



Hunter & Central Coast
Development
Corporation

Rail Bridge Row

Expression of Interest for Disposal



October 2019

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Overview

Hunter and Central Coast Development Corporation (HCCDC) is calling for Expressions Of Interest from prospective purchasers and developers for the site known as Rail Bridge Row, Newcastle.

Rail Bridge Row is located adjacent to the new Crown Street Light Rail Stop and has the potential to deliver a unique mixed-use development, under a predominantly B4 Mixed Uses land use zone. The Site is located east of the intersection of Hunter Street and Darby Street and in close proximity to Newcastle Harbour. A public plaza is identified to the immediate west of the site, providing a strategic link between Hunter Street and the foreshore. The site has significant frontage to Hunter Street, as well as a second frontage to Argyle Street enabling for vehicle access via an extension to this street.

The unique dimensions of the site require a creative and innovative architectural design outcome to provide for a built form that will delineate Hunter Street and respond to the unique heritage aspects of the site. Suggested designs could provide for residential uses on the upper floor/s, with commercial and retail spaces on the ground floor. This outcome would enhance the activation and vibrancy of a revitalised Hunter Street and take advantage of the pedestrian connections of the Crown Street Light Rail Stop.

The Disposal Process seeks to identify Respondents who will outline their vision for the site with regard to the selection criteria and demonstrate their experience and capability to deliver high quality development outcomes.

Details on the Site and associated Disposal Process are included in this EOI document and the accompanying Appendices. Respondents are encouraged to closely review this information and ensure that any Proposal submitted in response to the EOI complies with the requirements.

Part 1: Expression of Interest

Introduction

The Hunter and Central Coast Development Corporation has responsibility for the delivery of the Revitalising Newcastle Program; a \$650 million NSW Government investment in the provision of light rail and redevelopment opportunities in Newcastle City Centre. The project seeks to stimulate urban transformation and reconnect the city to the harbour by repurposing the former rail corridor into a mix of public spaces, tourism and mixed-use development.

The Newcastle *Local Environmental Plan 2012* was amended on 17 April 2018 to include the Rail Bridge Row site (on the former rail corridor), which is now predominantly zoned B4 Mixed Uses, enabling a mix of residential and commercial uses.

As part of the process for the appropriate disposal of sites of the former heavy rail corridor HCCDC is seeking to facilitate the development of these significant and strategically important sites.

Purpose of the EOI

This Expression Of Interest seeks to find a purchaser and developer for the site known as the Rail Bridge Row (Lot 8 in DP1251435) 280 Hunter St Newcastle.

Proposals are to ensure that the future development of the Rail Bridge Row site will be generally in accordance with the planning controls applicable to the site. Proposals for the Rail Bridge Row site should also demonstrate compatibility with the objectives of the [Revitalising Newcastle Program](#). Consideration of the potential for compliance with these will be included in the evaluation process to select the successful respondent. Further details of these obligations are included in this EOI document, but respondents are also advised to review the relevant controls and Program objectives.

Detailed designs are not required as part of this EOI process, however high-level concept plans should be provided to demonstrate the overall outcomes of the development, consideration of the impact on surrounding development and potential site integration. These concept plans must identify key outcomes for the Site, including active street frontages, integration with and enhancement of Hunter Street, and improved pedestrian amenity.

Objectives

The objectives of the Project are to secure a purchaser/developer:

- who will provide development which meets the objectives of the Revitalising Newcastle Program, in particular to bring people back to the city centre, help grow new jobs in the city centre, create great places linked to new transport, and preserve and enhance heritage and culture
- demonstrates thoughtful and innovative design, to optimise the development potential of the site
- with the financial capacity, resources and experience to execute the project to a high standard
- who will honour the heritage of the Rail Bridge Row site, the city, and of the neighbouring buildings in the design
- who will ensure the delivery of a high-quality development for Rail Bridge Row which seeks to accommodate a range of uses and activate Hunter Street as a vibrant pedestrian area
- who will optimise the development potential of the Rail Bridge Row site whilst complying with the relevant planning controls

EOI Responses must be received no later than **3pm on Monday 16 December 2019**.

Key Terms of Sale

The key terms of sale will include:

- Deposit of 10.0% of the Sale Price (excl. GST), payable upon entering into the Deed;
- 60 day settlement period.

Summary

| | |
|---|---|
| Project | EOI for disposal of Rail Bridge Row site |
| Site | Rail Bridge Row - this site is identified as 280 Hunter St Newcastle, Lot 8 DP1251435. It is bounded by Hunter Street, and properties fronting Hunter Street to the south, public space at Darby Plaza in the west and a vacant parcel known as the Scott Street Corridor site in the east. The north of the site is bounded by residential and commercial buildings fronting Wharf Road. This provides for a site area of approximately 4,125m ² . |
| Key Dates – indicative timetable | EOI Close: 3pm, 16 December 2019 Assessment and evaluation of EOI Responses: Approximately 10 business days Shortlist Date: 20 January 2019 Anticipated Sale Agreement: 30 January 2020 Anticipated Settlement: 30 March 2020 <i>Note: Dates are approximate only and are subject to change at the discretion of the Vendor.</i> |
| Contact and enquiries | All enquiries in relation to the EOI should be emailed to Peter.Macadam@colliers.com or contact made by phone on 02 4915 4020 |
| EOI Submission | All EOI submissions should be lodged through the NSW eTender website |

Part 3: Background

Hunter and Central Coast Development Corporation

Hunter and Central Coast Development Corporation (HCCDC) is a NSW State Government agency established under the *Growth Centres (Development Corporations) Act 1974* and is the owner of the Site. The Corporation came into effect on 1 November 2018 after the merger of the Hunter Development Corporation and the Central Coast Regional Development Corporation.

HCCDC strives to ensure that development projects on land under its control achieve the best possible outcomes from an urban design, environmental, sustainability, economic, social and community perspective.

HCCDC has been tasked with delivering the Revitalising Newcastle program.

Revitalising Newcastle

Revitalising Newcastle is a NSW Government program focused on activating the city to attract people, new enterprises and tourism to Newcastle. The government is investing more than \$650 million in the program to transform the city centre by strengthening connections between the city and waterfront, creating job opportunities, providing new housing and delivering attractive public spaces connected to better transport. The Program is underpinned by six objectives which will drive successful urban revitalisation:

1. Bring people back to the city centre

Re-imagine the city centre as an enhanced destination, supported by new employment, educational and housing opportunities and public domain that will attract people.

2. Connect the city to its waterfront

Unite the city centre and the harbour to improve the experience of being in and moving around the city.

3. Help grow new jobs in the city centre

Invest in initiatives that create jobs, with a focus on innovative industries, higher education and initiatives to encourage a range of businesses to the city centre.

4. Create great places linked to new transport

Integrate urban transformation with new, efficient transport to activate Hunter and Scott Streets and return them to thriving main streets.

5. Creating economically sustainable public domain and community assets

Leave a positive legacy for the people of Newcastle. Ensure that new public domain and community facilities can be maintained to a high standard into the future.

6. Preserve and enhance heritage and culture

Respect, maintain and enhance the unique heritage and character of Newcastle city centre through the revitalisation activities.

The repurposing of the Government land is an important outcome to realise these objectives. Optimising the development outcome with appropriate, integrated and high-quality design will assist to bring people back to the city centre by the creation of a destination site and enhanced residential and retail opportunities.

Rail Bridge Row provides for the opportunity to celebrate the heritage of the site with the integration and interpretation of unique heritage features. The site is also close to proposed and existing public spaces including the Darby Plaza and Market Street Lawn public open spaces and Hunter Street Mall, and will be serviced by the new Crown Street light rail stop.

Part 4: Site details

Site Location

The site is located on the former heavy rail corridor, between Argyle Street and the alignment with Perkins Street, see **Figure 1**.

Hunter Street, to the south of the site, is the main commercial and retail spine of Newcastle City Centre and has been enhanced through the provision of light rail, which opened late 2019.

The site is located immediately opposite the Crown Street light rail stop on Hunter Street, with significant bus routes available to the north along Wharf Road and south along King Street and Darby Street.

The site is situated between the Civic and East End precincts of Newcastle, with proximity to the Newcastle Local Law Courts at 343 Hunter Street, the Newcastle Town Hall, Civic Theatre, and Newcastle Museum, all within 350m of the Site. The University of Newcastle's NewSpace building is also within 500m of the site, with the University's presence set to expand through the development of the new campus at Honeysuckle. The Site also provides easy access to the Hunter Street Mall, the Foreshore, and is approximately 1km to Newcastle Beach.

The Site: Rail Bridge Row

Title Details

The site is identified as Lot 8 DP 1251435. Included in **Figure 2**.

Site area and survey

The Rail Bridge Row site is located on the northern side of Hunter Street; between Argyle Street in the west and the alignment of Brown Street in the east. The site has frontage to Hunter Street of approximately 155m and an approximately 8.6m frontage to and extended Argyle Street providing vehicular access to the site. The depth of the site varies from approximately 8.5m at the western end, 10m at the eastern boundary, and over 25m at the widest point towards the centre of the site. The total site area is approximately 4,125m², subject to survey.

Zoning and uses

The majority of the site has been rezoned as B4 Mixed Uses providing for a mix of land uses. Two small portions of the Site retains the SP2 Infrastructure (Railway) zoning (see **Figure 3**). This is due to some rationalisation of the Site boundary locations following the rezoning. The SP2 zoning covers an area of approximately 120m².

Concept plans were developed to inform the planning controls for the Site. Significantly, these plans identified the potential for retail, hospitality, office space and other commercial opportunities on the ground floor. The upper floor/s was determined to be suitable for residential uses. Live Work Units have been identified as a potential option for the site, combining the ground and upper floor/s as a single unit to house small businesses with the owner's living area on the first floor. However, this option is not a requirement and other proposals for the site will be considered where consistent with the program objectives. Further details can be found in Part 5: Planning Context below.

Easements

Deposited Plans DP1251435 and the associated 88B instrument included in **Appendix I** confirm the existing easements across the Site. Easements include a Right of Access to service the existing light rail substation in Lot 7 and an easement for drainage at the eastern end of the site over an existing line of pipe.

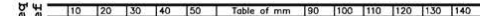
Respondents are advised to undertake their own due diligence regarding the impacts of any existing, proposed or alleged interests on the subject properties.

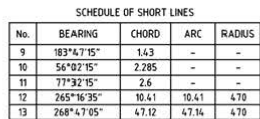
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Figure 1: Location Plan



Req:R044471 /Doc:DP 1251435 P /Rev:04-Mar-2019 /Sts:SC.OK /Pgs:ALL /Prt:05-Mar-2019 03:30 /Seq:1 of 7
Ref:fls:epian-oplan FOR SURVEYORS USE ONLY /Src:W





DP1251435

Figure 3: Indicative extent of Zoning (Extract from ePlanning Spatial Viewer 30/9/19)



Supporting site information

The reports referenced below provide details for the Rail Bridge Row site. These reports were provided in support of the Planning Proposal to rezone the former rail corridor lands.

However it should be noted that these reports are not up to date, and make reference to the original proposed land use zoning for sites on the former heavy rail corridor. Respondents should make their own enquiries and satisfy themselves in relation to the applicability of the information contained in these reports.

Site Use and Services

The Servicing Investigation report prepared by ADW Johnson to accompany the planning proposal for the former heavy rail corridor, and contained in the appendices, identified that the Rail Bridge Row site is able to be serviced.

Respondents should make their own enquiries and satisfy themselves on the requirements for the provision of services to the Site.

Archaeology and Heritage

The Rail Bridge Row site is located within the Newcastle City Centre Heritage Conservation Area, and is identified as a Heritage Item of local significance in the *Newcastle Local Environmental Plan 2012*. The heritage item categorisation is related to the remnants of the stone abutment to the AA Co Hunter Street overpass, which are located on this Site. Other unidentified items of heritage significance including cisterns and footings are also located on the site (the location of these items is indicated in **Figure 4**).

A site-specific heritage impact assessment will be required for any development of the site due to these heritage considerations. Ground disturbance work will need to be undertaken in accordance with the requirements of the *National Parks and Wildlife Act 1974*.

A heritage assessment report was undertaken by RPS in 2017 to support the planning proposal to amend the Newcastle Local Environment Plan 2012 in relation to the surplus rail corridor land between Worth Place and Watt Street in Newcastle. In addition, in July 2018, HCCDC engaged Umwelt to complete a site-specific Heritage and Archaeology Advice Report for both European and Aboriginal heritage and archaeology for the Rail Bridge Row site.

Both reports are included in the Appendices, however, respondents should make their own enquiries and satisfy themselves on the requirements for managing heritage obligations.

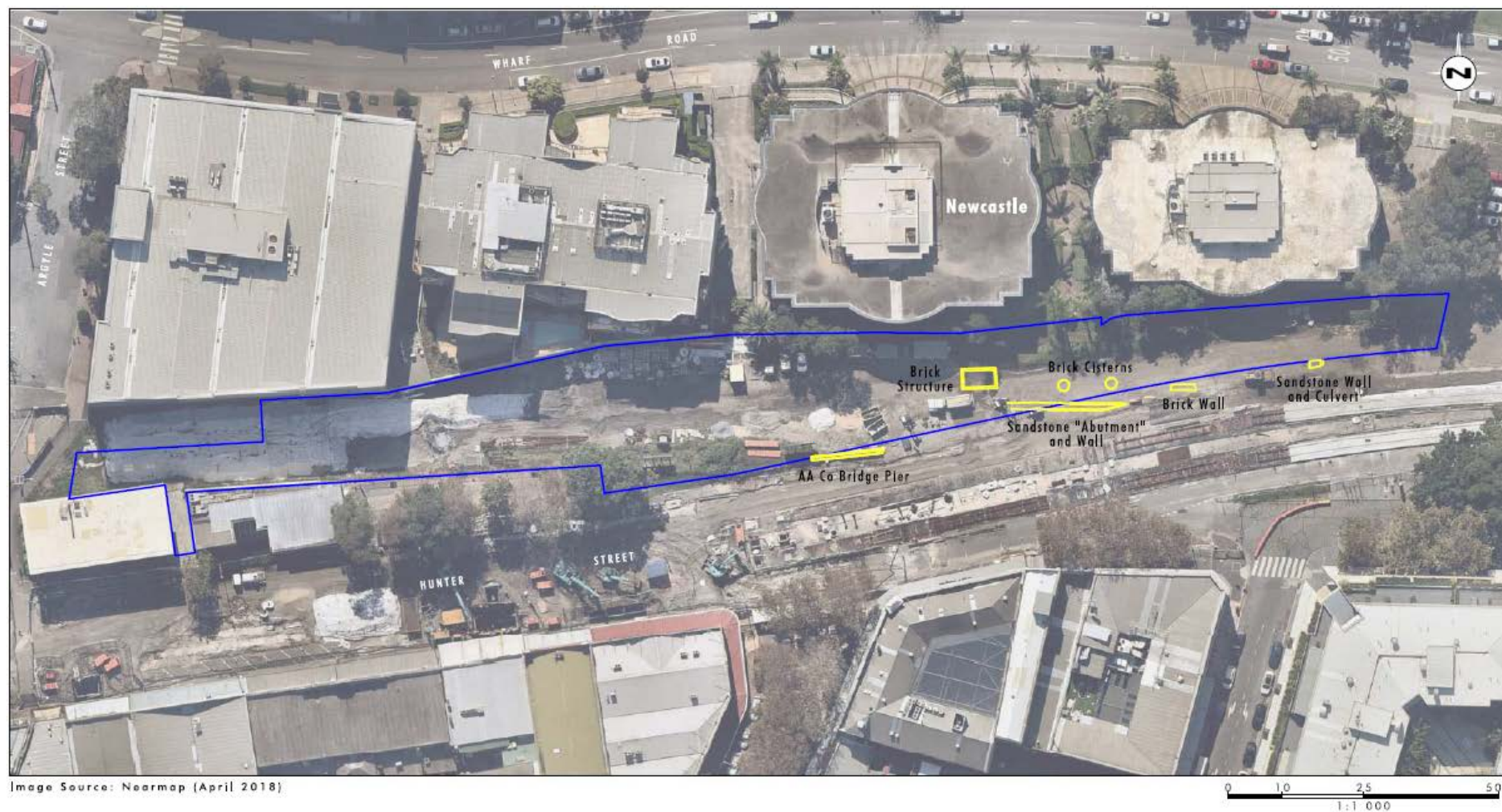


Figure 4: Archaeology and Heritage Items – Archaeology and Heritage Advice Report 2018 - Umwelt

Site Contamination

The sites of the former rail corridor were included within a Remediation Action Plan which identifies the appropriate remediation of the sites based on the preliminary testing and assessment. A copy of the Remediation Action Plan is included in Appendix J.

The surface infrastructure associated with the former use of the site for heavy rail has been removed, however no further works are proposed to further remediate the Site prior to disposal. The Remediation Action Plan provides details on how the site should be treated.

Respondents should make their own enquiries and satisfy themselves on the requirements for site contamination remediation.

Mine Subsidence

The site falls within the Newcastle City Centre Mine Subsidence Board (MSB) Plan area.

HCCDC was advised by the MSB in 2016 that the Site is subject to surface development guideline No. 9. A letter providing further details is attached in the Appendices.

The Respondent will need to obtain MSB approval for the final development and address any structural requirements of the MSB.

The development may also be eligible for the Newcastle Mines Grouting Funds and the Respondent is advised to make their own enquiries in this regard.

Respondents should make their own enquiries and satisfy themselves on the requirements for managing issues associated with mine subsidence risk.

Flood Risk Assessment

The site was subject to a flood risk assessment report undertaken to support the planning proposal (provided in the Appendices) and the Newcastle City-wide Floodplain Risk Management Study and Plan 2012 (found at www.newcastle.nsw.gov.au). These reports provide the base information required to understand the flood management constraints for the Site.

Respondents should make their own enquiries and satisfy themselves on the requirements for flood management.

Part 5: Planning Context

Local planning controls

The local planning controls for the Site are contained in the *Newcastle City Centre Local Environmental Plan (LEP) 2012* and the Newcastle Development Control Plan (DCP) 2012 which are available on the Newcastle City Council website www.newcastle.nsw.gov.au.

The Rail Bridge Row site is currently zoned predominantly B4 Mixed Uses with 14m maximum height and maximum FSR of 1.5:1 (as shown in **Figures 5, 6, and 7**). The B4 zone provides for a wide variety of permissible uses including commercial premises, shop-top housing, and hotel uses.

Specifically, the B4 Mixed Uses land use zoning provides for the following:

Zone B4 Mixed Uses

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works; Home occupations

3 Permitted with consent

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Camping grounds; Caravan parks; Cemeteries; Dual occupancies; Dwelling houses; Eco-tourist facilities; Electricity generating works; Farm buildings; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Heavy industrial storage establishments; Heavy industries; Helipads; High technology industries; Open cut mining; Resource recovery facilities; Rural industries; Secondary dwellings; Semi-detached dwellings; Sewage treatment plants; Truck depots; Vehicle body repair workshops; Waste disposal facilities; Water recycling facilities; Water supply systems.

A small portion of the north-east corner of the Rail Bridge Row site (approximately 120m²) has retained the SP2 Infrastructure (railways) zoning (indicated in **Figure 3**). This was associated with the deferral of the adjacent site to the east from the Planning Proposal to rezone the sites of the former heavy rail corridor. These areas also have no maximum height or FSR applied.

The SP2 zone provides for the following:

Zone SP2 Infrastructure (railways)

1 Objectives of zone

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

2 Permitted without consent

Roads

3 Permitted with consent

The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

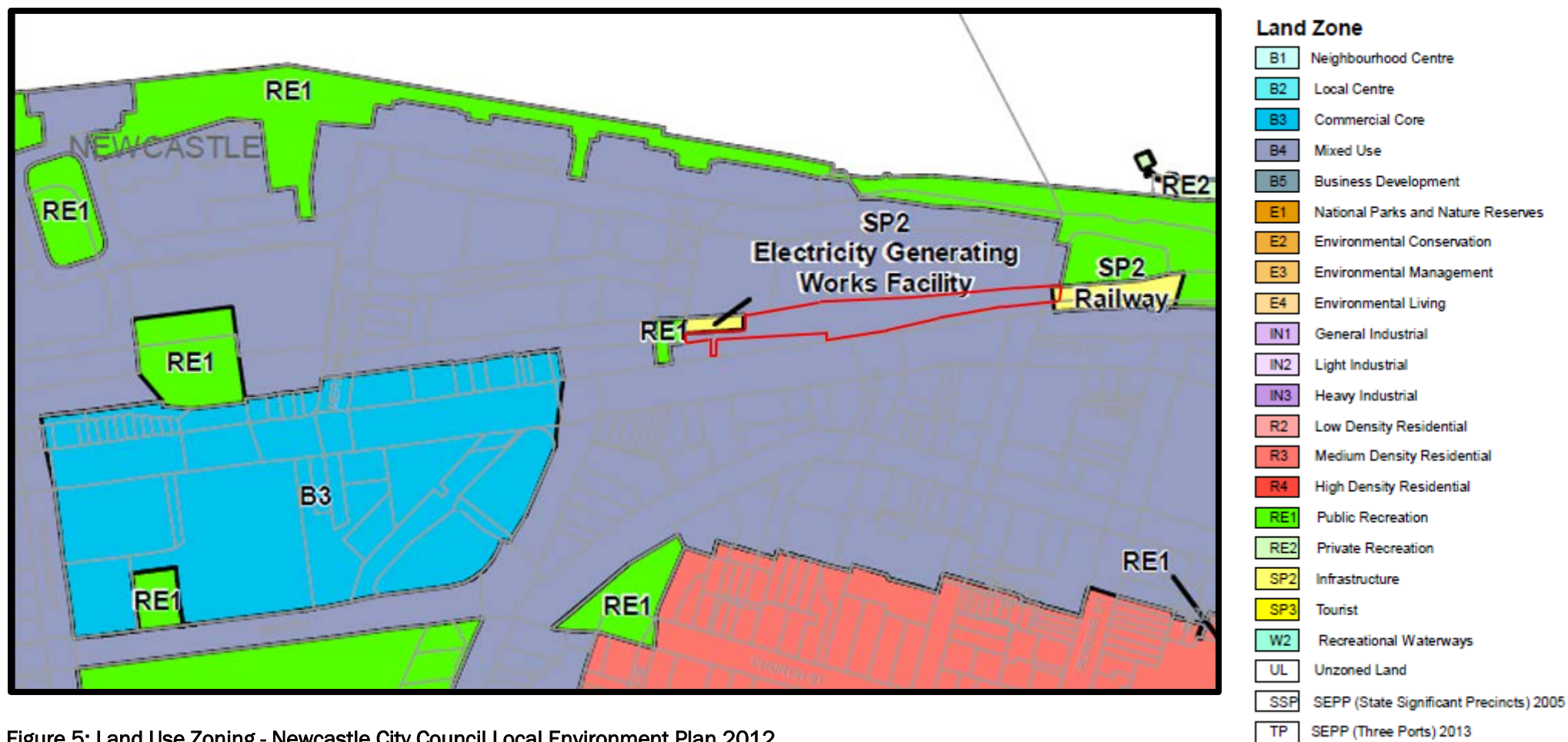


Figure 5: Land Use Zoning - Newcastle City Council Local Environment Plan 2012

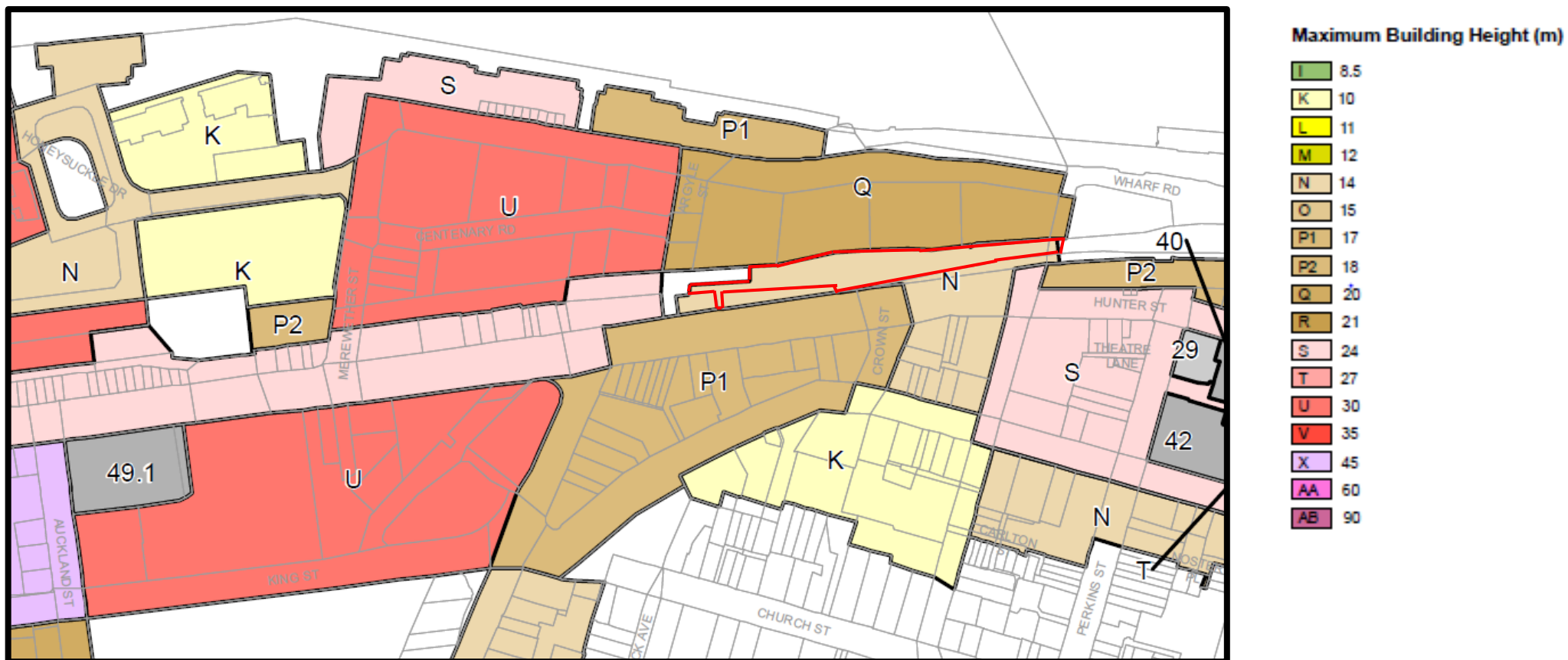


Figure 6 Height of Buildings - Newcastle City Council Local Environment Plan 2012

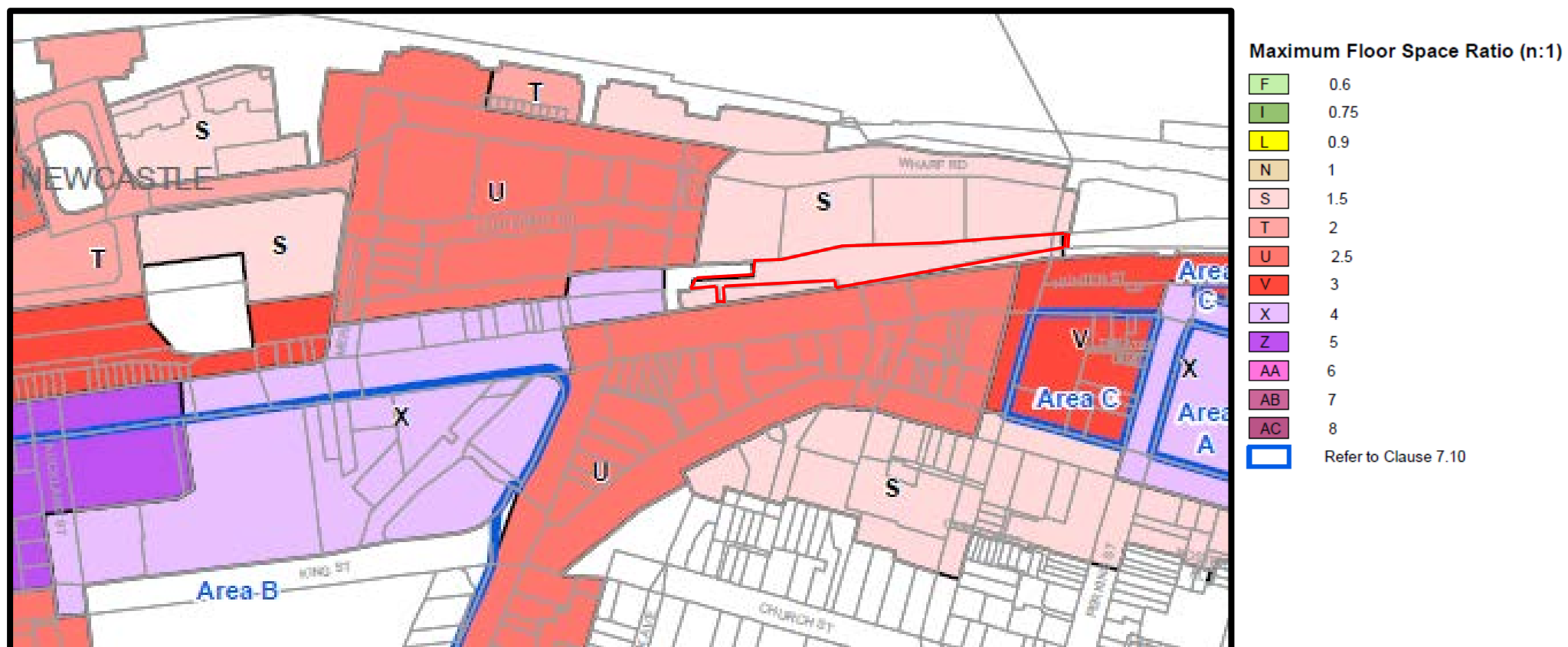


Figure 7: Floor Space Ratio - Newcastle City Council Local Environment Plan 2012

Development Controls

The development controls applicable to the site is contained in the *Newcastle Development Control Plan 2012* (DCP), accessible at <http://www.newcastle.nsw.gov.au/Home>.

The site is included within the Newcastle City Centre area which provides for specific controls including building setbacks and street wall heights, access arrangements and the provision of active uses fronting Hunter Street.

The DCP section also includes specific controls for the Rail Bridge Row site (see **Figure 8** below), identifying the future character of the site; to be of mixed use, providing for greater pedestrian priority and future transport improvements. Hunter Street and Scott Street should be strengthened as Newcastle's main street. The DCP names live-work style units and ground floor commercial, retail and office suites as possible uses. The section also includes an acceptable solution in relation to setbacks from the properties to the rear (see **Figure 9**)

One of the performance criteria of the DCP in relation to Rail Bridge Row is that new development respects and maintains the heritage values of this area. There are several suggestions made in the DCP as to the treatment of the AA Co bridge abutment.

Respondents should make their own enquiries and satisfy themselves on the requirements for the provision of services to the Site.

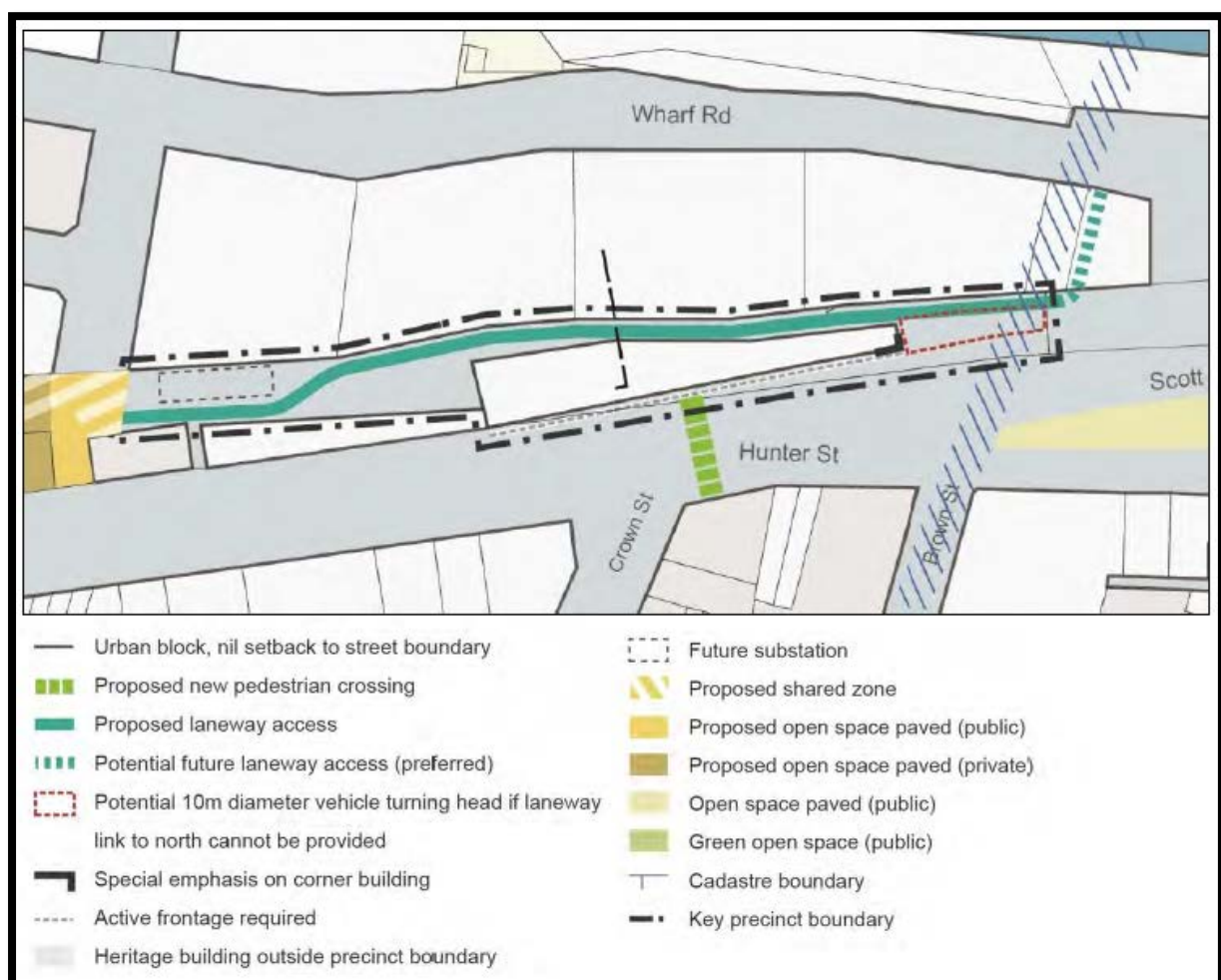


Figure 8: Hunter Street Live Work Units Key Precinct Map – Newcastle Development Control Plan 2012

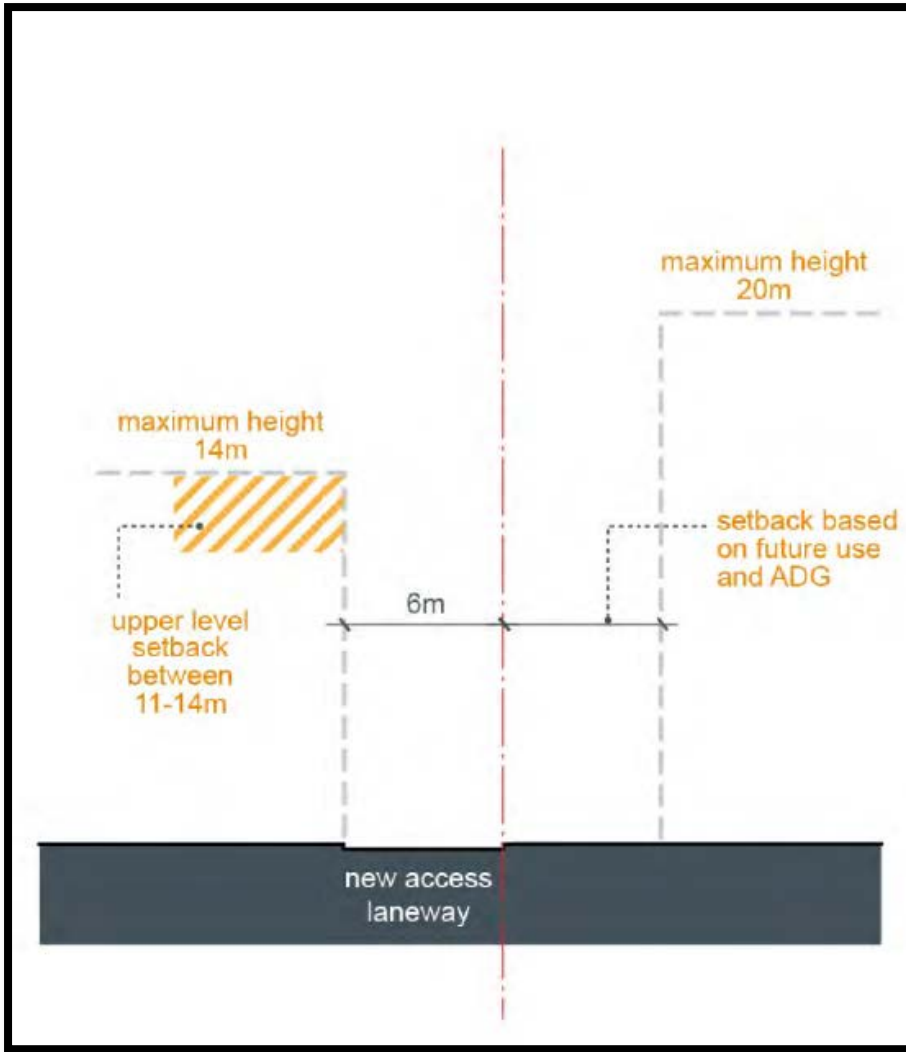


Figure 9: Building Setbacks and Separation – Newcastle Development Control Plan 2012

Public Domain

Darby Plaza Public Open Space

The site to the immediate west of Rail Bridge Row is proposed for a new area of public open space and is zoned RE1 Public Recreation under the LEP. The open space will provide a link between Hunter Street and Argyle Street, with the DCP (where the site is referred to as Hunter Street Live Work Units Site) including a shared zone from Argyle Street to provide vehicular access to the development sites to the east (Rail Bridge Row) and west (Darby Plaza) off this area.

The remediation, embellishment and dedication of this area to Council is included in a Voluntary Planning Agreement with Council associated with the LEP amendment and includes the provision of soft landscaping, footpaths, trees, furniture and lighting. Liaison will be required between the successful respondent for the Rail Bridge Row Site and HCCDC, to ensure the integration of the Darby Plaza Public Open Space with the development of Rail Bridge Row.

Part 6: Responding to the EOI

Lodgment requirements

Respondents must complete and submit all of the Returnable Schedules:

- Returnable Schedule 1 – EOI Details of Respondent(s), Acknowledgements and Conflicts of Interest
- Returnable Schedule 2 – Design and Development Outcomes
- Returnable Schedule 3 – Financial Offer
- Returnable Schedule 4 – Financial risk, experience and viability
- Returnable Schedule 5 – EOI Deed Poll

Proposals must be succinct and not include unnecessary information. Each page of the Proposal must be numbered to establish its completeness.

While Respondents are required to complete the Returnable Schedules, they provide the minimum requirements to assess the proposals. Respondents need to ensure that their Proposal fully responds to all elements of the EOI Criteria.

A Respondent may be excluded from assessment, at the absolute discretion of HCCDC, if the above is not provided.

All eligible submissions will then be assessed against the evaluation criteria detailed below.

Evaluation criteria

The evaluation of the responses will be undertaken in accordance with the following broad evaluation criteria (not listed in order of importance)

1. Design and Development Outcomes
2. Financial Offer
3. Risk, experience and viability

Criteria 1 – Design and Development Outcomes

The purpose of this evaluation criterion is for HCCDC to assess the:

- consistency of the proposal with the:
 - objectives of the Project as stated in this EOI document
 - planning controls applicable to the Site, including preserve and protect heritage items.

Rail Bridge Row [Returnable Schedule 2]

In addition to the above, in relation to Rail Bridge Row, HCCDC will assess whether the proposed development:

- will provide a development outcome which optimises the development potential of the site
- will provide for activation of Hunter Street frontage, to benefit the city and the public
- responds to the heritage of the site and the city, and respects the rhythm and form of neighbouring buildings
- proposed uses and indicative yield are appropriate for the site
- includes sustainability measures, and environmental and social initiatives

In responding to the criteria Respondents should include:

- a high-level concept plan [detailed designs are not required by this EOI] with indicative floor plates
- details of the Hunter Street frontage
- details of the proposed uses including number and size of apartments, if proposed
- non-residential floor space and potential uses.
- consideration of the proposed development with the relevant planning controls for the Site, or detailed justification where non-compliances exist.

Criteria 2 – Financial Offer [\[Returnable Schedule 3\]](#)

The purpose of this criterion is for HCCDC to assess the competitiveness and economic value of the proposed transaction.

Respondents must provide:

- a financial offer for the Rail Bridge Row site
- consideration of proposed terms

Criteria 3 – Risk, experience and viability [\[Returnable Schedule 4\]](#)

Respondents must demonstrate that they have adequate financial capacity to fund and deliver all the development proposed for the Site(s) including design and construction. Consideration will also be given to the likelihood of gaining the necessary approvals to undertake the development considering compliance with the applicable development controls.

Consideration will include an assessment of:

- an outline of the financial and legal structure proposed and evidence of the source and certainty of funding
- the degree to which the Respondent will seek debt or other funding to provide the necessary finance
- the degree to which the Respondent or other related parties will provide or underwrite the equity in the project
- details of parties who may offer corporate and financial guarantees to secure delivery
- copies of audited financial statements, including profit and loss account and balance sheets for the Respondent and each proposed guarantor for the last two financial years
- any contingent liabilities incurred or guarantees given by the Respondent or any proposed guarantor since the date of its last balance sheet
- any significant events affecting the Respondent and their estimated financial effects since the date of its last balance sheet
- the Respondent's experience and capability in the delivery of developments of a similar scale and nature
- Respondent's Quality Assurance and Work Health and Safety systems
- compliance with the relevant planning controls for the site, and consideration of the risks associated with gaining the necessary approvals.

In responding to this criterion, Respondents should provide information on:

- the Respondent's experience and track record in successfully developing comparable developments of a similar scale and type. Details must include:
 - description including floorspace, and number of employees
 - address

- a risk assessment associated with gaining development or other necessary approvals for the development

Part 7: Evaluation process

The selection process will involve the assessment and evaluation of EOI Responses received, after which HCCDC may shortlist Respondents (subject to suitable submissions being received by HCCDC) and may then enter into direct negotiations with one or more of the shortlisted Respondents.

The process for the selection of the successful Respondent will be managed by HCCDC and all decisions in connection with or arising out of this process will be at HCCDC's absolute discretion. This includes, without limitation, decisions regarding whether to accept or shortlist a Proposal or any Proposals, whether a Proposal is evaluated, how and whether the selection process will continue during and beyond the EOI stage, whether to continue, terminate, suspend or vary the selection process and any relevant time frames.

Respondents should be aware that HCCDC will negotiate with the shortlisted Respondents which may result in the simultaneous negotiation with more than one Respondent.

Respondents should also be aware that if they are selected to progress to the negotiation stage of the selection process they will be expected to maintain, as a minimum, the financial, contractual and other benefits of the Proposal submitted or developed during prior stages.

Respondents may also be required to present their proposal as part of the evaluation process.

Indicative Program

While the EOI stage is intended to be managed in accordance with the indicative timeframe set out below, the timing and manner in which it will be managed is at HCCDC's absolute discretion.

| | |
|--|--------------------|
| EOI document released through e-Tender | 1 November 2019 |
| Closing Date | 16 December 2019 |
| Evaluation of Proposals | 20 January 2019 |
| Negotiations | January 2020 |
| Sales Deed | By 30 January 2020 |
| Settlement | 30 March 2020 |

Disclosure Material

The disclosure material is listed in the Appendices Index. While this material has been provided to assist Respondents, HCCDC makes no warranties in relation to the material and Respondents must rely on their own enquiries.

Enquiries

All enquiries during the EOI stage should be submitted in writing through Peter Macadam, email address: Peter.Macadam@colliers.com, phone: 02 4915 4020.

HCCDC may publish any questions and answers it considers appropriate as an addendum.

Addenda

Any addenda will be issued via the NSW eTender website.

Unsuccessful Respondent

If it is determined not to select a Respondent to proceed beyond the EOI stage HCCDC is not obliged to give reasons why.

Part 8: Returnable Schedules

EOI Checklist

- ☐ Returnable Schedule 1 – EOI Details of Respondent(s), Acknowledgements and Conflict of Interest
- ☐ Returnable Schedule 2 – Design and Development Outcomes: Rail Bridge Row
- ☐ Returnable Schedule 3 – Financial Offer
- ☐ Returnable Schedule 4 – Risk, experience and viability
- ☐ Returnable Schedule 5 – EOI Deed Poll

Returnable Schedule 1 – Details of Respondent(s), Acknowledgements and Conflict of Interest

This Returnable Schedule is to be completed by an authorised representative of an incorporated entity. Where more than one company is involved with a Respondent, the full details of each partner or core Team Member and their intended method of engagement shall be described.

Respondent

Name of Respondent(s): -----

ACN / ABN: -----

Registered Business Address: -----

Core Business Members -----

Key Contact details during the EOI Process

Name: -----

Positions: -----

Phone/Mobile: -----

Email: -----

Signature: -----

Date: -----

ACKNOWLEDGEMENTS

1. Our response complies with the NSW Government Code of Practice for Procurement:
☐ Yes ☐ No **One box must be ticked**
2. We warrant that our response relies upon our own investigations and not upon the information included in the documentation provided on the NSW eTendering website and we have satisfied ourselves in relation to all aspects of the Expression Of Interest:
☐ Yes ☐ No **One box must be ticked**
3. We have provided letters of instruction to our accountants and auditors that allow HCCDC access to financial information if so requested:
☐ Yes ☐ No **One box must be ticked**
4. We agree to refrain from making an approach for information from any member of the Evaluation Committee or employees or consultants engaged by either HCCDC or the consultants in the engaged in the Project:
☐ Yes ☐ No **One box must be ticked**
5. We agree to refrain from making an offer of employment to an Excluded Individual prior to the dates specified in clause 6.2(a)(i) and (ii) in the Conditions:
☐ Yes ☐ No **One box must be ticked**
6. We agree that we must immediately notify HCCDC of any offers of employment made to the employees of HCCDC:
☐ Yes ☐ No **One box must be ticked**
7. We agree that neither we, the Core Team Members, Participants nor any director of the Respondent, such other entity or any associated entity or any Participant or Core Team Member, have been accused of any corrupt or criminal conduct in, or given any statement indicating involvement in any corrupt or criminal conduct to (or given any false or misleading statements), any court of competent jurisdiction, the New South Wales Independent Commission Against Corruption (or any similar body in any State or Territory of Australia) or any State or Federal Government Department, authority or body.
☐ Yes ☐ No **One box must be ticked**
If the "No" box is ticked, please provide full details.
8. The Respondent confirms that neither the Respondent, nor any director of the Respondent, or an entity associated with the Respondent, appears or will appear at any time before completion of the Transaction Documents on the:
 - (a) Department of Foreign Affairs and Trade Consolidated List as a Prohibited Entity; or
 - (b) Politically Exposed Persons List with sanctions or criminal convictions recorded against that person's name.☐ Yes ☐ No **One box must be ticked**

Prohibited Entity means the persons or entities listed by the Minister for Foreign Affairs in the Government Gazette pursuant to Part 4 of the *Charter of the United Nations Act 1945* (Cth) (which list, is available from the website of the Australian Department of Foreign Affairs and Trade).

CONFLICT OF INTEREST (only one box can be ticked)

- ☐ We have no conflicts of interest and have not colluded with any other parties that may have a conflict of interest in the Project.
- ☐ We have disclosed (attached) any financial interest / arrangement with any parties that could be perceived as a real or apparent conflict of interest in the context of the Project.

If Respondent is a Corporation

Executed by _____ **in accordance with**
Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by _____ **in accordance with**
Section 127 of the *Corporations Act 2001*

Signature of sole director and sole company secretary

who states that he or she is the sole director and the sole company secretary of the company.

Name of sole director and sole company secretary (print)

Returnable Schedule 2 – Design and Development Outcomes: Rail Bridge Row

Name of Respondent(s) _____

Respondents must prepare and attach to this schedule high-level concept plans and a development proposal of no more than 15 pages, including, as a minimum, the following information

- concept plans to identify the level of compliance with the relevant planning controls for the Site
- discussion to justify any non-compliances with the relevant planning controls which are anticipated
- indicative mix of uses and potential yield identifying potential number and size of residential apartments, if proposed
- amount and anticipated use of non-residential uses
- proposed ground floor activation to Hunter Street
- response to the items of heritage significance located on the Site
- inclusion of sustainability measures, and environmental and social initiatives

If Respondent is a Corporation

Executed by _____ in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by _____ in accordance
with Section 127 of the *Corporations Act 2001*

Signature of sole director and sole company
secretary

who states that he or she is the sole director and
the sole company secretary of the company.

Name of sole director and sole company secretary
(print)

Returnable Schedule 3 – Financial Offer

Name of

Respondent(s)/Business: _____

1. The Respondent acknowledges that financial offers are to be proposed on a standard sale basis in accordance with the attached sales contract and the following proposed terms:

- (a) Deposit of 10.0% of the Sale Price (excl. GST), payable upon entering into the Deed and non-refundable
- (b) 60 day settlement.

☐

Yes

☐

No

One box must be ticked

2. If no, please propose alternative arrangements (e.g. exchange with extended settlement):

3. Financial Offer

| | |
|---|----|
| Financial Offer for Rail Bridge Row Site (excluding GST) | \$ |
|---|----|

If Respondent is a Corporation

Executed by _____ in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by _____ in accordance
with Section 127 of the *Corporations Act 2001*

Signature of sole director and sole company
secretary

who states that he or she is the sole director and
the sole company secretary of the company.

Name of sole director and sole company secretary
(print)

Returnable Schedule 4 – Risk, experience and viability

Name of Respondent(s) _____

Respondents must prepare and attach to this schedule:

- a Financial Report of no more than 15 pages, including, as a minimum, the following information:
 - an outline of the financial and legal structure proposed and evidence of the source and certainty of funding
 - the degree to which the Respondent will seek debt or other funding to provide the necessary finance
 - the degree to which the Respondent or other related parties will provide or underwrite the equity in the project
 - details of parties who may offer corporate and financial guarantees to secure delivery
 - copies of audited financial statements, including profit and loss account and balance sheets for the Respondent and each proposed guarantor for the last two financial years
 - any contingent liabilities incurred or guarantees given by the Respondent or any proposed guarantor since the date of its last balance sheet
 - any significant events affecting the Respondent and their estimated financial effects since the date of its last balance sheet
- details of the Respondent's experience and capability in the delivery of developments of a similar scale and nature including project description and address.
- Respondent's Quality Assurance and Work Health and Safety systems
- a risk assessment associated with gaining development or other necessary approvals for the development.

If Respondent is a Corporation

Executed by _____ in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by _____ in accordance
with Section 127 of the *Corporations Act 2001*

Signature of sole director and sole company
secretary

who states that he or she is the sole director and
the sole company secretary of the company.

Name of sole director and sole company secretary
(print)

Returnable Schedule 5 – EOI Deed Poll

The Respondent must complete the EOI Deed Poll set out below.

EOI Deed Poll dated

By: *[insert name of Respondent]* ABN *[insert ABN of Respondent]* of *[insert address of Respondent]* (Respondent)

In favour of: Hunter and Central Coast Development Corporation ABN 94 688 782 063 (HCCDC)

Item 1 Background

- A. HCCDC has issued the EOI.
- B. The Respondent has determined to submit an EOI Response in response to the EOI.
- C. The Respondent agrees to give the acknowledgements, covenants, confirmations and releases in this Deed Poll to, and for the benefit of, Hunter and Central Coast Development Corporation ABN 94 688 782 063.

Operative provisions

1. Definitions and Interpretation

1.1. Defined terms

In this deed poll:

Acknowledgements means the acknowledgements set out in Schedule 1.

Conditions means the terms, conditions, warranties, acknowledgments, requirements and obligations set out in the EOI, the Information Memorandum and the Confidentiality and Process Deed Poll.

Consultants means the Respondent's contractors, subcontractors, officers, employees, agents and advisers.

Core Team Member means a person or entity nominated as a "Core Team Member" by the Respondent in Returnable Schedule 1 of its EOI Response.

Disclosure Material means the materials disclosed to the Respondent in the NSW eTendering website or in or by virtue of the EOI.

EOI means this expression of interest including all annexures, attachments, schedules and any document referred to or contemplated by any of them including the Disclosure Material.

EOI Process means the processes and procedures contemplated by, or pursuant to, the EOI.

Participants means a person or persons, an entity or entities:

- (a) that has, or have, decision making rights in relation to the management or governance of an EOI Response; or

- (b) is named or referred to in an EOI Response as a person who will participate in the Project by providing services, including construction or management services, or by providing commitments to lease or provide financial or other support to the EOI Response.

HCCDC's Personnel means all employees, former employees, contractors, consultants, former consultants, advisers and agents engaged by HCCDC in relation to the EOI.

1.2. Interpretation

In this deed poll:

- (a) any capitalised expressions not otherwise defined have the same meaning as in the EOI;
- (b) **person** includes an individual, the estate of an individual, a corporation, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust; and
- (c) **includes** in any form is not a word of limitation.

2. Acknowledgments

2.1. General acknowledgements

The Respondent acknowledges and agrees that:

- (a) it must and must procure that the Core Team Members, Participants and Consultants comply with the Conditions;
- (b) notwithstanding any document signed by the Respondent including this deed poll, or representations made by or on behalf of HCCDC, to the extent permitted by law, HCCDC has no obligation, whether under contract or any other basis, to the Respondent in relation to the EOI Process, including in relation to the Shortlist;
- (c) no commitment has been or is made by HCCDC as to any outcome of the EOI, or the EOI Process;
- (d) no legal or other obligation, right or relationship will arise between the Respondent and HCCDC whether by virtue of the EOI, the EOI Process, the submission of an EOI Response or otherwise unless and until the Transaction Documents have been signed and all Ministerial approvals and other NSW Government consents have been obtained;
- (e) HCCDC intends to and will rely upon the commitments made by the Respondent in this deed poll; and
- (f) nothing in this deed poll will limit any right or discretion of HCCDC.

2.2. Acknowledgement Obligations

The Respondent acknowledges and accepts that:

- (a) the submission of an EOI Response is subject to the Acknowledgements; and
- (b) the acknowledgements given in and by virtue of the Acknowledgements are absolute and unconditional, and the Respondent will not, except with agreement from HCCDC, resile from them in any way, although recognising the competitive nature of the EOI Process, the Respondent may make acknowledgements more favourable to HCCDC during the EOI Process.

3. Release and Indemnity

3.1. Release

To the full extent permitted by law, the Respondent releases and discharges HCCDC and HCCDC's Personnel in respect of any claims, actions, suits or causes of action, at law or in equity (whether in contract, tort, rectification, under statute or otherwise), which it might otherwise have had against them in respect of any liabilities, costs, expenses, losses or damages of any kind incurred or suffered, directly or indirectly, whether or not the parties were or could have been aware of them, which the Respondent:

- (a) now has;
 - (b) at any time had; or
 - (c) but for this deed poll, could or might have had,
- against HCCDC or HCCDC's Personnel in any way as a result of or in connection with:
- (a) the EOI;
 - (b) the Respondent submitting an EOI Response or the EOI Response itself;
 - (c) the conduct of the EOI Process;
 - (d) any Disclosure Material (including any further information provided by HCCDC);
 - (e) any error or omission (whether negligent or otherwise) in any information supplied by HCCDC or HCCDC's Personnel;
 - (f) any negligent misstatement of HCCDC or HCCDC's Personnel;
 - (g) any person acting or refraining from acting on any recommendation or on the basis of any recommendation contained in the Disclosure Material;
 - (h) HCCDC failing to evaluate and assess the EOI Response;
 - (i) HCCDC evaluating and assessing a Late EOI Response or Non-Conforming EOI Response or Non-Complying EOI Response; or
 - (j) HCCDC exercising, or failing to exercise, any right, power or discretion under or in connection with the EOI.

3.2. Indemnity

The Respondent indemnifies and will keep indemnified HCCDC and HCCDC's Personnel from and against any and all damages, loss, cost, expense, charge or liability incurred or suffered, directly or indirectly, by them at any time as a result of or in connection with:

- (a) any breach of the obligations under this deed poll by:
 - (i) the Respondent or Related Bodies Corporate;
 - (ii) any of its Participants or Related Bodies Corporate;
 - (iii) any Consultants;
 - (iv) any of its Core Team Members or Related Bodies Corporate;
- (b) any claim made against HCCDC which arises from any action or omission of the Respondent, its Core Team Members, Participant or Consultants; or
- (c) the inspection of the Site for the Project by the Respondent (or any person associated with, or invited by, the Respondent).

4. Representations and Warranties by Respondents

Each EOI Response is made on the basis that the Respondent represents and warrants to HCCDC that:

- (a) no information and records provided by or on behalf of the Respondent (including its Participants and Consultants and Core Team Members) to HCCDC at any time in relation to the Respondent or an EOI Response is or will be false or misleading and all such information and records are and will be true and accurate in all material respects;
- (b) the information contained in the EOI Response may be relied upon by HCCDC in determining whether or not to shortlist the Respondent;
- (c) it is satisfied as to the correctness, accuracy, adequacy and sufficiency of the EOI Response;
- (d) it does not rely on any representation or warranty made by or on behalf of HCCDC other than any contained or expressly referred to in the EOI;
- (e) it does not rely on the currency, authenticity, accuracy, suitability or completeness of any Disclosure Material or of the documents annexed to, or exhibited by, the EOI;
- (f) it has no knowledge of the EOI Response made by any other Respondent;
- (g) except as disclosed in an EOI Response, it has not entered into any contract, arrangement or understanding to receive any money directly or indirectly from or on behalf of any other Respondent nor received any money or allowance from or on behalf of any other Respondent in relation to any EOI Response or any contract to be entered into consequent thereon, nor will it receive any money as aforesaid;
- (h) it will not make any claim against HCCDC regarding any cost or expense incurred as a result of preparing or lodging an EOI Response; and
- (i) it is participating in the EOI Process on its own account and not as agent or trustee for or on behalf of any other person, unless this is disclosed in the EOI Response.

5. No Revocation, Modification or Variation

The Respondent agrees that no revocation, modification or variation or amendment of this Deed Poll shall be effective except with the prior written consent of HCCDC.

6. Remedies

- (a) The Respondent acknowledges that monetary damages may be an inadequate remedy for breach of any of their obligations in this Deed Poll.
- (b) Subject to the court's discretion and in addition to any other remedy which may be available in law or in equity, HCCDC may, without having to prove that damages are an inadequate remedy, apply to any court of competent jurisdiction for orders involving an injunction, declaration or specific performance if the Respondent is in breach or threatens to breach, or if HCCDC believes that the Respondent will breach, its obligations under this Deed Poll.

Schedule 1 - Acknowledgements

The Respondent acknowledges and agrees that:

- (a) it has made and relies on its own independent investigations, enquiries and inspections in connection with all aspects of the EOI Process, the EOI and its EOI Response;
- (b) if it acts or relies on the information contained in or accompanying the EOI, it does so entirely at its own risk;
- (c) it has made its own independent evaluation and assessment:
 - (i) of the EOI and the opportunities described by the EOI together with any other documents referred to in the EOI; and
 - (ii) whether or not it wishes to lodge an EOI Response;
- (d) it has informed itself fully on the nature and extent of the Project and all relevant matters;
- (e) HCCDC and HCCDC's Personnel:
 - (i) make no representation or warranty, express or implied, and do not assume any duty of care to the Respondent or any of its Participants and Consultants and Core Team Members that:
 - A. any information of any nature whatsoever in or in relation to the EOI, whether provided in the EOI or otherwise, and whether provided on, before or after the date of the EOI, is or will be accurate, adequate, current, authentic, suitable or complete; and/ or
 - B. reasonable care has been taken or will be taken in completing, preparing or providing such information; and
 - (ii) are not liable to the Respondent or any of their Participants or Consultants or Core Team Members for any incorrect or misleading information or failure to disclose information whether in connection with the EOI or at any other time;
- (f) any available information concerning any matter, whether contained or referred to in the EOI or Information Memorandum or not, is for information only and is subject to review and change without notice;
- (g) HCCDC is not obliged to accept or proceed with the EOI Response submitted by the Respondent and may:
 - (i) cancel, revoke, withdraw or terminate the EOI Process at any time;
 - (ii) decline to accept any EOI Response;
 - (iii) elect not to proceed with the process set out in the EOI at any time;
 - (iv) terminate at any time further participation in the EOI Process by any Respondent;
 - (v) reject or exclude from further evaluation and assessment the EOI Response or all EOI Responses, or any or all Non-Conforming EOI Responses or Conforming EOI Responses, without giving reasons;
 - (vi) abandon the EOI Process and enter into discussions or negotiations in connection with the Project with any one or more Respondents (other than the Respondent) or any other person;
 - (vii) adopt different approaches for different EOI Responses;
 - (viii) exercise any of its other rights set out in the EOI at any time;

- (h) HCCDC may invite the Respondent to submit an EOI Response despite any deficiency in that EOI Response, and irrespective of whether or not deficiencies exist in the EOI Responses of other Respondents;
- (i) HCCDC is proceeding with the EOI Process in reliance upon the acknowledgements, covenants, confirmations and releases set out in this deed poll;
- (j) HCCDC is not liable to the Respondent for liability or loss arising from or cost incurred in connection with HCCDC doing any of the things contemplated by the EOI;
- (k) HCCDC may suffer loss or damage if the Respondent breaches the representations and warranties in this deed poll;
- (l) by lodging the EOI Response in response to the EOI, to the extent permitted by law, the Respondent:
 - (i) is deemed to have waived any and all rights to claim for costs, loss or damage which may have suffered or may suffer arising from any negligent, incomplete, inaccurate, misleading or ambiguous information contained in, or implied by, or given in connection with, or omitted from, the EOI (which includes all annexures, attachments, schedules or any other documents referred to or contemplated by any of them including the Disclosure Materials); and
 - (ii) expressly waives all rights and claims it may have had but for paragraph (l)(i) of this Schedule 1;
- (m) it will not in any way disclose, exhibit or publicise an EOI Response, the EOI or any information provided to it by HCCDC or any other person on behalf of HCCDC;
- (n) it will declare any real or perceived conflict of interest to HCCDC as soon as the conflict is identified and it will assist to assess, manage and resolve that conflict of interest in favour of the public interest and to the satisfaction of HCCDC;
- (o) it will promptly notify HCCDC if and when it identifies any mistakes or ambiguities concerning or arising out of the EOI which come to its attention whether before or after the Closing Time;
- (p) it will comply with the requirements of the Probity Advisor with respect to all matters arising from the EOI and an EOI Response;
- (q) it is aware of the requirements of the Procurement Guidelines, it will comply with the Procurement Guidelines, and it will provide HCCDC upon request evidence of compliance with the Procurement Guidelines and access to all relevant information to demonstrate compliance for the duration of the EOI Process;
- (r) without affecting any legally enforceable obligations on any Respondent, no legally enforceable obligations are imposed on HCCDC arising from or by virtue of:
 - (i) a Respondent submitting an EOI Response;
 - (ii) a Respondent signing and delivering the Confidentiality and Process Deed Poll or this deed poll; or
 - (iii) the Procurement Guidelines.
- (s) no legal or other obligation, right or relationship will arise between the Respondent and HCCDC whether by virtue of the EOI, the EOI Process or otherwise unless and until the Transaction Documents have been signed and all Ministerial approvals and other NSW Government approvals and consents have been obtained;
- (t) HCCDC may negotiate with any Respondent to vary its EOI Response on any grounds relevant to HCCDC obtaining the best result from the EOI, in which case:

- (i) HCCDC need not inform any other Respondent of those negotiations or any changes by HCCDC to the relevant Respondent's EOI Response;
- (ii) those negotiations do not constitute a counter-offer by HCCDC and the EOI Response remains valid and can be accepted by HCCDC despite those negotiations;
- (iii) HCCDC may withdraw from such negotiations at any time and commence negotiations with another Respondent without any obligation to invite EOI Responses, EOI Responses, offers or submission from any other Respondent in respect of the terms which are the subject of such negotiation or variation;
- (u) there will be no procedural or substantive limitation upon the manner in which HCCDC may conduct the EOI Process;
- (v) it cannot assign its EOI Response to any other person;
- (w) it will notify HCCDC immediately before changing any of its Core Team Members or Participants and it cannot change any of its Core Team Members or Participants without HCCDC's approval;
- (x) it will inform HCCDC promptly in writing of any material change:
 - (i) to any of the information contained in its EOI Response; and
 - (ii) in circumstances that may affect the trust, completeness or accuracy of any of the information provided by the Respondent in connection with the EOI Response;
- (y) it will pay all costs and expenses incurred by HCCDC arising out of its default under or breach of any provision of this deed poll.

Executed as a deed poll.

If Respondent is a Corporation

Executed by _____ in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by _____ in accordance
with Section 127 of the *Corporations Act 2001*

Signature of sole director and sole company
secretary

who states that he or she is the sole director and
the sole company secretary of the company.

Name of sole director and sole company secretary
(print)

Appendix A: EOI Conditions

1. EOI purpose and process

1.1 Purpose

The purpose of this EOI is to identify Respondents and their EOI Responses which best satisfy the Project Objectives and which HCCDC may shortlist to be involved in the negotiation stage of the procurement process.

1.2 Evaluation Criteria

EOI Responses will be evaluated and assessed on the basis of the Evaluation Criteria.

2. Lodgement of EOI Response

2.1 Lodgement requirements

Each EOI Response must be lodged by a soft copy of the EOI Response uploaded to the NSW eTendering website. EOI Responses and supporting materials must be in English.

2.2 Items to be submitted

An EOI Response may only be submitted by the Respondent lodging the Returnable Schedules properly executed by the Respondent, completed with the Respondent's name and address together with all information required to be submitted with each Returnable Schedule;

Respondents may provide additional materials in support of their EOI Responses.

3. Late EOI Response

The Evaluation Committee may accept or exclude an EOI Response that is submitted after the Closing Time from further evaluation and assessment. In making its determination, the Evaluation Committee may consider the following:

- (a) if the EOI Response was received after the Closing Time because of events beyond the Respondent's reasonable control;
- (b) if the Respondent notified HCCDC before the Closing Time that its EOI Response would not be lodged before the Closing Time;
- (c) whether the Respondent may gain a material competitive advantage as a result of its EOI Response being lodged after the Closing Time;
- (d) whether the acceptance of a late EOI Response may compromise the integrity of the EOI Process; and/or
- (e) any other matter to be taken into account in the Procurement Guidelines.

4. Modification of EOI Response

HCCDC will consider a modification of an EOI Response already lodged by a Respondent only if the modification is lodged before the Closing Time or if the modification is requested or permitted by the HCCDC under clauses 8 and 11 of these Conditions. All modifications must be in writing, executed and submitted before the Closing Time (or within the time nominated by HCCDC if the modification has been requested after the Closing Time) in the same form and manner as the original EOI Response or as otherwise requested by HCCDC.

5. Respondent conduct

5.1 Conflict of interest

Respondents must advise HCCDC immediately of any conflict of interest in relation to this EOI including, without limitation, in relation to their Core Team Members, Participants or Consultants, whether actual or perceived, which exists or arises or has the potential to arise. If HCCDC is of the opinion that a conflict of interest exists or could reasonably exist, HCCDC may exclude the EOI Response from further evaluation and assessment.

5.2 Improper assistance and collusive behaviour

- (a) Respondents and their Core Team Members, Participants and Consultants must not engage in any collusive bidding or anti-competitive conduct with any person, or any other unethical, improper or unlawful conduct in relation to this EOI, the EOI Process or an EOI Response.
- (b) HCCDC may involve the Australian Competition and Consumer Commission (ACCC) to provide assistance to HCCDC in relation to any competition issues concerning a Respondent or related to an EOI Response.
- (c) In addition to any other remedies available under law or any agreement, HCCDC may exclude from further evaluation and assessment any EOI Response lodged by a Respondent that has engaged in any collusive bidding or anti-competitive conduct with any other person, or any other unlawful or unethical conduct in relation to this EOI, the EOI Process or an EOI Response.
- (d) Respondents must not, and must ensure that their Core Team Members, Participants and Consultants do not use the improper assistance of any HCCDC's Personnel or use information obtained unlawfully, unethically or in breach of an obligation of confidentiality to HCCDC in relation to this EOI, the EOI Process or an EOI Response.
- (e) HCCDC may exclude from further evaluation and assessment EOI Responses which have been compiled:
 - (i) with improper assistance from:
 - (A) HCCDC Personnel;
 - (B) Excluded Individuals;
 - (C) Technical Advisers; or
 - (ii) using information improperly, unlawfully or unethically obtained from HCCDC or third parties; or
 - (iii) otherwise as a result of unethical or improper conduct.

5.3 Unacceptable Behaviour and Collusion

Respondents must not, and must ensure that their Core Team Members, Participants and Consultants do not:

- (a) offer inducements at any time in connection with the preparation of their EOI Responses; or
- (b) make false or misleading statements in their EOI Responses.

HCCDC may determine that the EOI Response from that Respondent who breaches this clause 5.3 may be excluded from further evaluation and assessment.

6. Notification of discrepancies

If a Respondent finds any discrepancy, error or omission in the EOI documentation, the Respondent must notify HCCDC in writing immediately.

HCCDC is under no obligation to notify Respondents of any discrepancy or error in, or omission from this EOI or in any addenda issued on the NSW eTendering website covered by or notified to HCCDC before or after the Closing Time.

7. Prior to Closing Time

7.1 Questions and answers (Q&As)

- (a) All Questions from Respondents prior to the Closing Time must be submitted through the email address Peter.Macadam@colliers.com
- (b) Unless a Respondent expresses an indication to the contrary (by typing the words "Confidential Question" in the subject box when submitting a Question), all responses to matters raised through the Q&A Process may be made available for viewing by all Respondents in a manner HCCDC determines, in its discretion.
- (c) To the extent a matter raised by a Respondent has been nominated as being confidential in the Q&A Process:
 - (i) HCCDC may determine whether that matter (and any response to that matter) should be made available to other Respondents; and
 - (ii) HCCDC will take all reasonable steps to ensure that confidential information in the nature of know how or commercial-in-confidence information is not used or disclosed by it or any of HCCDC's Personnel except in accordance with the Conditions.
- (d) If HCCDC determines that a matter which a Respondent considers to be confidential (and its response) should be made available to all Respondents, HCCDC will notify the relevant Respondent, through the Q&A Process, that:
 - (i) HCCDC does not consider the matter to be confidential;
 - (ii) it intends to make any Question and the associated response available to all other parties with access to the NSW eTendering website; and
 - (iii) the Respondent has an opportunity to withdraw the Question or otherwise re-submit the Question on a non-confidential basis.
- (e) Subject to section 7.1(d), HCCDC will respond in writing to Questions submitted by Respondents as quickly as possible following receipt of the Questions. However, the nature and content of the Questions will determine the time frame within which HCCDC will be able to respond.
- (f) All Questions must be lodged by Respondents prior to 3 Business Days before the Closing Time.

7.2 Discussions with Respondents

- (a) HCCDC may, if appropriate, have discussions with Respondents to answer written queries and to clarify any issues. HCCDC will, as deemed appropriate, engage in discussions with any party for the purpose of clarifying issues and answering any questions prior to the Closing Time.
- (b) Nothing that is discussed between HCCDC and a Respondent may be relied upon by that Respondent unless subsequently confirmed in writing by HCCDC at the request of the Respondent.

- (c) discussed between HCCDC and the Respondents, such written clarifications and written responses will be distributed to all Respondents, unless they are nominated by the relevant Respondent as being confidential to that Respondent and acknowledged as confidential by HCCDC.

8. After the Closing Time

8.1 Enquiries

On and from the Closing Time, all enquiries concerning this EOI must be made through HCCDC's agent, Peter Macadam of Colliers International.

8.2 Interactive Process

- (a) HCCDC may at any time (including as part of the evaluation and assessment process or after the announcement of the Shortlist) after the Closing Time:
 - (i) request any Respondent to submit additional information or provide more details and information about:
 - (A) matters relating to the Evaluation Criteria; and
 - (B) its ability to complete and fulfill obligations under an EOI Response submitted by that Respondent;
 - (ii) request any Respondent to make one or more formal presentations or participate in an interview or workshop;
 - (iii) request clarification or further information regarding any EOI Response;
 - (iv) request any Respondent to review, improve and/or enhance parts of its EOI Response;
 - (v) request a Respondent to enter into discussions or negotiations with HCCDC (and undertake those discussions or negotiations), irrespective of whether that Respondent is shortlisted or the Shortlist has been nominated;
 - (vi) discontinue negotiations with any Respondent at any time for any reason (without having to attribute reasons therefore or be accountable in any way);
 - (vii) may enter into Transaction Documents with a Respondent;
 - (viii) provide additional information or clarification to Respondents;
 - (ix) request any information regarding any Respondent or any EOI Response from:
 - (A) any referee nominated by a Respondent; or
 - (B) any other third party; or
 - (x) conduct a financial assessment of an EOI Response or a Respondent including through its appointed consultant, and Respondents will be required to make available sufficient information to HCCDC for the assessment to be undertaken including current profit and loss statements, cashflow analysis, balance sheet or other audited financial statements.
- (b) The Respondent must respond promptly, in writing, to all such requests.
- (c) HCCDC may exercise any of its rights in clause 8.2(a) with respect to one or more Respondents at the same time.
- (d) HCCDC's decision to exercise any or none of the rights in clause 8.2(a) is final and HCCDC will not be liable to a Respondent because it has exercised any or none of

its rights in these Conditions. Respondents have no rights to participate in any such processes.

- (e) If HCCDC requests, any Respondent invited to enter into discussions or negotiations with HCCDC must sign a negotiation protocol in relation to such processes, and containing such terms and conditions as HCCDC reasonably determines.

8.3 Meetings

- (a) HCCDC may convene meetings with one or more Respondents after the Closing Time, and HCCDC will determine the process for those meetings.

8.4 Change in Respondent

A Respondent must notify HCCDC and obtain HCCDC's prior consent if the Respondent proposes to:

- (a) substitute another legal entity to take over an EOI Response of the original Respondent;
- (b) assign the EOI Response to another legal entity;
- (c) change or vary the composition or ownership of the Respondent;
- (d) change or vary the shareholding in a Respondent;
- (e) change or vary any Participant, Core Team Member or Consultant.

HCCDC may request that the Respondent provide HCCDC with satisfactory evidence that the Respondent will be able to comply with its EOI Response.

If HCCDC is not notified or does not consent to any such change or variation, HCCDC may, but is not obliged to, exclude the EOI Response by the relevant Respondent from further evaluation and assessment.

HCCDC reserves the right to refuse to allow any such change where in HCCDC's view, the EOI Process may be prejudiced or compromised.

9. Evaluation of EOI Responses

9.1 Evaluation Criteria

The Evaluation Committee will evaluate and assess EOI Responses on the following Evaluation Criteria:

| Criterion | Indicators |
|--|--|
| Design and Development Outcome: Rail Bridge Row | <ul style="list-style-type: none"> ▪ objectives of the project as stated in this EOI document ▪ planning controls applicable to the Site, including preserve and protect heritage items ▪ development outcome which optimises the development potential of the site ▪ activation of Hunter Street frontage, to benefit the city and the public ▪ provides for development that responds to the heritage of the site and the city, and respects the rhythm and form of |

| | |
|---------------------------------------|---|
| | neighbouring buildings <ul style="list-style-type: none"> proposed uses and indicative yield are appropriate for the site inclusion of sustainability measures, and environmental and social initiatives |
| Financial Offer | <ul style="list-style-type: none"> financial offer for the site (s) compliance with sales terms |
| Risk, experience and viability | <ul style="list-style-type: none"> risks inherent in the Proposal bid structure the Respondent's performance risk in the delivery of the development complexity of the financial model and any assumptions on which it is based financial stature of the Respondent and any assumptions behind it the Respondent's experience and capability in the delivery of developments of a similar scale whether the development is within the Respondent's core business capability Respondent's Quality Assurance and Work Health and Safety systems risk inherent in the gaining of development approval for the proposal |

- (a) Weightings that the Evaluation Committee may apply to the Evaluation Criteria will not be released to Respondents.
- (b) Respondents must provide the information requested by the Returnable Schedules in adequate detail to allow evaluation and assessment.
- (c) Evaluation and assessment of EOI Responses will be based on receipt of all information requested in or by virtue of this EOI.
- (d) HCCDC reserves the right to set aside from further consideration any EOI Response which is identified as achieving a rating of "Marginal" or less against any one or more of the Evaluation Criteria. For the purposes of this clause, "Marginal" means:
- meets minimum requirements to a low standard;
 - claims are generally not substantiated;
 - the returnable schedules submitted are generally weak in key areas, or are unable to be properly assessed;
 - the submission represents a moderate to high risk to HCCDC; or
 - marginal probability of successful outcome.

9.2 Evaluation and assessment of EOI Responses

- (a) The evaluation and assessment of EOI Responses will be the responsibility of an Evaluation Committee appointed by HCCDC (which may include representatives of HCCDC). The Evaluation Committee may be assisted by independent advisers.
- (b) The terms of reference for the Evaluation Committee will include, but not be limited to, the following:
 - (i) to evaluate EOI Responses in accordance with the Evaluation Criteria; and
 - (ii) to recommend the Respondents (if any) that may be invited to participate in any of the processes referred to in clause 8.2.

10. Outcome of EOI Process

10.1 Shortlisting

HCCDC will, subject to its rights under clauses 8.2 and 11 and subject to receiving satisfactory submissions, notify the Shortlist that it has been nominated to proceed to the Further Stage.

10.2 Negotiating in good faith

- (a) If HCCDC elects to negotiate a private agreement with a Respondent (Preferred Respondent) rather than proceed with the Shortlist to a Further Stage, the Preferred Respondent must:
 - (i) negotiate in good faith with HCCDC to agree commercial issues and to agree and finalise the Transaction Documents;
 - (ii) use their best endeavours,
to ensure that detailed negotiations and execution of the Transaction Documents to implement the EOI Response of the Preferred Respondent is completed by 21 December 2018 (or such other date reasonably nominated by HCCDC).
- (b) HCCDC may select a Respondent as a "reserve" to commit to negotiate with HCCDC if HCCDC terminates the negotiations with the Preferred Respondent (Reserve Respondent).
- (c) If a Respondent is appointed as a Reserve Respondent, it must maintain its EOI Response in the event that HCCDC and the Preferred Respondent(s) are unable to reach agreement on the form of a relevant Transaction Documents during the Negotiation Period.
- (d) Notwithstanding that HCCDC has selected one or more Preferred Respondent(s), HCCDC reserves the right to open negotiations with any of the other Respondents or any other person at any time in respect of the Project or to nominate the Shortlist to proceed to the Further Stage.
- (e) Nothing in this EOI obliges HCCDC to disclose negotiations with any Preferred Respondent or any other person to other Respondents.
- (f) Negotiations with a Preferred Respondent may be discontinued by HCCDC at any time and without giving reasons.

10.3 Withdrawing from negotiations

- (a) HCCDC may withdraw from negotiations with a Preferred Respondent during the Negotiation Period without giving reasons for the withdrawal. In this event, HCCDC may still shortlist that Preferred Respondent.

- (b) Subject to its obligations in this EOI, a Preferred Respondent may withdraw from negotiations during the Negotiation Period by serving written notice on HCCDC. If a Preferred Respondent withdraws from negotiations it is no longer a Preferred Respondent.

10.4 Transaction Documents entered into

If HCCDC enters into Transaction Documents with the Preferred Respondent, then this EOI Process is at an end and there will be no Further Stage.

10.5 Unsuccessful Respondents

Upon selection of the Shortlist, HCCDC must notify those Respondents which have not been shortlisted. HCCDC is not obliged to give reasons for that decision.

An Unsuccessful Respondent is not entitled to any redress against HCCDC, and HCCDC's decision will be final. No Unsuccessful Respondent has any redress or claim against HCCDC as a result of HCCDC exercising any or all of its rights.

Respondents will have no claim against HCCDC for any costs or expenses in connection with any EOI Response.

11. HCCDC's rights

In addition to its rights set out elsewhere in these Conditions, HCCDC may at any time and without giving reasons:

- (a) extend the Closing Time at any time before the Closing Time by notice to potential Respondents;
- (b) extend the Shortlist Date at any time by notice to all potential Respondents (before the Closing Time) or all Respondents (after the Closing Time);
- (c) shortlist one or more Respondents;
- (d) reject any or all EOI Responses;
- (e) not shortlist the EOI Response with the highest or best financial offer;
- (f) not accept any EOI Response;
- (g) negotiate a private agreement with a Respondent or any other person at any time rather than shortlist one or more Respondents or proceeding to the Further Stage;
- (h) enter into Transaction Documents with a Respondent or any other person at any time;
- (i) request one or more Respondents to review, improve and/or enhance any part of its EOI Response;
- (j) request any Respondent to submit an offer;
- (k) amend, suspend, discontinue or terminate the process set out in these Conditions by notice in writing to one or more Respondents whose EOI Response(s) have been excluded from further evaluation and assessment;
- (l) at any time review and change the information or requirements contained in and attached to these Conditions by notice in writing to one or more Respondents whose EOI Response(s) have not been excluded from further evaluation and assessment;
- (m) provide additional information or clarification to Respondents;
- (n) not proceed with this EOI, in the manner set out in these Conditions, or at all;

- (o) not proceed with a Further Stage;
- (p) terminate a Respondent's involvement in the EOI process and/or discontinue the evaluation and assessment of a EOI Response where it determines that the EOI Response is unsuitable, unsatisfactory, substantially incomplete or clearly uncompetitive and without first evaluating and assessing all of the Evaluation Criteria;
- (q) terminate a Respondent's involvement in the EOI process where HCCDC or the Evaluation Committee has determined to exclude that Respondent's EOI Response from further evaluation and assessment; or
- (r) accept or reject any EOI Response which:
 - (i) is late;
 - (ii) is in any way incomplete or irregular;
 - (iii) does not comply with any requirements of these Conditions,

and HCCDC's decision to exercise any or none of the rights in these Conditions is final and HCCDC will not be liable to a Respondent because HCCDC has exercised any or none of its rights in these Conditions.

HCCDC may exercise its rights in this clause 11 with respect to multiple Respondents at the same time.

12. No Legal Obligations

- (a) This EOI constitutes a call for expressions of interest to submit EOI Responses. By this EOI, Respondents are invited to submit EOI Responses but this EOI (with the exception of the Returnable Schedule 4 – EOI Deed Poll) does not constitute an offer capable of legal acceptance and creates no legally enforceable obligation on, nor is there any contract involving HCCDC despite any obligation, duty or responsibility whether enforceable or otherwise which this EOI purports to impose on, or is accepted by, HCCDC and notwithstanding any claim made by any Respondent based upon contract, quasi contract, estoppel, negligence or any statutory or other basis.
- (b) Without affecting any legally enforceable obligations on any Respondent, no legally enforceable obligations are imposed on HCCDC arising from or by virtue of:
 - (i) a Respondent submitting a EOI Response;
 - (ii) a Respondent signing and delivering the Confidentiality and Process Deed Poll or the deed poll in Returnable Schedule 4; or
 - (iii) the Procurement Guidelines.
- (c) Without affecting any legally enforceable obligations on any Respondent, no legal or other obligation, right or relationship will arise (and no contract will be taken for any purpose to have been entered into or created) between a Respondent and HCCDC whether by virtue of this EOI, the EOI Process or otherwise unless and until the Transaction Documents have been signed and all Ministerial approvals and other NSW Government consents have been obtained.
- (d) HCCDC is not obliged to proceed with any process contemplated by this EOI or any other process, activity or thing referred to, or contemplated by, this EOI or otherwise related to the Project.

13. FIRB approval

13.1 Shortlist

HCCDC may decide not to shortlist a Respondent unless and until that Respondent warrants that the Commonwealth Treasurer cannot prohibit that Respondent entering into and completing the Transaction Documents under the FATA.

13.2 Conditional EOI Response

HCCDC may, without providing reasons, exclude an EOI Response from evaluation and assessment which is conditional on the Respondent obtaining the consent of the Commonwealth Treasurer to enter into and complete the Transaction Documents. HCCDC's decision as to whether to exclude such an EOI Response from further evaluation and assessment is final, and HCCDC will not be liable to a Respondent because HCCDC has or has not exercised this right.

14. Joint EOI Response

14.1 Multiple Respondents jointly and severally bound

Two or more persons or corporations or a combination of both may lodge an EOI Response. If so, they will be jointly and severally bound by the EOI Response.

14.2 Notices to multiple parties

Where a joint EOI Response is lodged under clause 14.1, any notice, order, direction, request or other communication which HCCDC must or may give to a Respondent will be properly given to all persons being a Respondent if given to any one or more of such persons. Any notice, request or other communication given by one or more of such persons to HCCDC under these Conditions will be deemed to have been given by and will bind all persons being the Respondent.

15. Acknowledgments of Respondent

15.1 Deeming provisions

A Respondent will be deemed to have:

- (a) examined this EOI document and other information made available in writing by HCCDC through the NSW eTender website to Respondents for the purpose of this EOI and satisfied itself as to their correctness and sufficiency;
- (b) examined all information relevant to the risks, contingencies and other circumstances affecting its EOI Response; and
- (c) satisfied itself as to all matters and things relating to the Project as appropriate including any development or other approval which may be required in connection with the Project.

15.2 Reliance on Respondent statements

The Respondent acknowledges and agrees that HCCDC may rely on any statements made by the Respondent (including its Core Team Members, Participants and Consultants). The statements that HCCDC may rely on include those contained in the EOI Response, those made in any written or verbal communications or in any negotiations with HCCDC. If HCCDC believes that the Respondent has made any false or misleading statements, or breached these Conditions, HCCDC may exclude the EOI Response by that Respondent from further evaluation and assessment.

16. Notices and communication with Respondents

16.1 Prior to the Closing Time

A notice, demand or communication (**Notice**) from HCCDC to a Respondent or potential Respondent under these Conditions:

- (a) prior to the Closing Time, will either be delivered via the NSW eTendering website; and
- (b) on and from the Closing Time, will be delivered in accordance with the notice details provided in the EOI Response.

16.2 Respondent responsibility

It is the responsibility of Respondents to regularly log on to the NSW eTendering website to check for communications and further information provided by HCCDC.

16.3 Effective on receipt

A Notice given in accordance with these Conditions takes effect at the following times, if the Notice is:

- (a) provided in the NSW eTendering website, at the time that it is loaded into the NSW eTendering website;
- (b) delivered by email, at the time that the email is sent;
- (c) hand delivered, on delivery; and
- (d) sent by prepaid post, two Business Days after the date of posting,

but if the delivery, sending or loading is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

17. NSW Government requirements

17.1 NSW Government Code of Practice for Procurement and the Procurement Guidelines

- (a) Respondents must comply with and must take reasonable steps to ensure that its Core Team Members, Participants and Consultants comply with the Code and the Procurement Guidelines.
- (b) The submission of an EOI Response will be an acknowledgement and representation by the Respondent that:
 - (i) it is aware of the requirements of the Code and the Procurement Guidelines;
 - (ii) it will comply with the Code and the Procurement Guidelines and it will take reasonable steps to ensure that its Core Team Members, Participants and Consultants comply with the Code and Procurement Guidelines; and
 - (iii) it agrees to provide evidence of compliance with the Code and the Procurement Guidelines and access to all relevant information to demonstrate compliance for the duration of any Transaction Document that may be awarded.

Failure to comply with the Code and the Procurement Guidelines will be taken into account by HCCDC when evaluating and assessing an EOI Response and may result in an EOI Response being excluded from further evaluation and assessment without prejudice to any other right of action or remedies available to HCCDC.

17.2 Privacy and Personal Information Protection Notice

Respondents are advised that all (if any) personal information required to be provided with their EOI Response is intended only for use by HCCDC for the purpose of the assessment of EOI Responses. The information will be stored by HCCDC in accordance with the requirements of the *State Records Act 1998* and/or the *Personal Information Protection Act 1998* (NSW).

17.3 Government Information (Public Access) Act 2009 (GIPA)

Respondents are advised that information provided with their EOI Response is subject to the requirements of the GIPA Act. The GIPA Act requires all government agencies to periodically release information on their website, but providing appropriate protection for individuals' privacy. All contracts over \$150,000 that HCCDC enters with the private sector must be recorded in the register of the government contracts which is published on the NSW Government EOI Responses website. Information on the EOI Response may also be released formally or informally under the GIPA Act and if required under an access application.

17.4 Intellectual Property

Despite any intellectual property or ownership rights that may apply to Respondents, HCCDC will be entitled to retain all EOI Responses (including models and drawings) and all correspondence and other materials received from or on behalf of Respondents. The EOI Responses (and all intellectual property rights and moral rights associated with the EOI Responses) will become the property of HCCDC on lodgement.

18. Probity

18.1 Probity Procedures

HCCDC reserves the right to require any Respondent, or any proposing Respondent, to implement appropriate procedures and measures to ensure the probity and competitiveness of the processes contemplated by this EOI, including separation barrier arrangements, the appointment of an independent Probity Advisor and the execution of appropriate probity deeds by the Respondent.

19. Miscellaneous

19.1 Costs and expenses

Each Respondent must pay its own costs and pay all duty in connection with this EOI and/or the development, preparation, submission, execution and completion of any EOI Response or other documents delivered to HCCDC in accordance with these Conditions, including attending meetings, negotiations, discussions and providing additional information or enhancements if required.

19.2 Credit Information

HCCDC may have access to and give consideration to:

- (a) any risk assessment undertaken by any credit rating agency; and
- (b) any information produced by a bank, financial institution or accountant of a Respondent, so as to assess the EOI Response and may consider such materials as tools in the assessment and evaluation process.

In submitting an EOI Response, the Respondent will be taken to have consented to HCCDC accessing this risk assessment and information, including any relevant personal information.

19.3 Confidentiality

- (a) These Conditions and all information supplied to or obtained by the Respondent in relation to this EOI must be kept confidential by the Respondent and may not be disclosed to any person except:
 - (i) to the Respondent's Core Team Members, Participants or Consultants (as required) retained by the Respondent in relation to the EOI Response;
 - (ii) for the purposes of this EOI Response or otherwise with the consent of HCCDC;
 - (iii) if required by law or a stock exchange (and then only after HCCDC is previously informed of such proposed disclosure and has had an opportunity to negotiate the terms of that disclosure in good faith);
 - (iv) in connection with legal proceedings relating to this EOI Response; or
 - (v) if the information is generally and publicly available otherwise than as a result of a breach of this clause or another confidentiality agreement between the person and a third party.
- (b) The Respondent must not publicise its EOI Response or proposed EOI Response in any way.
- (c) The Respondent must procure that its Core Team Members, Participants and Consultants:
 - (i) keep confidential these Conditions and all information supplied to or obtained by the Respondent, the Core Team Members, Participants or Consultants in relation to this EOI;
 - (ii) do not disclose or publicise any part of an EOI Response or any information in connection with an EOI Response without obtaining HCCDC's written consent.
- (d) This clause continues to bind each Respondent despite HCCDC shortlisting any other EOI Response and, despite the Transaction Documents being entered into.
- (e) HCCDC may (but is not obliged to) exclude that Respondent's EOI Response from further evaluation and assessment in the event of a breach of this clause 19.3.

19.4 Governing law and jurisdiction

This document is governed by the law of New South Wales. The Respondent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

19.5 Disclaimer

While the information in this EOI has been formulated with all due care, HCCDC does not warrant or represent that any materials provided to Respondents are free from errors or omissions. Respondents must form independent judgments about any information in this EOI and make their own enquiries.

The information is made available on the understanding that HCCDC, and HCCDC's Personnel will have no liability (including liability by reason of negligence) for any loss, damage, cost or expense incurred or arising by reason of any person using or relying on the information and whether caused by reason or any error, omission or misrepresentation in the information or otherwise.

19.6 Discretion of HCCDC

HCCDC may exercise any power, right, discretion or remedy (however described) under this EOI, in its absolute discretion, unless these Conditions expressly contemplate otherwise.

HCCDC reserves the right to accept an EOI Response that is not in accordance with these Conditions.

20. Defined terms and interpretation

20.1 Defined terms

In these Conditions:

Business Day means a day on which trading banks, or a majority of them, are open for business in Sydney, excluding Saturdays, Sundays and public holidays.

Closing Time means 3pm 16 December 2019 or as amended by tender addendum.

Conditions means the terms, conditions, warranties, acknowledgments, requirements and obligations for this EOI set out in this document, EOI Deed Poll.

Consultants means the Participant's contractors, subcontractors, officers, employees, agents and advisers.

EOI means this call for expressions of interest in relation to the Project on the terms of the Conditions, including all annexures, attachments, schedules and any document referred to or contemplated by any of them.

EOI Process means the processes and procedures contemplated by, or pursuant to, this EOI.

EOI Response means an expression of interest in relation to the Project made subject to and in accordance with these Conditions.

Evaluation Criteria means the criteria referred to in Part 6 and clause 9.1 which will be used to evaluate and assess the EOI Responses.

Evaluation Committee means the group responsible for evaluating and assessing the EOI Responses as referred to in clause 9.2.

Excluded Individual means any employee of HCCDC listed in the Excluded Individual list located in the NSW eTendering website (which may be amended by notice in writing from time to time).

FATA means the *Foreign Acquisitions and Takeovers Act 1975*.

FIRB means the Foreign Investment Review Board

Further Stage means a further stage of the selection process.

GIPA Act means the *Government Information (Public Access) Act 2009*.

NSW eTendering website means the website at where EOI documentation is provided and lodged [NSW eTendering website](#)

Participant means a person or persons, an entity or entities:

- (a) that has, or have, decision making rights in relation to the management or governance of an EOI Response; or
- (b) is named or referred to in an EOI Response as a person who will participate in the Project by providing services, including construction or management services, or by providing commitments to lease or provide financial or other support to the EOI Response.

Probity Advisor means the Probity Advisor appointed for the purposes of this EOI who at the date of the issue of this EOI are the persons referred to in the Information Table.

Procurement Guidelines means:

- (a) NSW Government Procurement Framework (NSW Procurement Board - July 2015 Version 4);
- (b) The Australia-United States Free Trade Agreement (1 January 2005);
- (c) NSW Government Code of Practice for Procurement (18 January 2005); and
- (d) NSW Government Tendering Guidelines (November 2010),

as amended, supplemented, varied or replaced from time to time.

Project means the project described in the Introduction and overview of opportunity section of this EOI.

Project Objectives means the objectives for the Project set out Part 1 of this EOI.

Respondent means a party who submits an EOI Response or a party whom HCCDC is calling to make an EOI Response with respect to the Project.

Questions means a question, enquiry, query or request for information submitted by a Respondent on the NSW eTendering website.

Returnable Schedules means the returnable schedules attached to these Conditions.

Shortlist means the shortlist of Respondent(s) nominated by HCCDC to participate in the Further Stage.

Shortlist Date means a date estimated to be 20 January 2019 or any date extended by HCCDC in accordance with these Conditions.

Technical Adviser means an adviser or consultant appointed by HCCDC to provide specialist advice relating to one or more areas of expertise related to this EOI, from time to time.

Transaction Document means legally binding document setting out the rights and responsibilities between HCCDC the successful Respondent(s).

Unsuccessful Respondent means a Respondent who is not shortlisted.

HCCDC means Hunter and Central Coast Development Corporation ABN 94 688 782 063.

HCCDC Personnel means all employees, former employees, contractors, consultants, former consultants, advisers and agents engaged by HCCDC in relation to the EOI.

20.2 Interpretation

In these Conditions, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule, or annexure is to a clause or paragraph of, or schedule or or annexure to, these Conditions, and a reference to these Conditions includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to these Conditions, and includes the party's executors, administrators, successors and permitted assigns and substitutes;

- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Conditions or any part of them;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.

Appendix B: Key Contract Terms

| Proposed Terms | Description |
|---|---|
| Contract | <ul style="list-style-type: none"> HCCDC Contract for Sale with Special Conditions |
| Purchaser | <ul style="list-style-type: none"> Purchasing entity - Guarantor - |
| Purchase Price | <ul style="list-style-type: none"> \$ plus GST |
| Conditions Precedent to Completion | <ul style="list-style-type: none"> Nil |
| Completion Date | <ul style="list-style-type: none"> 60 days after Contract execution. |
| Site Condition | <ul style="list-style-type: none"> The Purchaser accepts the site is sold on an “as is” and “where is” basis. |
| Site Contamination | <ul style="list-style-type: none"> The Purchaser has accepted the risk of contamination and will undertake any remediation work required. HCCDC will be indemnified for any liability associated with contamination. |
| Mine Subsidence | <ul style="list-style-type: none"> The Purchaser accepts responsibility for obtaining Subsidence NSW’s approval, if required, for the final development |
| Licence to Access | <ul style="list-style-type: none"> From the date exchange, HCCDC may provide the Purchaser, upon application, with a non-exclusive licence on terms acceptable to HCCDC to access the site for investigations associated with its development application within reason. |

Appendix C: Servicing Investigation Report for the Former Heavy Rail Corridor

See attached

Appendix D: Heritage Assessment Report for the Former Heavy Rail Corridor

See attached

Appendix E: Mine Subsidence Board Risk Category Map

See attached

Appendix F: Flood Risk Assessment for the Former Heavy Rail Corridor

See attached

Appendix G: Mine Subsidence Board Letter addressing Former Newcastle Rail Corridor

See attached

Appendix H: Heritage and Archaeology Advice Report 2018

See attached

Appendix I: Deposited Plan 1251435 and 88B Instrument

See attached

Appendix J: Remediation Action Plan

See attached

Appendix K: Draft Contract for Sale

See attached

Appendix L: Site Survey

See attached

