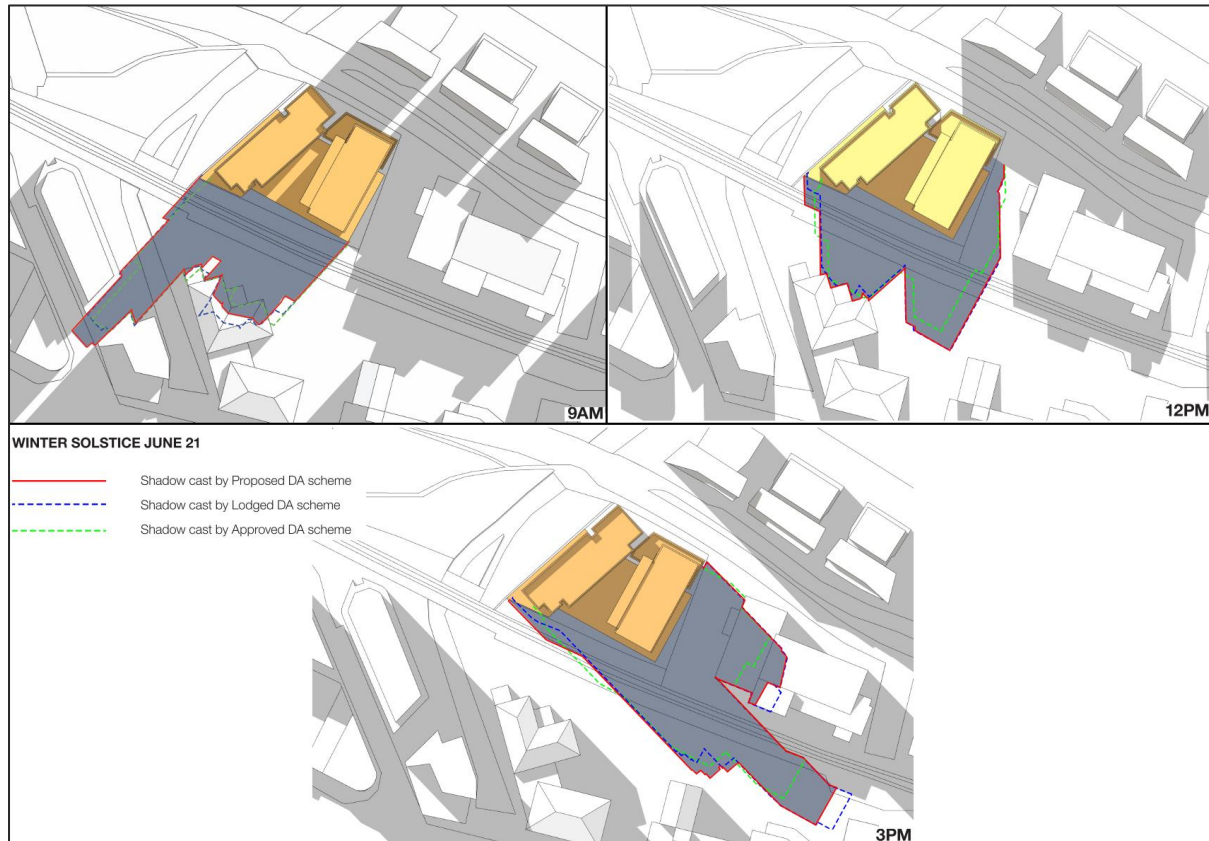
Concerns were raised in public submissions of privacy impacts from the proposal to Aero Apartments, located approximately 70 m south of the site at 770 Hunter Street, and to Astra Apartments, located approximately 100 m south west of the site at 12 Bellevue Street.

The Department considered the proposal would not result in any adverse privacy impacts to surrounding properties as there would be little opportunity for overlooking from the proposal given the

generous separation distance between properties and the hotel suites have an eastern or western orientation.

### Overshadowing impacts

The Department requested updated shadow diagrams that compared the shadow impact resulting from the scheme approved under SSD 8440 and the proposed development (**Figure 14**).



**Figure 14 |** Shadow diagrams – comparison between approved, lodged and proposed scheme  
(Source: RtS)

#### East to Hunter Water building

The proposal will result in minimal additional overshadowing to the commercial Hunter Water building to the east between 12:00pm and 3:00pm. The additional overshadowing impact would occur over the existing at-grade car park and the rear façade that abuts the light rail corridor. No overshadowing will occur to residential properties or public open space to the east.

#### South to Light Rail Corridor

No overshadowing would occur to residential properties or public open space to the south, as the overshadowing impacts are isolated to light rail corridor and the rear portion of properties fronting Hunter Street. Overshadowing to these properties occurs primarily to the at-grade carparking, the shadow is quick moving and these properties still receive morning sunlight. The proposal will not result in an increased impact to residents at 25 Bellevue Street.

#### West to Cockle Creek

The proposal would result in a minor increase in shadowing to the west over the Cottage Creek open space in the morning at the equinox, which is caused by the repositioning of the building on the site rather than the changes in height. There is no impact to the west of Cottage Creek in the proposal.

The submitted shadow diagrams demonstrate that the portions of the building which exceed the height control do not have any adverse impacts on the public domain, or nearby residential or commercial properties when compared to a fully compliant scheme.

Despite the variation to the height control, the Department is satisfied that the proposal would not result in unacceptable overshadowing impacts to residential properties or the public domain due to the of the building elements on the site coupled with a reduction in the bulk as part of the RTS.

## 6.4 Traffic, Parking, Access and Transport

### Car Parking

The proposal would provide a total of 177 car parking spaces, including 12 accessible car parking spaces and 6 motorcycle parking spaces across four storeys at the rear of the podium element. The breakdown of spaces for each use is outlined in **Table 7** below.

**Table 7** | Car Parking Breakdown

| Land use     | Number of spaces | Signage                 |
|--------------|------------------|-------------------------|
| Hotel        | 44               | Hotel guests only       |
| Office       | 68               | Commercial tenants only |
| Remainder    | 65               | Unmarked                |
| <b>Total</b> | <b>177</b>       | -                       |

The NDCP 2012 provides that for non-residential city-centre developments, a flat car parking rate of 1 car parking space per 60 m<sup>2</sup> of Gross Floor Area (GFA) is required. Based on the Applicant's GFA calculation of 11, 816 m<sup>2</sup>, the development is required to provide 197 car parking spaces. The NDCP also states that the total number of parking spaces may be reduced if an overlap of car parking demand is likely to occur.

Hotels typically generate their peak parking demands on a weekday between 6pm and 6am whilst commercial development generates peak parking demand during 6am to 6pm on weekdays. The provision of parking in accordance with the DCP is likely to result in unused car parking spaces due to the temporal differences between the uses.

The Department considers the proposed parking rates are acceptable as:

- the parking demand for the proposed uses are likely to be complimentary, allowing sharing of spaces to occur

- the ancillary uses on the site are unlikely to generate parking demand as they will be primarily accessed by hotel guests and commercial tenants
- the site is highly accessible by public transport, being adjacent to the light rail.

### **Hotel drop-off and pick up**

The proposal seeks to provide a drop-off/pick-up zone for the hotel within an indented bay on Honeysuckle Drive. The realignment of Honeysuckle Drive by Hunter and Central Coast Development Corporation (HCCDC) is currently under construction, and will include an indented parking and loading bay.

Council advised that any proposal to use on-street parking or loading is required to be approved by the Newcastle City Traffic Committee, and raised concerns that this approval is not guaranteed. In response to Council's comments, the Applicant provided amended plans showing two pick up/drop off spaces within the basement. The Department is therefore satisfied that in the event that the Traffic Committee does not support the final design, suitable arrangements can be made within the on-site parking area for guest drop-off/pick-up if required.

The Department therefore recommends a condition which requires separate approval for any drop off/pick-up zone on Honeysuckle Drive or an alternative on-site drop-off/pick-up facility within the on-site parking facility.

### **Traffic Impacts**

In response to TfNSW concerns, the Applicant demonstrated that the intersection of Hannell Street and Honeysuckle Drive will still operate within typical performance thresholds for a signalised intersection (DOS less than 0.9 and maximum LOS of C). As a result, no mitigation measures are considered to be required to support the proposed development.

TfNSW reviewed the amended Traffic Assessment and updated modelling and raised no concerns, and Council raised no objection to the traffic impacts on local roads.

The Department is satisfied the additional traffic demands generated by the proposed development will have an insignificant impact on intersection operation during all assessed scenarios, and would not adversely impact traffic generation on the surrounding road network.

### **Bicycle Parking**

The proposal would provide 50 bicycle parking spaces:

- 35 spaces for the commercial use secured within the carpark
- 9 spaces for the hotel and café within the basement
- 6 visitor spaces in the public areas

A breakdown of the bicycle parking for each use confirms that under the NDCP, 38 spaces are required. The proposal exceeds this requirement, and Council has raised no objection. The Department considers the bicycle parking is appropriate for the proposed development.

## Access and Loading

The proposal as initially lodged provided a 3.8m high access from Honeysuckle Drive into the basement. In response to concerns raised by Council about the height of the access not complying with AS2809.2 which requires a 4.5m clearance for medium rigid vehicles (MRV), the Applicant amended the plans to provide a 4.2m high access.

The Applicant contends that the provision of 4.5m would increase the building height and/or affect the flood design levels. A breakdown of typical delivery types and vehicles for the uses was provided, demonstrating that servicing can be accommodated by a range of vehicles other than MRVs.

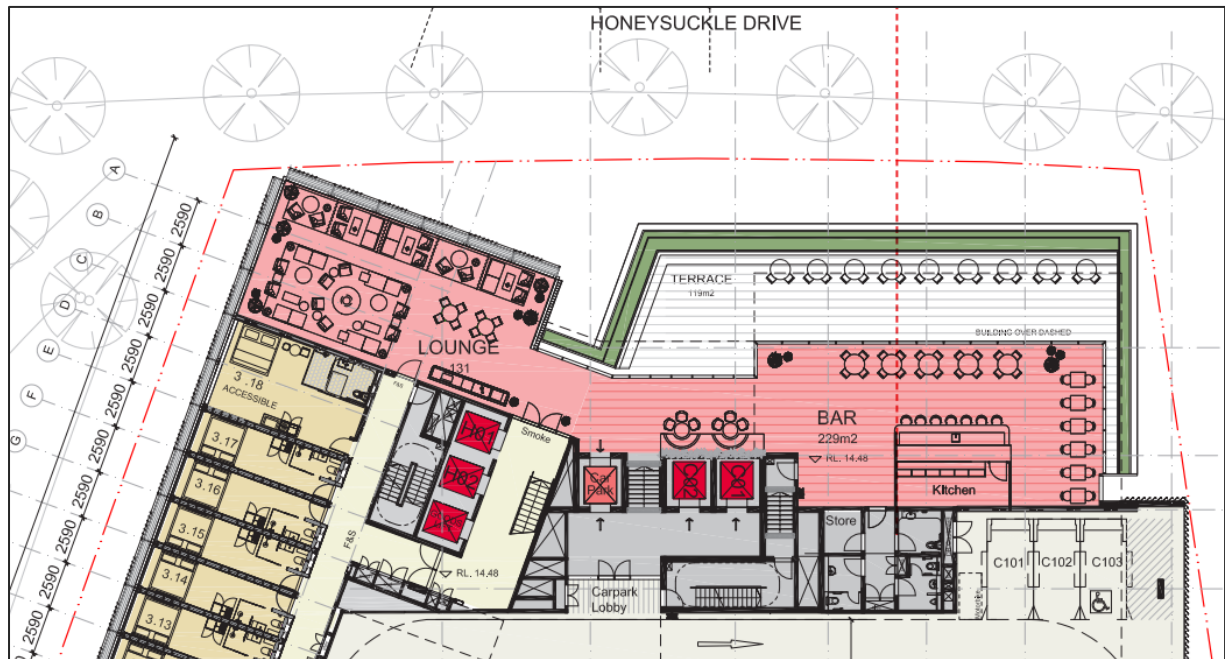
The Department, however, considers the development should comply with the relevant Australian Standards, and notes that the previous approval for the site (SSD 8440) included a condition to this effect. The Department therefore recommends a condition requiring the vertical height clearance be increased to 4.5m to comply with AS2890. 2-2002.

## Operation of the licenced bar and terrace

The proposal includes a licenced bar (229 m<sup>2</sup>) and associated outdoor terrace on level three of the commercial tower (**Figure 15**). The outdoor terrace is 119 m<sup>2</sup> and is situated on the northern edge of the commercial tower overlooking Honeysuckle Drive. The bar is proposed to accommodate a maximum of 200 patrons at any one time with a maximum of 50 patrons using the outdoor terrace at any one time. The Applicant notes the bar will be predominantly used by patrons of the other uses in the development.

The bar and terrace layout provides 63 seats with access to table space and was originally proposed to operate from 6 am to 12 am midnight seven-days-per-week. The Applicant's acoustic assessment notes background music would be played indoors (up to 90 dBA) and also in the terrace (up to 75 dBA). A plan of management for the licenced area was included in the acoustic assessment. The plan of management recommended the doors and windows to the outdoor terrace are closed between 10 pm and 7 am and that bottles should only be disposed of prior to 10 pm or after 7 am.

The lounge located to the immediate west of the bar is proposed to be used by hotel guests only.



**Figure 15|** The proposed layout of the bar and terrace (Source: Applicant)

NSW Police raised concerns with the proposed hours and instead recommended:

- Bar Area: 6 am to 12 midnight Monday to Saturday, 6 am to 10 pm on Sundays.
- Terrace: 6 am to 10:30 pm Monday to Saturday, 6 am to 10 pm on Sundays.

NSW Police recommended a series of conditions of consent relating to public safety and requested that a detailed Plan of Management be submitted to police prior to operation of the premises.

The Applicant amended the Plan of Management to reflect the hours of operation suggested by NSW Police.

Subject to the imposition of conditions recommended by NSW Police and compliance with the Plan of Management, the Department is satisfied the impacts of the bar will be appropriately managed and would not result in adverse impacts on the surrounding development or locality. The Department has also recommended a condition limiting the maximum number of patrons permitted in the bar to 200, and 50 within the outdoor terrace, unless the liquor licence permits less than this.

## 6.5 Other issues

The Department's consideration of other issues is summarised in **Table 8**. These are issues raised in the submissions which are not otherwise key issues addressed above.

**Table 8 | Response to other assessment issues**

| Issue                      | Findings  | Recommendations   |
|----------------------------|---|---|
| <b>Flooding</b>            | <ul style="list-style-type: none"> <li>The site is classified as flood prone land as it is affected by the probable maximum flood (PMF) event and the 1% AEP flood event for both local catchment flooding and ocean flooding.</li> <li>The Applicant submitted a Flooding Assessment Report to assess flooding impacts associated with the proposal.</li> <li>The proposed building footprint has been accounted for in the Honeysuckle Redevelopment Area Flood Study (2018), which has been endorsed by Council to support development in the Honeysuckle precinct. The recommended flood planning level (FPL) from this study for the site is 2.9 m AHD.</li> <li>The Department has reviewed the Flooding Assessment Report and considers the proposal would not result in any significant flood impacts or risks as: <ul style="list-style-type: none"> <li>the proposed finished floor levels have been set in accordance with Council's flood planning requirements</li> <li>the building footprint has been accounted for in the Honeysuckle Redevelopment Area Flood Study (2018)</li> </ul> </li> <li>The Department also notes that Council have not raised any issues with the proposal from a flooding perspective and have recommended conditions requiring a Flood Risk Management Plan.</li> <li>Subject to the recommended conditions, the Department is satisfied the proposal would not result in any significant flooding impacts or risks.</li> </ul> | <p>The Department recommends conditions requiring:</p> <ul style="list-style-type: none"> <li>finished floor levels to be set in accordance with Council's flood planning requirements</li> <li>the implementation of a flood emergency management plan.</li> </ul> |
| <b>Acid sulphate soils</b> | <ul style="list-style-type: none"> <li>The site is identified as containing a high probability of ASS occurring between 1 m and 3 m from the ground level in the Newcastle acid sulfate soils (ASS) map.</li> <li>As part of the EIS, an ASS Management Plan (ASSMP) was prepared to guide the management of ASS.</li> <li>The Department considers the ASSMP is acceptable as it provides appropriate management procedures including: <ul style="list-style-type: none"> <li>a methodology for the identification of materials requiring management;</li> <li>protocols for the onsite treatment and management of ASS materials</li> <li>management and treatment of groundwater and surface water prior to disposal</li> <li>excavation inspection and validation assessment protocols to be implemented during the proposed works</li> </ul> </li> </ul>   | <p>The Department recommends a condition requiring the implementation of the measures outlined in the ASSMP.</p>  |

|                        |  |  |
|------------------------|--|--|
|                        | <ul style="list-style-type: none"> <li>○ a monitoring regime for treatment of ASS and water quality monitoring.</li> <li>• The Department also notes the proposal includes minimal earthworks, as existing foundations will be utilised where possible. Where new foundations are required, the maximum excavation depth is 2.5 m.</li> <li>• Subject to implementing the measures outlined in the ASSMP, the Department is satisfied that any environmental risks associated with the disturbance of ASS can be appropriately mitigated and managed.</li> </ul>   |  |
| <b>Mine subsidence</b> | <ul style="list-style-type: none"> <li>• The site is identified within a mine subsidence area.</li> <li>• Consultation with the Mine Subsidence Board has occurred, and approval has been provided, subject to conditions.</li> </ul>  | The Department recommends a condition requiring compliance with the conditions imposed by the Mine Subsidence Board, in their approval issued on 18 February 2020. |
| <b>Heritage</b>        | <ul style="list-style-type: none"> <li>• The site is not listed on the State Heritage Register (SHR) nor is it in the immediate vicinity of any SHR item. However, the site is located within the vicinity of local heritage items and the Newcastle City Centre Heritage Conservation Area (NCC HCA) which is located to the immediate south of the site.</li> <li>• A Heritage Impact Statement (HIS) was submitted with the EIS. In summary, the HIS concluded <ul style="list-style-type: none"> <li>○ the proposal is considered to be sympathetic to the adjacent NCA HCA and nearby local heritage items</li> <li>○ the proposal is physically and visually separated from the heritage items in the vicinity</li> <li>○ the proposal would not interfere with views within the NCC HCA as it is lies outside the designated HCA.</li> </ul> </li> <li>• The Department notes that Council have not raised any issues with the proposal from a heritage perspective.</li> <li>• The Department has considered the HIS and is satisfied the potential heritage impacts of the proposal are acceptable, given that the site lies outside of the NCC HCA and there are no heritage items located near the site that would be impacted by the proposal</li> </ul> | The Department notes that no conditions are required regarding heritage.   |
| <b>Archaeology</b>     | <ul style="list-style-type: none"> <li>• The Department notes that the excavation works have been completed on the site in accordance with SSD 8840.</li> <li>• The Department notes that existing foundations will be utilised where possible, and the extent of excavation for new foundations is wholly within the previously approved footprint.</li> <li>• Test excavation results and the Aboriginal cultural heritage management plan were provided as part of the RTS, and reviewed by Heritage NSW who raised no concerns.</li> <li>• The Department is therefore satisfied that the proposal would not result in any adverse impacts on Aboriginal archaeology.</li> </ul>   | The Department has recommended a condition requiring compliance with the Aboriginal Cultural Heritage Management Plan.   |

|                              |  |   |
|------------------------------|--|---|
| <b>Wind</b>                  | <ul style="list-style-type: none"> <li>• A Pedestrian Wind Environment Study (Wind Study) was submitted with the application.</li> <li>• The study notes that a number of mitigation measures are required, but that with the treatments, wind conditions for all outdoor trafficable uses will be suitable.</li> <li>• Subject to implementing the measures outlined in the Wind Study, the Department is satisfied that the proposal would not result in unacceptable wind conditions for pedestrians.</li> </ul>  | The Department recommends a condition requiring the implementation of the measures outlined in the Wind Study.                        |
| <b>Waste Collection</b>      | <ul style="list-style-type: none"> <li>• An Operational Waste Management Plan (OWMP) was submitted with the application which proposes the on-site collection of waste by a private contractor.</li> <li>• Council requested an engagement agreement from a commercial waste collection provider be provided to demonstrate that the waste management services as detailed within the OWMP are able to be conducted.</li> <li>• In response, the Applicant's RtS confirmed that a waste contractor would be able to undertake the waste management services as detailed within the OWMP. The Department considers the on-site collection of waste acceptable in this instance.</li> </ul>  | The Department recommends a condition requiring compliance with the OWMP.   |
| <b>Stormwater management</b> | <ul style="list-style-type: none"> <li>• The Applicant submitted a Stormwater Management Strategy which included a stormwater management plan to address the stormwater management requirements of the proposal.</li> <li>• The stormwater system is designed to discharge by gravity to the Cottage Creek Stormwater Channel, via pipes connecting the rainwater tank and the roof areas. Stormwater detention is not required, due to the site discharging directly to the Cottage Creek Stormwater Channel and the site's close proximity to the harbour.</li> <li>• To ensure water quality requirements are met in accordance with Council's Water Sensitive Urban Design Guideline, stormwater runoff would be treated within the stormwater quality treatment tank through a passive filtration system before being discharged to the Cottage Creek Stormwater Channel.</li> <li>• The Department has assessed the proposal and is satisfied that the proposal would appropriately manage stormwater before entering Cottage Creek Stormwater Channel as: <ul style="list-style-type: none"> <li>○ stormwater drainage system as been designed to convey all storms up to and including the 1% AEP event.</li> <li>○ the MUSIC modelling shows that water quality would be appropriately managed by the proposed treatment system</li> <li>○ a holistic integrated approach to water management within the building is proposed, including water use reduction through efficient fixtures and water runoff capture through a 7kL rainwater tank, which will reduce the demand on the town water supply</li> </ul> </li> </ul> | The Department recommends conditions requiring compliance with the stormwater management plan and the treatment of stormwater run-off |

- The Department has also recommended conditions requiring compliance with the Stormwater Management Plan. Subject to the recommended conditions, the Department is satisfied the proposed stormwater management plan would appropriately manage stormwater volume and quality.

## Noise

- A Noise Impact Assessment (NIA) was submitted to assess the potential operational noise impacts associated with the proposal. This included an assessment of predicted noise impacts from:
  - the loading dock activities
  - the use of Level 1 Bar and outdoor terrace between 6.00 am and midnight.
- The nearest noise sensitive receivers include:
  - existing residential flat building at 25 Bellevue Street (approximately 50m to the south west of the site)
  - existing commercial building at 710 Hunter Street (approximately 35m south of the site)
  - existing commercial building at 36 Honeysuckle Drive (adjacent to the eastern boundary)
  - existing commercial building at 50 Honeysuckle Drive (approximately 50m north of the site)
- The assessment notes that a detailed acoustic review should be undertaken for the ground floor gym and café once detailed layouts, operational hours, number of patrons and selection of plant is known.
- However, the assessment notes that compliance with noise emission criteria will be achievable through appropriate plant section location or standard acoustic treatments.
- The assessment of the bar concludes that the predicted noise levels meet the NSW Office of Liquor and Gaming criteria and the NSW EPA Noise Policy for Industry criteria, subject to the implementation of recommended measures.
- The Department is satisfied that to subject to recommended conditions and further acoustic assessment, the proposal would not result in unacceptable acoustic impacts.

The Department recommends conditions requiring:

- An acoustic assessment of mechanical plant, building services equipment and the use of the gym and café
- The operation of the loading dock restricted between 10pm and 7am
- the recommendations of the Acoustic Report to be implemented.

## Public Domain Works

- Council's submission noted the previous consent at the site (SSD 8440) required the developer to consult with the Hunter Development Corporation (HDC) to design and improve public domain works within the Honeysuckle Drive frontage.
- The Applicant advised requested that a similar condition to that placed on SSD 8840 requiring public domain works be included.
- In response to a request for further details about proposed public domain works, the Applicant noted that the majority of public domain works have been completed by HDC, and the street signage and Section 138 works will be provided as part of the proposal.
- Council recommended a condition requiring the Applicant to undertake public domain works

The Department recommends a condition requiring the Applicant to complete the public domain works recommended by Council, and to consult with HDC to confirm if any further works are required.

including: paving, street trees, signage, street furniture and lighting.

- The Department has therefore recommended a condition requiring the works mentioned by Council to be completed.

#### Groundwater

- DPIE Water requested that a detailed site water balance outlining the water quantity and water source. If the detailed site water balance identifies a requirement for surface or groundwater take, a Water Access Licence (WAL) must be obtained or a detailed assessment provided on how the works comply with any applicable WAL exemption in the Water Management (General) Regulation 2018.
- The Applicant responded noting that as no basement levels are proposed, dewatering is not expected during construction.
- The Department is satisfied the proposal would not have adverse impacts on groundwater, but has recommended conditions to ensure that the appropriate licences are obtained if triggered.

The Department recommends a condition requiring a detailed site water balance outlining the water quantity and water source to be submitted prior to the issue of a Construction Certificate.

#### Signage

- The application proposes one business identification sign for the hotel on the northern façade of the development.
- An assessment of the sign against SEPP 64 (**Appendix C**) concludes that the proposal is generally consistent with the objectives and assessment criteria.

- The Department recommends a condition of consent requiring the proposed sign to comply with SEPP 64 and for detailed plans to be approved by Council prior to installation.

#### Contributions

- Council's submission noted that Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019 applies to the site and that a contribution of \$1,338,264 is payable to Council prior to the issue of a Construction Certificate.

- The Department recommends a condition requiring development contributions to be paid prior to the issue of a Construction Certificate.

#### Construction impacts

##### Noise

- A public submission raised concerns about the potential construction noise associated with the proposal.
- The NIA submitted with the proposal concludes that the construction noise impacts are not likely to be significant as:
  - The nearest occupied commercial building is 25m away
  - The nearest occupied residential building is approximately 55m to the south west
  - Works generating the most noise are typically used during the demolition and excavation stages, which have largely been completed.
- The Department notes that the NIA states that a detailed assessment is to be conducted once construction plans, equipment and methodology are finalised, but that a Construction Noise and Vibration Management Plan (CNVMP) will be developed.
- A range of mitigation measures were identified in the NIA to reduce noise impacts, including hoarding, use of alternative equipment and silencing devices.

The Department recommends conditions requiring:

- limiting hours of construction to between 7 am and 5.30 pm Mondays to Fridays and 8 am and 1 pm Saturdays. No work on Sundays and Public Holidays.
- restrictions on high-noise activities.
- the establishment of a Community Communication Strategy.
- the preparation of a Construction Environmental Management Plan, Pedestrian and Traffic Management Plan, Noise and Vibration Management Plan, and a Soil and Water Management Plan.

- The Department supports the suggested preparation of CNVMP and recommends a condition requiring this to be done.
- The Department concludes construction noise impacts from the proposal would be temporary and are able to be appropriately managed and mitigated through the recommended conditions.

#### Traffic

- The Applicant submitted a TIA in support of the proposal which considers potential construction impacts.
- The TIA estimates the proposal would generate between 35 to 45 vehicle trips per hour during the morning and afternoon peak period. The TIA outlines that construction vehicles would not have an adverse impact on the surrounding road network and recommends a range of measures to mitigate construction traffic impacts, including designating travel routes, designated construction employee parking, controlled access points and designated material delivery times and procedures.
- The Department considers the proposal would not result in any significant construction traffic impacts given the temporary nature of the works, the low volumes of traffic associated with the proposal and the proposed mitigation measures put forward in the TIA. The Department has also recommended a condition requiring a detailed Construction, Pedestrian and Traffic Management Plan be prepared and implemented for the project.

#### Other

- The Department has assessed all other potential construction impacts associated with the proposal and is satisfied that they can be appropriately mitigated and managed by conditions of consent.
  - The Department also recommends a Communication Strategy to provide mechanisms to facilitate communication between Council and the adjoining affected landowners and businesses, and others directly impacted by the development, during construction works
-

## 7 Evaluation

The Department has assessed the merits of the proposal and has carefully considered all issues raised in Council, government agency and public submissions. The Department has also considered all relevant matters under Section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ESD.

The Department is satisfied the proposal should be approved for the following reasons:

- the proposal is consistent with the objectives of the Hunter Regional Plan 2036, Greater Newcastle Metropolitan Plan 2036 and the Newcastle Urban Renewal Strategy 2014 as it would provide tourist and commercial facilities in an accessible location within the Newcastle city centre
- the proposal achieves design excellence, in supported by the Government Architect's office and positively contributes to the renewal of the Honeysuckle Precinct
- the height and scale of the proposal appropriately relates to the existing site context and surrounding features and would not result in any unreasonable amenity impacts
- the design of the building incorporating two towers breaks down the bulk and scale of the building and allows for an additional view corridor to the foreshore through the middle of the site
- it would not result in any significant traffic impacts and has excellent access to existing public transport including light rail and bus services, cycling and pedestrian infrastructure
- appropriate mitigation and protection measures would be implemented to address flooding impacts
- it is expected to create approximately 1,000 construction jobs and approximately 60 ongoing operational jobs
- all other issues have been appropriately addressed by recommended conditions of approval.

The Department's assessment therefore concludes the proposed development is in the public interest and should be approved, subject to conditions.

## 8 Recommendation

It is recommended that the Executive Director, Regions, Industry and Key Sites, as delegate of the Minister for Planning and Public Spaces:

- **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 SSD 10378; and
- **signs** the attached development consent and recommended conditions of consent (see **Appendix E**).

Recommended by:



**Emma Butcher**

Senior Planning Officer  
Key Sites Assessments

Recommended by



**Keiran Thomas**

Director  
Regional Assessments

## 9 Determination

The recommendation is **adopted** / ~~not adopted~~ by:



27/01/2021

**Anthea Sargeant**

Executive Director

Regions, Industry and Key Sites

# Appendices

## Appendix A – List of referenced documents

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

Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/25551>

Submissions on the Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/25551>

Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/25551>

Submissions on the Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/25551>

## Appendix B – Community Views for Draft Notice of Decision

A summary of the Department's consideration of the issues raised in submissions is provided in **Table 1**.

**Table 1** | Department's consideration of key issues raised in submissions

| Issue   | Consideration  |
|---|--|
| <p><i>View Loss</i></p> <p>the proposal would adversely impact on views from apartments at 770 Hunter Street.</p>                             | <p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>As part of the Response to Submissions (RTS), the Applicant provided an updated View Impact Analysis which concludes the view impacts to all residential apartments to the south are acceptable.</li> </ul>  |
| <p><i>Overshadowing</i></p> <ul style="list-style-type: none"> <li>the proposal would overshadow multiple apartments to the south.</li> </ul> | <p><i>Assessment</i></p> <p>As part of the Response to Submissions (RTS), the Applicant provided further shadow diagrams which illustrate that the portions of the building which exceed the height control do not have any adverse impacts on the public domain, or nearby residential or commercial properties when compared to a fully compliant scheme.</p>  |
| <p><i>Construction impacts</i></p> <p>the proposal would result in disturbance from noise and dust.</p>                                       | <p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>The Department has considered the construction impacts associated with the proposal, and is satisfied they can be appropriately managed.</li> </ul> <p><i>Conditions</i></p> <ul style="list-style-type: none"> <li>Condition C9 requires the preparation of a Construction Environmental Management Plan which considers measures to control dust.</li> <li>Condition C12 requires a Construction Noise and Vibration Plan to be prepared.</li> </ul> |

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

**Table 1 | Consideration of the objects of the EP&A Act**

| Objects of the EP&A Act   | Summary  |
|---|--|
| (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 would promote increased economic opportunity in Newcastle through facilitating 187 new hotel rooms and commercial 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 principles of ESD are considered below.  |
| (c) to promote the orderly and economic use and development of land   | The proposed development represents an efficient and economic use of land consistent with environmental planning instruments and policies under the EP&A Act.  |
| (d) to promote the delivery and maintenance of affordable housing   | Not relevant to the proposal.  |
| (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats                              | The proposal, in conjunction with the Department's recommended conditions, would not have adverse impacts to threatened and other species of native animals and plants, ecological communities and their habitats.   |
| (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)   | The proposal would not have an adverse impact on nearby heritage items or conservation areas, as addressed in <b>Section 6</b> .   |
| (g) to promote good design and amenity of the built environment   | The proposed redevelopment exhibits design excellence as discussed in <b>Section 6</b> .   |
| (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants   | Recommended conditions would ensure the proposed development works would be constructed in compliance with all relevant building codes and health and safety requirements.   |

|  |  |
|--|--|
| (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State | The proposal is SSD and therefore the Minister is the consent authority. The Department consulted with Council and relevant government agencies on the proposal. |
| (j) to provide increased opportunity for community participation in environmental planning and assessment.   | <b>Section 5</b> of this report sets out details of the Department's public exhibition of the proposal.  |

**Table 2 | Consideration of the matters listed under section 4.15(1) of the EP&A Act**

| Section 4.15(1) Evaluation   | Summary   |
|--|---|
| (a)(i) any environmental planning instrument   | The proposal complies with the relevant legislation, as addressed in <b>Section 4</b> the consideration of other relevant EPIs is provided below.   |
| (a)(ii) any proposed instrument  | Consideration of proposed instruments is provided below.  |
| (a)(iii) any development control plan  | Under clause 11 of the SRD SEPP, DCPs do not apply to SSD. Notwithstanding, consideration has been given to the Newcastle Development Control Plan 2012.  |
| (a)(iiia) any planning agreement   | Not applicable.   |
| (a)(iv) the regulations<br><i>Refer Division 8 of the EP&amp;A Regulation</i>  | The application satisfactorily meets the relevant requirements of the 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 considers the impacts of the development are either appropriately mitigated or conditioned (refer to <b>Section 6</b> of this report.  |
| (c) the suitability of the site for the development  | The site is suitable for the development as addressed in <b>Sections 4 and 6</b> of this report.  |
| (d) any submissions  | Consideration has been given to the submissions received during the EIS exhibition period and following lodgement of the RtS. See <b>Sections 5 and 6</b> of this report.   |
| (e) the public interest  | The Department considers the proposal to be in the public interest as addressed in <b>Section 6</b> .   |
| Biodiversity values exempt if:<br>(a) On biodiversity certified land<br>(b) Biobanking Statement exists  | Not applicable.   |
| The likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. (Section 7.14 of the <i>Biodiversity Conservation Act 2016</i> ) | <p>The Department has consulted with EESG and considers the proposal would not have any adverse impact on biodiversity values. Refer to <b>Section 4</b> of this report.</p> <p>Under section 7.9(2) of the <i>Biodiversity Conservation Act 2016</i> (BC Act) requires applications for a SSD to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the</p> |

Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values.

On 11 November 2019, the requirement for a BDAR was waived as the delegated Environment Agency Head in the Biodiversity and Conservation Division of the Environment, Energy and Science Group in the NSW DPIE (formally Office of Environment and heritage) determined the proposal is not likely to have any significant impact on biodiversity values, given the lack of vegetation on the site and the nature of existing and surrounding development.

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## Ecologically Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms.

The Department has assessed the proposal in relation to the ESD principles and has made the following conclusions:

- Precautionary Principle – the site is disturbed due to earthworks undertaken as part of the previous development consent. As such, the proposal would not result in any serious or irreversible environmental damage.
- Inter-Generational Equity - the proposal would not have adverse impacts on the environment for future generations, subject to the Department's recommended conditions.
- Biodiversity Principle – the Department is satisfied the proposal would not have any significant flora, fauna or biodiversity impacts, given the lack of vegetation on the site and the nature of existing and surrounding development.
- Valuation Principle – the proposal includes a number of measures to limit the ongoing cost, resource and energy requirements of the development. These include passive solar design, use of renewable energy to reduce energy consumption, robust materials reducing on-going maintenance costs and native planting to reduce water consumption in landscaped areas.

A range of sustainability measures and ESD initiatives are proposed, including:

- Energy – incorporation of solar panels on the rooftop, corridor and fire stair lighting on occupancy sensors and the use of LEDs and other low-energy, flicker free lighting sources.
- Water Efficiency - provision of a 7kL rainwater tank for reuse in landscape irrigation, use of water saving appliances and native plantings to reduce consumption in landscaped areas
- Passive Design Principles - reducing the development's overall requirement for building services
- Materiality - maximising the use of sustainable and healthy products, such as those with low embodied energy, locally sourced, and made from renewable or recycled resources
- Waste – reducing waste by avoidance, reuse and recycling, maximising diversion of waste from landfill during the construction and operational phase of the development

Overall, the proposal 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.

### Environmental Planning Instruments

Controls considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy 55 – Remediation of Land
- Draft State Environmental Planning Policy for the Remediation of Land
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy No 64 – Advertising and Signage
- Newcastle Local Environmental Plan 2012
- Other Plans and Policies:

Newcastle Development Control Plan 2012

Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019

### State Environmental Planning Policy (State and Regional Development) 2011

The State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) aims to identify development that is of State significance due to its size, economic value or potential impact.

The project is classified as State significant development (SSD) under section 4.36 of the EP&A Act, as it comprises development on land identified as being within the Honeysuckle site and has a capital investment value of more than \$10 million under clause 2(d) of Schedule 2 of the SRD SEPP.

### State Environmental Planning Policy (Infrastructure) 2007

The State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

The project approval is 'traffic generating development' under Schedule 3 of the ISEPP. In addition, the proposal includes more than 2,500m<sup>2</sup> commercial GFA and therefore is a development to which the ISEPP applies. The ISEPP requires the development be referred to TfNSW (RMS) for comment.

The application was referred to TfNSW (RMS) in accordance with the ISEPP. TfNSW (RMS)'s submission on the proposal is summarised at **Section 5**. The Department considers the proposed development to be consistent with the ISEPP given the consultation and consideration of transport, traffic and parking issues in **Section 6** and recommended conditions of consent in **Appendix E**.

## **State Environmental Planning Policy No. 55 – Remediation of Land**

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) aims to ensure potential contamination issues are considered in the determination of a development application. SEPP 55 requires the consent authority to consider whether the land is contaminated, and if so, whether the land is suitable for the purposes of the proposed development.

The site has been subject to extensive filling including importation of excess potentially contaminated fill materials from other Honeysuckle development sites, and potentially contaminating land uses, including industrial railway yards. Several onsite contamination investigations and associated reports have previously been undertaken for the site, including a previous Remediation Action Plan (RAP) prepared by Douglas Partners (2017).

An updated RAP has been prepared by Douglas Partners (2018), documenting the procedures and standards to remove the risks posed by environmental impacts which may be present underlying the site and to make the site suitable for the proposed redevelopment, while ensuring the protection of human health and the surrounding environment.

Based on the previous investigation DP concluded that the site is considered to be suitable for the proposed mixed use development, provided the following is undertaken:

- all materials exceeding land use criteria are suitably remediated or managed on-site
- appropriate remediation and Work Health and Safety (WHS) procedures are undertaken during development to address bonded asbestos fragments and asbestos impacted fill materials (where present) with reference to NEPM 2013 guidelines.

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

## **Draft Remediation of Land State Environmental Planning Policy**

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**

The Coastal Management 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 site is mapped as a coastal environmental area and as a coastal use area under the Coastal Management SEPP. These relevant matters are addressed in **Table 3** below.

**Table 3 | Consideration of the Coastal Management SEPP**

| Criteria   | Department's Consideration   | Compliance |
|--|--|------------|
| <b>Division 3 Coastal environmental area</b>   |  |            |
| (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.  | The proposal would not have a significant impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.                                      | Yes        |
| (b) The coastal environmental values and natural coastal processes.  | The site is within an existing developed urban area and on a highly disturbed site. As such, it is not expected the proposal will have an impact on the coastal environmental and natural coastal processes. | Yes        |
| (c) The water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes.                                 | The proposal will not impact on the Marine Estate or any sensitive coastal lakes.  | Yes        |
| (d) Marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms.   | The site is void of any significant vegetation.  | Yes        |
| (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.  | The site does not contain existing public open space or provide access to and along the foreshore.   | Yes        |
| (f) Aboriginal cultural heritage, practices and places.  | As discussed in <b>Section 6</b> the proposal will not impact upon any Aboriginal cultural heritage, practices and places.   | Yes        |
| (g) The use of the surf zone.  | The site is not located within a surf zone.  | Yes        |
| <b>Division 4 Coastal use area</b>   |  |            |
| (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  | The development is wholly contained within the site boundary and will not impede or diminish public access to the foreshore.   | Yes        |

|  |  |     |
|--|--|-----|
| (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores | The development will not overshadow the foreshore and will not result in a loss of views from a public place.  | Yes |
| (iii) the visual amenity and scenic qualities of the coast, including coastal headlands    | The high standard of the building's architectural design will have a positive impact on the scenic qualities of the area.                              | Yes |
| (iv) Aboriginal cultural heritage, practices and places                                    | As discussed in <b>Section 6</b> the proposal will not impact upon any Aboriginal cultural heritage, practices, places and built environment heritage. | Yes |
| (v) cultural and built environment heritage  |  |     |

### State Environmental Planning Policy No 64 – Advertising and Signage

State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64) applies to all signage that under an EPI can be displayed with or without development consent and is visible from any public place or public reserve.

The development includes a building identification sign on the northern facade of the upper most storey of the hotel component of the building.

Under clause 8 of SEPP 64, consent must not be granted for any signage unless the development is consistent with the objectives of the SEPP and with the assessment criteria contained in Schedule 1. The Department considers the development to be compatible with the desired amenity and visual character of the area, provide effective communication and is of high-quality design and is therefore consistent with the objectives of SEPP 64. The Department's assessment of Schedule 1 of SEPP 64 is provided in **Table 4** below.

**Table 4 | Consideration of Schedule 1 Assessment Criteria, SEPP 64**

| Assessment criteria  | Department's consideration  | Compliance |
|--|---|------------|
| <b>1 Character of the area</b>   |   |            |
| Is the development compatible with the existing or desired future character of the area or locality in which it is proposed to be located?   | The proposed signage is located within the Honeysuckle precinct and is considered compatible with the surrounding character of the site.              | Yes        |
| Is the development consistent with a particular theme for outdoor advertising in the area or locality?   | The development does not include any advertising however includes building identification signage which is consistent with the theme of the locality. | Yes        |
| <b>2 Special areas</b>   |   |            |
| Does the development detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The proposed signage will not detract from the amenity or visual quality of the surrounding area.   | Yes        |

### 3 Views and vistas

|  |   |     |
|--|---|-----|
| Does the development:  | The proposed signage:   |     |
| <ul style="list-style-type: none"> <li>obscure or compromise important views?</li> <li>dominate the skyline and reduce the quality of vistas?</li> <li>respect the viewing rights of other advertisers?</li> </ul> | <ul style="list-style-type: none"> <li>will not obscure any views, including important views.</li> <li>does not dominate the existing skyline</li> <li>will not disturb the viewing rights of other advertisers in the vicinity.</li> </ul> | Yes |

### 4 Streetscape, setting or landscape

|   |  |     |
|---|--|-----|
| Is the scale, proportion and form of the development appropriate for the streetscape, setting or landscape? | The scale, proportion and form of the proposed signage is appropriate for the setting of the proposed development.                   | Yes |
| Does the development contribute to the visual interest of the streetscape, setting or landscape?            | The proposed signage will contribute to the visual interest of the building by providing identification and recognition of the site. | Yes |
| Does the development reduce clutter by simplifying existing advertising?                                    | The site does not contain any existing advertising.  | N/A |
| Does the development screen unsightliness?  | The proposed signage is integrated into a new development that exhibits design excellence, therefore there is no unsightliness.      | Yes |
| Does the development protrude above buildings, structures or tree canopies in the area or locality?         | The proposed signage is integrated into the building façade and does not protrude above the building.                                | Yes |
| Does the development require ongoing vegetation management?   | The proposed signage does not require any ongoing vegetation management  | N/A |

### 5 Site and building

|  |  |     |
|--|--|-----|
| Is the development compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? | The proposed signage is compatible with the scale, proportion and other characteristics of the building. | Yes |
| Does the development respect important features of the site or building, or both?  | The proposed signage will not detract from the important features of the site and building.              | Yes |
| Does the development show innovation and imagination in its relationship to the site or building, or both?   | The proposed signage is innovatively located and appropriately relates to the building.                  | Yes |

### 6 Associated devices and logos with advertisements and advertising structures

|   |  |     |
|---|--|-----|
| Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? | The proposed signage will be internally illuminated. | Yes |
|---|--|-----|

### 7 Illumination

|  |  |     |
|--|--|-----|
| Would illumination:  | The Department recommends a  | Yes |
| <ul style="list-style-type: none"> <li>result in unacceptable glare?</li> <li>affect safety for pedestrians, vehicles or aircraft?</li> <li>detract from the amenity of any residence or other form of accommodation.</li> <li>Can the intensity of the illumination be adjusted?</li> <li>Is the illumination subject to a curfew?</li> </ul> | condition of consent to ensure the signage illumination does not exceed the relevant Australian Standards. |     |

## 8 Safety

|  |   |     |
|--|---|-----|
| Would the development reduce safety for:   | The Department considers that the signage:  | Yes |
| <ul style="list-style-type: none"> <li>pedestrians, particularly children, by obscuring sightlines from public areas?</li> <li>for any public road?</li> <li>pedestrians or bicyclists?</li> </ul> | <ul style="list-style-type: none"> <li>will not reduce the safety for any public road or pedestrians or cyclists.</li> <li>will not obscure any sightlines, and therefore is not considered to reduce the safety of pedestrians.</li> </ul> |     |

## Newcastle Local Environmental Plan 2012

The site is located on land in which the Newcastle Local Environmental Plan (NLEP) 2012 applies. The Department's assessment of the proposed development against the provision of the NLEP 2012 is provided in **Table 5** and **Table 6**.

**Table 5 | Department's consideration of NLEP 2012**

| Criteria  | Departments Consideration  | Compliance |
|---|--|------------|
| <b>Clause 2.3 Zone objectives</b><br>The objectives of the B3 zone are: <ul style="list-style-type: none"> <li>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.</li> <li>To encourage appropriate employment opportunities in accessible locations.</li> <li>To maximise public transport patronage and encourage walking and cycling.</li> <li>To provide for commercial floor space within a mixed use development.</li> <li>To strengthen the role of the Newcastle City Centre as the regional business, retail and</li> </ul> | The Department considers the proposal consistent with the B3 zone objectives, as follows: <ul style="list-style-type: none"> <li>The proposal includes a range of uses including commercial premises, hotel accommodation with ancillary uses including a gymnasium, café, and a small bar, which will serve the needs of the local and wider community</li> <li>The proposal will provide employment opportunities, with the creation of 60 operational jobs and 1000 construction jobs within an accessible location.</li> <li>The proposal is located within Newcastle CBD, which is well serviced by public transport.</li> <li>The proposal provides 5442 m<sup>2</sup> of commercial floor space within a mixed use building.</li> <li>The proposal will provide an increase in employment and investment opportunities in Newcastle, by providing commercial spaces and hotel accommodation, which will strengthen the role of the Newcastle City Centre as the business, retail and cultural centre of the Hunter region.</li> </ul> | Yes        |

|   |   |   |
|---|---|---|
| <p>cultural centre of the Hunter region.</p> <ul style="list-style-type: none"> <li>To provide for the retention and creation of view corridors.</li> </ul> | <ul style="list-style-type: none"> <li>As discussed in <b>Section 6</b>, the proposal would not impact upon any significant view corridors.</li> </ul>  |   |
| <b>Clause 2.3 Permissibility</b>  | As discussed in <b>Section 4.2</b> , the proposal is permissible within the B3 zone.  | Yes   |
| <p><b>Clause 4.3 Height of buildings</b></p> <p>The site is subject to a maximum building height of 30 m.</p>   | The proposal provides a maximum building height of 35.78 m, representing a non-compliance of 5.78 m or 19.26%.  | No, refer to <b>Section 6</b> and <b>Appendix D</b> for further discussion. |
| <p><b>Clause 4.4 Floor space ratio</b></p> <p>The site is subject to a maximum FSR of 4:1</p>   | The proposal provides a FSR of 3.17:1   | Yes   |
| <b>Clause 4.6 Exceptions to development standards</b>   | The application includes a request for exception/variation to Clause 4.3 Height of buildings development standard and is discussed further in <b>Section 6</b> and <b>Appendix D</b> .  | Yes   |
| <b>Clause 5.10 Heritage conservation</b>  | As discussed in <b>Section 6</b> , the proposal would not result in any significant impacts to heritage (both built and cultural heritage).   | Yes   |
| <b>Clause 6.1 Acid sulfate soils</b>  | The site is located within land mapped as Class 3 ASS. An ASS Management Plan was submitted as part of the EIS and considered acceptable. Further discussion is provided in <b>Section 6</b> .  | Yes   |
| <b>Clause 6.2 Earthworks</b>  | <p>Limited earthworks are proposed as the development does not involve basement works. Additionally, the structural foundations for the proposal would consist of predominately existing foundations constructed as part of the previous development under SSD 8440 which will be adopted to the new layout.</p> <p>Any new foundations, would be constructed using driven/displacement piles, which will do not general spoil.</p> <p>Given the above limited earthworks, the proposal is unlikely to have an impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, subject to conditions.</p> | Yes   |
| <b>Clause 6.5 Public safety – licensed premises</b>   | As discussed in <b>Section 6</b> , the Department is satisfied the licensed bar would not result in any significant impacts on public safety.   | Yes   |
| <b>Clause 7.3 Minimum building street frontage</b>  | A building street frontage in excess of 20 m is provided.   | Yes   |

|  |  |     |
|--|--|-----|
| <b>Clause 7.5 Design excellence</b>                  | As discussed in <b>Section 6</b> and in <b>Table 6</b> below the Department considers the proposal exhibits design excellence.   | Yes |
| <b>Clause 7.6 Active street frontages in zone B3</b> | <p>The hotel lobby, cafe and the commercial lobby face onto Honeysuckle Drive encouraging pedestrian activity and will provide an active, people oriented street frontage.</p> <p>Additionally, a gymnasium is located on the western side which will provide an active use to the public reserve.</p> | Yes |

**Table 6 | Consideration of Clause 7.5 – Design Excellence, NLEP 2012**

| Criteria   | Department's Consideration  |
|--|---|
| In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:  |   |
| (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved  | As discussed in <b>Section 6</b> , the design and detailing are of a high standard, which is appropriate for the use, nature of the building and the site.  |
| (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain  | As discussed in <b>Section 6</b> , the form, and external appearance of the proposal will improve the quality and amenity of the public domain.   |
| (c) whether the development detrimentally impacts on view corridors identified in the NDCP 2012  | As discussed in <b>Section 6</b> , the proposal would not detrimentally impact on view corridors.   |
| (d) how the proposed development addresses the following matters:  |   |
| (i) any heritage issues and streetscape constraints,   | There are no anticipated adverse heritage impacts of any significance from the proposal, as discussed in <b>Section 6</b> .   |
| (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form | The proposed towers are setback from adjoining development to ensure appropriate privacy and solar access.  |
| (iii) bulk, massing and modulation of buildings,   | The base of the building (three storeys to the side boundaries) provides an appropriate scale for adjoining future development, while the side and street setbacks and building form provide modulation of the massing, and mediation of scale. |
| (iv) street frontage heights   | A street wall height of 3 storeys is provided (approximately 11.5 m) which is generally consistent with the block pattern established by existing buildings within Honeysuckle.   |
| (v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity   | Environmental impacts have been considered acceptable as discussed in <b>Section 6</b> and in <b>Appendix C</b> .   |
| (vi) the achievement of the principles of ecologically sustainable development   | As discussed in <b>Appendix C</b> , the proposal is consistent with ESD principles and the Department   |

|  |  |
|--|--|
|  | is satisfied the proposed sustainability initiatives would encourage ESD, in accordance with the objects of the EP&A Act.  |
| (vii) pedestrian, cycle, vehicular and service access, circulation and requirements, | Pedestrian, cycle, vehicular and service access and circulation requirements have been considered acceptable as discussed in <b>Section 6</b> .  |
| (viii) the impact on, and any proposed improvements to, the public domain.           | The proposal would not have an adverse impact on the public domain, noting that the development will provide public domain works within the Honeysuckle Drive frontage of the site, including a raised pedestrian crossing generally in the vicinity of the existing refuge. |

### Newcastle Development Control Plan 2012

The Newcastle Development Control Plan (NDCP) 2012 supports the provisions of the NLEP 2012 and provides a set of development objectives and provisions for development within the Newcastle Local Government Area. In accordance with clause 11 of the SRD SEPP, DCPs do not apply to SSD. The proposal is therefore not subject to the requirements of NDCP 2012. However, relevant chapters of the NDCP 2012 have been considered in **Table 7** below.

**Table 7 | Consideration of NDCP 2012**

| Criteria   | Departments Consideration   | Compliance |
|--|---|------------|
| <b>Section 3 – Land Use Specific provisions</b>  |   |            |
| <b>3.09 Tourist and visitor accommodation</b><br>To encourage tourist and visitor accommodation where possible   | The tourist component of the proposal is permissible in the B3 Commercial Core zone and is located in a suitable location for visitors.   | Yes        |
| <b>3.10 Commercial development</b> <ul style="list-style-type: none"> <li>Ground floor retail uses provide multiple pedestrian accesses along the street frontage</li> <li>Solid walls or covered glass for lengths greater than 3m are to be avoided</li> </ul> | The proposal provides: <ul style="list-style-type: none"> <li>a retail tenancy with outdoor dining area, residential lobby, and hotel lobby face Honeysuckle Drive.</li> <li>multiple entry points to the building front Honeysuckle Drive.</li> <li>building facades are articulated with various façade treatments including glazing, aluminium vertical louvres, profiled aluminium cladding and tensile mesh planting/screening.</li> </ul> | Yes        |
| <b>Section 4 – Risk Minimisation</b>   |   |            |
| <b>4.01 Flood management</b><br>The site is flood prone land and as such a flood impact assessment is required.  | A flood impact assessment has been prepared and the proposal has been designed in accordance with Council's flood requirements.   | Yes        |
| <b>4.03 Mine subsidence</b>  | Consultation with the Mine Subsidence Board has occurred, and approval has been provided.   | Yes        |

The site is identified within a mine subsidence area

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**4.04 Safety and security**

Encourage a built environment that provides safe and activated places

The proposal has been assessed against the Crime Prevention Through Environmental Design (CPTED) framework and is consistent with the key principles of CPTED.

Yes

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**4.05 Social impact**

Consider both positive and negative social impacts in achieving socially sustainable development

A Plan of Management outlines the ongoing management of the site and associated social impacts.

Yes

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**Section 5 – Environmental Protection**

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**5.01 Soil management**

To protect the environment against soil erosion and loss of soil from construction

An erosion and sediment control plan has been prepared and considered acceptable.

Yes

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**5.02 Land contamination**

Consideration of land contamination in accordance with SEPP 55

Contamination investigations have been carried out, which determined the site was suitable for the proposed use with minimal opportunity for soil access.

Yes

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**5.03 Tree management**

To consider existing trees on site and promote tree growth

The site contains no trees. A Landscape Plan has been prepared that details a comprehensive landscape strategy for the site.

Yes

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**5.04-5.06 heritage archaeological management**

Provisions to ensure consideration of heritage items and Aboriginal heritage as part of proposed development

An Aboriginal Cultural Heritage Management Plan has been developed and contains a number of recommendations to ensure the archaeological and cultural heritage values are managed.

Yes

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**Section 6 – Locality Specific Provisions – 6.01 Newcastle City Centre**

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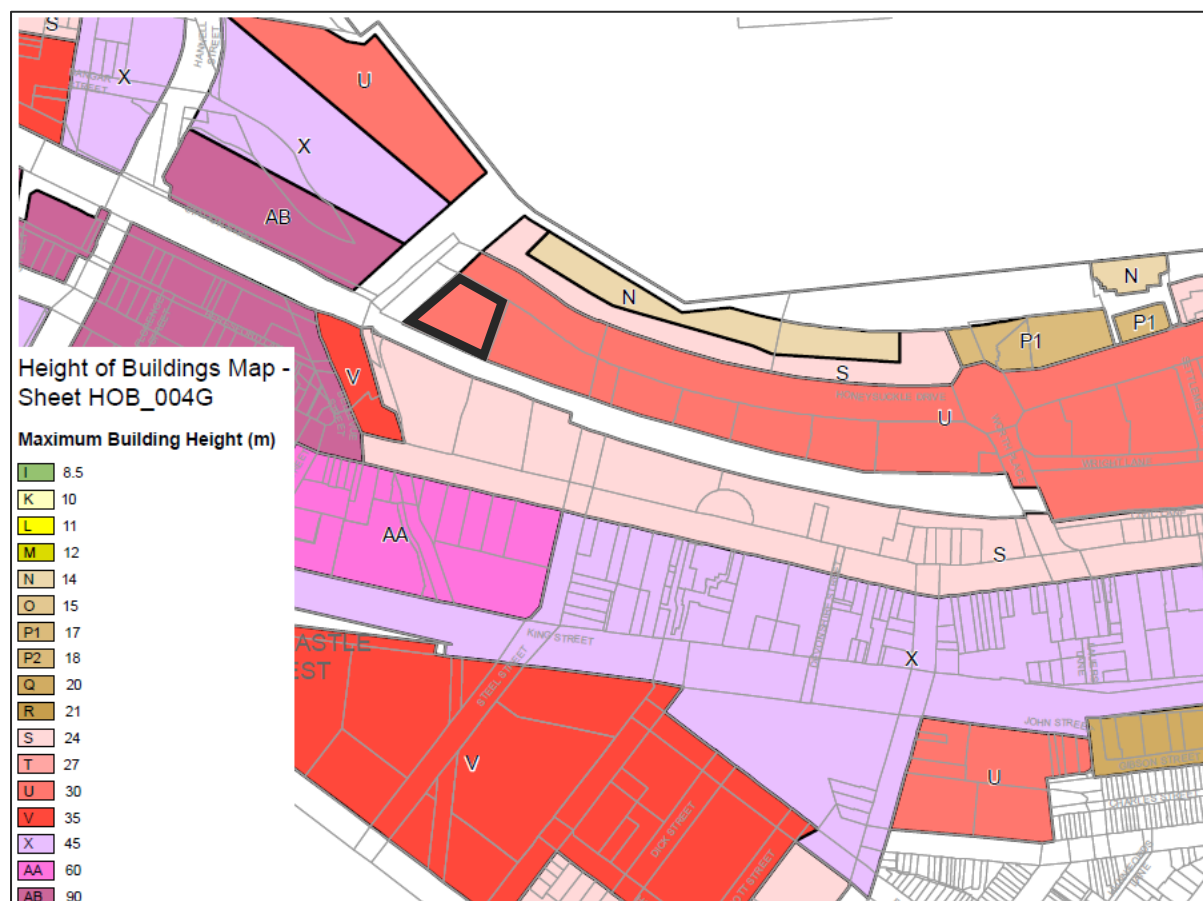
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**Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019**

The Applicant will pay development contributions in accordance with Council's Contribution Plan. It is recommended a condition is imposed to this effect.

## Appendix D – Clause 4.6 Variation: Building Height

The proposal seeks a variation to the maximum building height as prescribed by Clause 4.3 of the NLEP 2012. Clause 4.3 of the NLEP 2012 requires the height of a building on any land not to exceed the maximum height shown for the land on the Height of Buildings Map. The site is subject to a maximum building height of 30 m (**Figure 1**).



**Figure 1 |** Extract of the NLEP 2012 height of building map (site outlined in black)

The proposed building including the rooftop plant/services and lift overrun ranges in height from 33.7 m for the hotel tower and 35.78 m for the commercial tower. A breakdown of the building height is provided in **Table 1** and the areas proposed to exceed the maximum building height is shown in **Figure 2**.

**Table 1 |** Proposed building height

| Element                                  | Height             | Variation        |
|--|--------------------|------------------|
| Commercial tower including rooftop plant | 35.78 m (RL 39.58) | 5.78 m or 19.26% |
| Commercial tower excluding rooftop plant | 33.98 m (RL 37.78) | 3.98 m or 13.26% |
| Hotel tower including rooftop plant      | 33.70 m (RL 36.71) | 3.37 m or 12.3%  |



**Figure 2 |** Areas of the building proposed to exceed the maximum building height (source: RtS)

Clause 4.6(2) of the CHLEP 2013 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 A**).

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 B3 commercial core zone are as follows:

- 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.

The Department is satisfied that the proposed development is consistent with the relevant objectives of the B3 zone in NLEP 2012, as:

- the proposed mixed use development includes predominately hotel and commercial land uses in an area identified by HDC for mixed uses, supporting the commercial residential, community and entertainment uses in the Honeysuckle Precinct and the wider community
- the development will contribute to the economic revitalisation of the Newcastle City Centre by creating hotel and commercial premises which will provide continuing employment opportunities in a central location
- the site is in a highly accessible location within walking distance of city centre services and facilities and in proximity to existing pedestrian and cycle links, bus stops and the light rail line
- the site supports the role of the Newcastle City Centre by providing a mixed use development with hotel and commercial premises in proximity to other business, commercial and entertainment uses
- the building will not impact on identified view corridors providing public views and sight lines to key public spaces, the waterfront, prominent heritage items or landmarks.

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

The objectives of the Building Height development standard in NLEP 2012 are:

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

The Department considers the proposal to be consistent with these building height objectives, noting:

- the strategic context nominates the site as within the Honeysuckle Precinct, a substantial growth precinct. Those parts of the building that exceed the maximum building height are likely to be imperceptible from the public domain. Accordingly, the proposed built form, density and scale are consistent with, and will make a positive contribution towards, the desired built form outcomes in the Honeysuckle Precinct.
- the areas of the building that infringe the maximum permissible building height development standard does not unduly interfere with neighbouring properties or public areas receiving satisfactory exposure to sunlight. The submitted shadow diagrams demonstrate that the portions of the building which exceed the height control do not have any adverse impacts on the public domain, or nearby residential or commercial properties when compared to a fully compliant scheme.

**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:

- the proposal provides a mixed use building that is appropriate for the site, having regard to the location and current/future setting within a mixed use zone in the Honeysuckle Precinct
- the proposed building is highly articulated and visually interesting. The form of the building above the podium is split into two towers, as a result the proposal is read as two elements which breaks

down the bulk and scale of the building and allows for an additional view corridor to the foreshore through the middle of the site.

- the proposal is consistent with the objects of the EP&A Act.
- the objectives of the building height development standard would be upheld as the design is site responsive and would have minimal environmental, social and economic impacts

Having considered the Applicant's written request and further to the Department's assessment of height in **Section 6**, 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 and the proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

In supporting the Applicant's request, the Department considers that the development will deliver an overall better planning outcome for the site, for the following reasons:

- the proposal will make a positive contribution to the urban fabric of the Honeysuckle Precinct with a mixed use development that is consistent with the objectives of the zone
- the proposal provides for hotel accommodation and commercial premises in a location that is highly accessible by public transport and is well connected to existing pedestrian and cycling links
- the site is in the Newcastle City Centre and will support the growth of the commercial centre.

## **Appendix E – Recommended Instrument of Consent**

The recommended conditions of consent can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/25551>