



New South Wales Government  
Independent Planning Commission

# **46 Fitzroy Street, Carrington - Commercial Facility (DA-10689)**

## **Statement of Reasons for Decision**

Chris Wilson (Chair)

2 February 2022

2 February 2022 Final Report ©  
State of New South Wales through the Independent Planning Commission 2022

Independent Planning Commission NSW  
Suite 15.02, Level 15, 135 King Street, Sydney NSW 2001  
Telephone: (02) 9383 2100  
Email: [ipcn@ipcn.nsw.gov.au](mailto:ipcn@ipcn.nsw.gov.au)  
ABN: 83815363299

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## EXECUTIVE SUMMARY

Port of Newcastle Operations Pty Ltd (the Applicant) has sought development consent for a commercial building in the Port of Newcastle Lease Area at Carrington, within the Newcastle Local Government Area (LGA).

The \$28.4-million proposal includes the construction of a four-storey building for port-related office uses, along with a ground-floor café, landscaping, car parking, seating and communal spaces, a waste disposal area, water tanks and signage.

The Application has been made under Part 4 of the *Environmental Planning and Assessment Act 1979*. In accordance with clause 8(a) of the *State Environmental Planning Policy (Three Ports) 2013*, the Minister for Planning is the consent authority for development applications on land within the Port of Newcastle Lease Area. However, the Applicant has made a reportable political donation and the Independent Planning Commission is therefore the consent authority under delegation from the Minister.

A whole-of-government assessment was finalised by the Department of Planning & Environment in December 2021. The Department concluded that the Application is approvable, subject to conditions of consent. It noted that the proposed development is “*consistent with the strategic direction of the Carrington and Port of Newcastle areas*” and “*would be managed to an acceptable level of environmental performance*”.

Commissioner Chris Wilson was appointed to determine the development application.

As part of the decision-making process, Commissioner Wilson met with representatives of the Applicant, the Department and Newcastle City Council, and conducted a virtual site inspection.

The community expressed its views on the proposed development through written submissions to the Commission. Concerns raised in submissions centred around traffic and parking.

After careful consideration of all the material and taking into account the community’s views, the Commission has determined that development consent should be granted for the Application, subject to conditions of consent. These conditions are designed to prevent, minimise and/or offset adverse environmental impacts, and ensure ongoing monitoring and appropriate environmental management of the site.

The Commission’s reasons for approval of the Application are set out in this Statement of Reasons for Decision.

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## DEFINED TERMS

ABBREVIATION	DEFINITION
<b>Applicant</b>	Port of Newcastle Operations Pty Ltd
<b>Application</b>	DA-10689
<b>AR</b>	Department's Assessment Report (December 2021)
<b>AR para.</b>	Paragraph of the AR
<b>CIV</b>	Capital Investment Value
<b>Commission</b>	NSW Independent Planning Commission
<b>Council</b>	City of Newcastle Council
<b>Department</b>	Department of Planning and Environment
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulations</b>	<i>Environmental Planning and Assessment Regulations 2000</i>
<b>EPI</b>	Environmental Planning Instrument
<b>ESD</b>	Ecologically Sustainable Development
<b>GFA</b>	Gross Floor Area
<b>LGA</b>	Local Government Area
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
<b>Material</b>	The material identified in section 4.3 of this report
<b>Minister</b>	Minister for Planning
<b>NDCP 2012</b>	<i>Newcastle Development Control Plan 2012</i>
<b>OEMP</b>	Operational Environmental Management Plan
<b>Ports SEPP</b>	<i>State Environmental Planning Policy (Three Ports) 2013</i>
<b>SEE</b>	Statement of Environmental Effects
<b>Site</b>	65 Denison Street and 46 Fitzroy Street, Carrington (Lot 33 in DP 1078910)

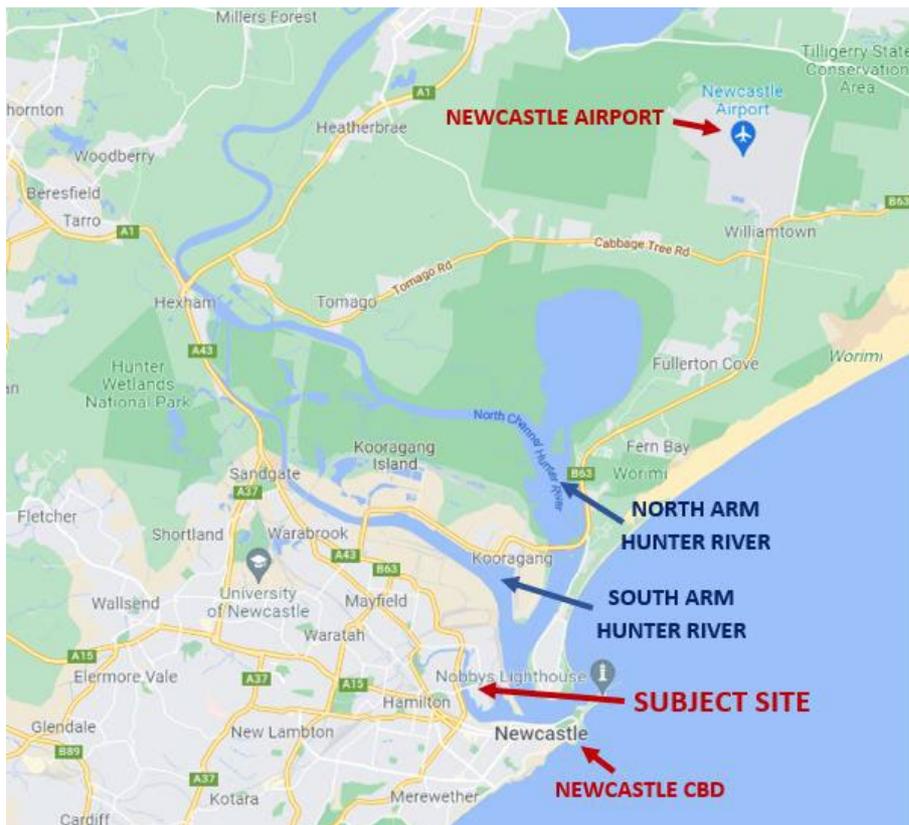
## 1 INTRODUCTION

1. On 11 December 2021, the NSW Department of Planning and Environment (**Department**) referred a development application (DA-10689) (**Application**) made by Port of Newcastle Operations Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination. The Application seeks approval for an office building with a ground-floor café at 46 Fitzroy Street, Carrington, in the City of Newcastle Local Government Area (**LGA**).
2. The Minister for Planning (**Minister**) is the consent authority for Part 4 applications on land within the Port of Newcastle lease area under clause 8(a) of the *State Environmental Planning Policy (Three Ports) 2013 (Ports SEPP)*; however, as the Applicant disclosed a reportable political donation under section 10.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the Commission has exercised the Minister's functions as consent authority under the Minister's delegation of 14 September 2011.
3. Professor Mary O'Kane AC, Chair of the Commission, nominated Commissioner Chris Wilson (Panel Chair) to constitute the Commission Panel determining the Application.

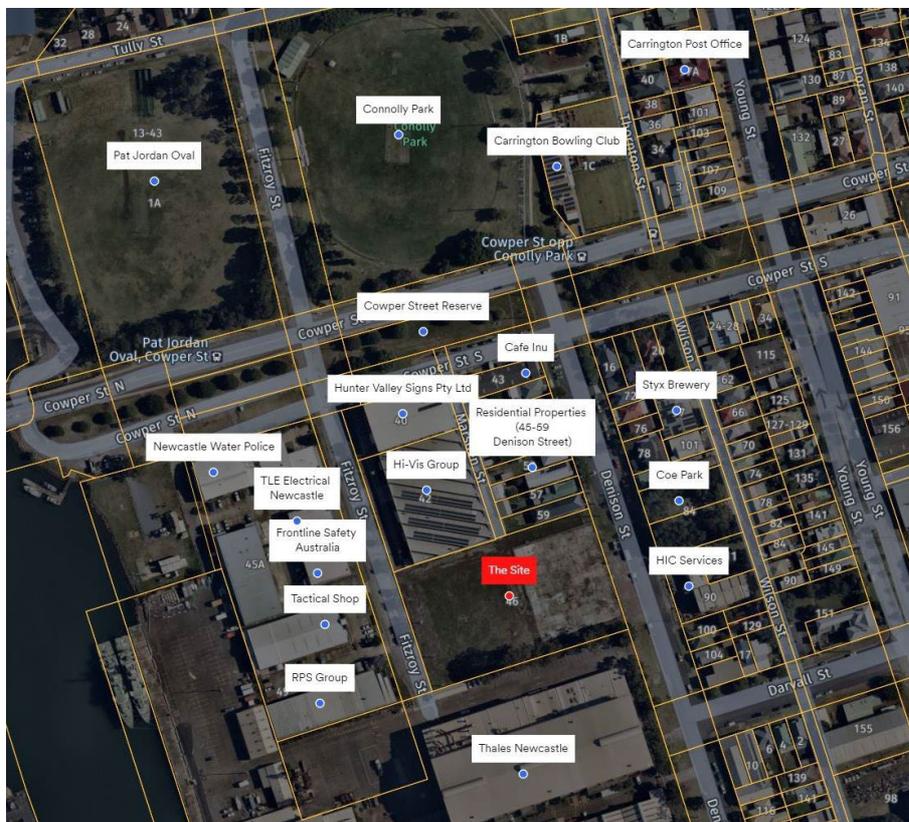
## 2 SITE AND LOCATION

4. The Department's Assessment Report (**AR**), dated December 2021, states that the site is located at 65 Denison Street and 46 Fitzroy Street, Carrington, and is legally defined as Lot 33 in DP 1078910 (the **Site**).
5. The Department states that the Site is located approximately 1.5 kilometres north-west of the Newcastle CBD (AR para 1.3.1). However, Figure 6.01-1 of the *Newcastle Development Control Plan 2012 (NDCP 2012)* shows the city centre as extending west to include the Honeysuckle area. Based on the NDCP 2012 mapping, the Site is approximately 600 m north of the nearest point of the Newcastle city centre.
6. The Site is zoned SP1 Special Activities under the Ports SEPP and is in the Port of Newcastle Lease Area as identified on the Lease Area Map in the Ports SEPP. The Site has an area of 8,684 m<sup>2</sup> and is a vacant, brownfield site (AR para 1.3.2). The Site extends from Fitzroy Street at its western boundary to Denison Street at its eastern boundary and is therefore provided with two street frontages.
7. The regional context of the Site is shown in **Figure 1** and the local context is shown in **Figure 2**, below.

**Figure 1: Regional Context of the Site (source: Department's AR)**



**Figure 2: Local Context of the Site (source: Department's AR)**



### 3 THE APPLICATION

8. The Application is summarised in **Table 1** below, adapted from the Department's AR.

**Table 1** Project Summary (source: Department's AR)

Project Summary	
<b>Overview</b>	<ul style="list-style-type: none"> <li>Construction of a four-storey building comprising office premises, a café, landscaping, car parking, seating and communal spaces, a waste disposal area, water tanks and signage.</li> </ul>
<b>Site area and development footprint</b>	<ul style="list-style-type: none"> <li>Site area of 8,685 m<sup>2</sup></li> <li>Gross Floor Area (GFA) of 6,432 m<sup>2</sup>.</li> <li>With the area of surplus car parking included, consistent with NDCP 2012, the GFA is 7,036 m<sup>2</sup> resulting in a Floor Space Ratio of 0.8:1</li> </ul>
<b>Parking</b>	<ul style="list-style-type: none"> <li>172 at grade car parking spaces comprising:               <ul style="list-style-type: none"> <li>38 external staff spaces, including one accessible space</li> <li>10 external visitor spaces, including one accessible space</li> <li>15 internal staff spaces (secure undercover)</li> <li>8 electric vehicle charging spaces (secure undercover)</li> <li>1 loading space</li> </ul> </li> <li>50 bike rack spaces<sup>1</sup></li> <li>8 motorbike parking spaces</li> </ul>
<b>Building dimensions</b>	<ul style="list-style-type: none"> <li>Maximum height (including plant room) of 18.458 m (approximately 20.8 m RL)</li> <li>A setback of approximately 67 m from the site boundary fronting Denison Street<sup>2</sup></li> <li>A setback of approximately 16 m from the site boundary fronting Fitzroy Street<sup>3</sup></li> </ul>
<b>Traffic</b>	<ul style="list-style-type: none"> <li>611 trips per day during operation</li> </ul>
<b>Hours of operation</b>	<ul style="list-style-type: none"> <li>Office - generally between 6:00 am and 6:00 pm, Monday to Friday, with some tenants possibly operating outside of these hours and on weekends.</li> <li>Café - between 7:00 am to 4:00 pm Monday to Friday</li> </ul>
<b>Employment</b>	<ul style="list-style-type: none"> <li>100 construction jobs estimated</li> <li>Up to 644 operational jobs estimated</li> </ul>
<b>CIV</b>	<ul style="list-style-type: none"> <li>Capital Investment Value (CIV) of \$28.4M</li> </ul>

<sup>1</sup> Table 1 of Department's AR includes incorrect figure (15) for bike rack spaces, with the correct figure (50) reported elsewhere in the AR and in the Applicant's SEE

<sup>2</sup> Table 1 of the Department's AR references a setback of 12.3 m from Denison Street, which is the approximate setback distance of the site boundary (not the building) from Denison Street

<sup>3</sup> Table 1 of the Department's AR references a setback of 6.5 m from Fitzroy Street, which is the approximate setback distance of the site boundary (not the building) from the Fitzroy Street

## 4 STATUTORY CONTEXT

### 4.1 Part 4 Development

9. The Application has been made under Part 4 of the EP&A Act. Clause 8(a) of the Ports SEPP makes the Minister for Planning the consent authority for Part 4 applications on land within the Port of Newcastle lease area (AR para. 4.2.1).
10. As the Applicant has made a reportable political donation, the Commission is exercising the Minister's functions as consent authority under the Minister's delegation made on 14 September 2011 (AR para. 4.3.2).
11. The proposal is integrated development pursuant to Division 4.8 of the EP&A Act. The Site is within a mine subsidence district and as such requires approval from Subsidence Advisory NSW under Section 22 of the Coal Mine Subsidence Act 2017.

### 4.2 Permissibility

12. The proposal is development for the purpose of business premises or office premises and can be carried out with development consent on land within the Port of Newcastle lease area, pursuant to clause 23 (Additional Permitted Uses) of the Ports SEPP.

### 4.3 Mandatory Considerations

13. In determining this Application, the Commission has taken into consideration the matters under section 4.15(1) of the EP&A Act (**Mandatory Considerations**) that are relevant to the Application.
14. The Department has considered the Mandatory Considerations at section 4.3 of the AR, and the Commission agrees with this assessment conducted on its behalf.
15. The Commission has summarised its consideration of the relevant Mandatory Considerations in **Table 2**, below, and elsewhere in this Statement of Reasons, noting the Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that the Commission has considered matters other than the Mandatory Considerations, the Commission has considered those matters having regard to the subject matter, scope and purpose of the EP&A Act.

**Table 2** Mandatory Considerations

<b>Mandatory Considerations</b>	<b>Commission's Comments</b>
<b>Relevant Environmental Planning Instruments</b>	Appendix C of the Department's AR identifies relevant EPIs for consideration. The relevant EPIs are as follows: <ul style="list-style-type: none"><li>• <i>State Environmental Planning Policy (Infrastructure) 2007</i>;</li><li>• <i>State Environmental Planning Policy (Three Ports) 2013</i>;</li><li>• <i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i>;</li><li>• <i>State Environmental Planning Policy (Coastal Management) 2018</i>;</li><li>• <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>;</li><li>• <i>State Environmental Planning Policy No. 55 – Remediation of Land</i>;</li><li>• <i>State Environmental Planning Policy No. 64 – Advertising Structures and Signage</i></li></ul> The Commission agrees with the Department's assessment concerning the EPIs that are of relevance to the Application as

<b>Mandatory Considerations</b>	<b>Commission's Comments</b>
	set out in Appendix C of the AR.
<b>Relevant proposed EPIs</b>	The Commission has considered relevant proposed EPIs in making its determination, including the <i>Draft State Environmental Planning Policy (Remediation of Land)</i> .
<b>Relevant Development Control Plans</b>	The <i>Newcastle Development Control Plan 2012</i> does not apply to the Site because the Site is located within the Port of Newcastle lease area as identified in the Ports SEPP. However, the Commission has used it as a guide where appropriate.
<b>Likely Impacts of the Development</b>	The likely impacts of the Project have been considered by the Commission as set out in section 7 of this Statement of Reasons.
<b>Suitability of the Site for Development</b>	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The Project is permissible with consent under clause 23 of the Ports SEPP and is generally consistent with the objectives of the Ports SEPP regarding port-related activity;</li> <li>• The proposed development would provide an appropriate buffer between existing industrial and residential land uses adjoining the Site;</li> <li>• Vehicular access to the Site and parking will be designed in accordance with relevant Australian standards and managed to minimise amenity impacts;</li> <li>• Traffic generated by the proposal will not adversely impact the local or regional road networks;</li> <li>• The Project will not result in any unreasonable off-site amenity, environmental or land use safety impacts;</li> <li>• the Application is an orderly and economic use of the Site, providing port-related office facilities and a cafe that are fit-for-purpose; and,</li> <li>• impacts on surrounding land uses have been minimised and can be appropriately mitigated through conditions of consent.</li> </ul>
<b>Objects of the EP&amp;A Act</b>	<p>In this determination, the Commission has carefully considered the Objects of the EP&amp;A Act. The Commission agrees with the Department's assessment of the Application against the Objects of the EP&amp;A Act provided in Table 2 of the AR, which finds that the Project is consistent with those Objects.</p> <p>The Commission finds the Application has been assessed against relevant EPIs and, subject to the conditions imposed, is consistent with the Objects of the EP&amp;A Act.</p>
<b>Ecologically Sustainable Development (ESD)</b>	The Commission agrees with the Department's assessment of the Application against the ESD principles. The Commission is satisfied that the Project will not adversely impact the environment and is consistent with the objects of the EP&A Act and the principles of ESD.
<b>The Public Interest</b>	The Commission has considered whether the Project is in the public interest in making its determination. The Commission has weighed the benefits of the Project against its impacts, noting the proposed mitigation measures. The Commission is satisfied

Mandatory Considerations	Commission's Comments
	<p>that the Project is in the public interest given the Project will:</p> <ul style="list-style-type: none"> <li>• support the operation of the Port of Newcastle;</li> <li>• generate up to 100 jobs during construction, 644 jobs during operation, and \$28.4M in capital investment; and</li> <li>• not result in any unacceptable impacts - any residual impacts can be readably managed through compliance with the imposed conditions.</li> </ul>

## 5 THE COMMISSION'S CONSIDERATION

### 5.1 The Department's Assessment Report

16. The Department's AR includes an assessment of key issues for the Application, including site suitability, parking, operational traffic, and residential amenity. The Department's AR concludes the impact of the development can be mitigated or managed, subject to recommended conditions, and that the Application can be approved.

### 5.2 The Commission's Meetings

17. As part of its determination process, the Commission met with representatives of the stakeholders listed in **Table 3**. All meeting and site inspection notes have been made available on the Commission's website.

**Table 3** Commission's Meetings and Virtual Site Inspection

Meeting	Date of Meeting / Inspection	Transcript / Notes Available
Virtual Site Inspection	13 January 2022	17 January 2022
Department	13 January 2022	17 January 2022
Council	18 January 2022	20 January 2022
Applicant	13 January 2022	17 January 2022

18. The Commission also extended meeting invitations to individuals who had made a written submission to the Department during the Department's consultation period, however, no responses were received.

### 5.3 Locality Inspection and Virtual Site Inspection

19. Site inspections conducted by the Commission are typically in-person and may include attendees from representatives of the Applicant and local community groups. However, as a precaution against COVID-19, the Commission Panel did not conduct an in-person site inspection as part of its determination of this Application. The Commission instead undertook a virtual site inspection.
20. The virtual site inspection was completed on 13 January 2022 and involved the Applicant showing pre-recorded images and video of the Site, including drone footage and a fly-through of an architectural model of the proposed development. The Commission requested explanation or clarification of site characteristics as required. A full transcript of the virtual site inspection was made publicly available on the Commission's website on 17 January 2022.

#### 5.4 Material Considered by the Commission

21. In making its determination, the Commission has carefully considered the following information (**Material**):
- the Applicant’s Statement of Environmental Effects (**SEE**) prepared by Ramboll, dated 11 June 2021 and amended 24 September 2021, and all supporting documentation;
  - the Applicant’s Response to Submissions, prepared by Ramboll, dated 24 September 2021;
  - the Applicant’s Response to Submissions Addendum, prepared by Ramboll, dated 1 November 2021;
  - all submissions made to the Department in respect of the Application, including from Council and public authorities;
  - the Department’s draft Development Consent, sent with the referral;
  - the Applicant’s letter to the Commission, received on 17 January 2022;
  - the Department’s email to the Commission, dated 19 January 2022;
  - the Applicant’s letter to the Commission, received on 21 January 2022;
  - the Council’s email to the Commission, dated 25 January 2022; and,
  - the Department’s email in response to the Commission’s draft conditions, dated 27 January 2022.

#### 5.5 The Applicant’s Correspondence

22. The Applicant, in its letter to the Commission, received on 17 January 2022, referred to its ongoing detailed design process and:
- an anticipated building height of RL 23.00;
  - an increased Gross Floor Area of 6,673 m<sup>2</sup>; and
  - a reduced number of car parking spaces.

As the Applicant did not seek any amendment or variation of the Application pursuant to Clause 55 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*, these proposed variations were not assessed by the Department pursuant to the 19 November 2021 delegation of the Commissions’ functions under clause 55 of the EP&A Regulation and have not formed part of the Commission’s consideration.

23. The Applicant’s letter also included comments on the Department’s recommended conditions of consent, with concerns that conditions in relation to height, GFA, and car parking were overly prescriptive and would not accommodate “foreseen amendments”, stating:

*This does not afford reasonable design development throughout the detailed design that will be prepared for construction certification. In this way, the plans would not be able to be certified.*

The Commission considers that the Department’s recommended conditions in relation to building height, GFA and car parking are appropriate – noting that the Application seeks detailed approval for the design, construction and operation of a commercial building. In the absence of a request to amend or vary the Application under Clause 55 of the EP&A Regulation, the Commission does not support the Applicant’s proposed amendments seeking to accommodate those “foreseen amendments”.

## 6 COMMUNITY PARTICIPATION

### 6.1 Public Comments

24. The Department publicly exhibited the Application between 9 July 2021 and 22 July 2021 and received five submissions from the public, including two objecting and three commenting on the Application (AR para. 5.4.1). Public submissions to the Department raised concerns regarding traffic, parking, noise, impacts on Denison Street, residential amenity and building siting (AR para. 5.3.4).
25. The Department also invited comments from relevant State government authorities and Council and received comments from Council and Ausgrid, and General Terms of Approval from Subsidence Advisory NSW (AR para. 5.2.1).
26. The Commission determined that a Public Meeting was not necessary to determine the Application as the issues raised in submissions to the Department are well documented and the Commission met with representatives of Council. Furthermore, the Commission extended invitations to individuals who had made a written submission to the Department to meet with the Commission. No responses were received.
27. The Commission invited written submissions until 5 pm on 31 January 2022 and received two submissions, one objecting and the other commenting on the Project.
28. Key issues raised in submissions to the Commission included:
  - Vehicle parking impacts and the number of proposed parking spaces; and
  - Increased vehicle movements, vehicle access, and potential impacts on the local road network.

## 7 CONSIDERATION OF KEY ISSUES

### 7.1 Site Suitability

29. Council raised concerns regarding site suitability in a written submission to the Department, dated 2 August 2021, including that:
  - the Application lacked evidence demonstrating that the development will attract port-related uses; and
  - the proposed development would be more appropriately located in the Newcastle city centre, noting that the city centre adjoins the harbour and is well placed to accommodate port-related office-based businesses.
30. The Department's finding regarding site suitability in AR para. 6.2.8 states:

*“On balance, the proposal (subject to recommended conditions) addresses the relevant objectives of the SP1 zone as it will provide for port related business premises that will support the operations of the PON [Port of Newcastle] and aid in the efficient operation of the port. In addition, the nature and scale of this land use provides a suitable buffer between other industrial uses that require separation from neighbouring residential areas and other sensitive land uses. The proposal offers improved amenity and compatibility in comparison to previous light industrial uses, whilst providing increased employment opportunities in the area.”*
31. The Department recommended a condition of consent requiring that the Applicant submits an Operational Environmental Management Plan (**OEMP**) detailing how tenancies will be managed to ensure the building is operated for port-related uses.
32. In its meeting with the Commission (see section 5.2 of this report), Council reiterated its concerns regarding site suitability, stating that:

- the Application lacked compelling evidence addressing Council’s concerns regarding site suitability;
  - the Application did not provide economic analysis to demonstrate demand for port-related, office-based uses at the Site;
  - the Application lacked specific examples of port-related office-based businesses that could use the proposed development; and
  - the proposed land use is not supported by relevant strategic documents.
33. The Commission wrote to the Applicant on 18 January 2022 requesting the following additional information regarding site suitability:
- evidence of the strategic merit of the proposed out-of-centre location with regard to the Newcastle Local Strategic Planning Statement, Newcastle Employment Lands Strategy (2019), and Port Master Plan 2040; and
  - Further information demonstrating how the proposed development would meet demand for port-related office uses within the Port of Newcastle lease area.
34. The Applicant responded to the Commission on 21 January 2022, and included the following key points regarding site suitability:
- there is limited land within the port area available and/or suitable for commercial development;
  - feasibility studies and market analysis for the proposal and the revision of the Port Master Plan 2040 indicate that there will be increased demand for office space for port-related tenants proximate to the port;
  - the Applicant has been approached by port-related businesses who are interested in a tenancy within the proposed building;
  - examples are provided of other office-based, port-related businesses that exist in the area and are considered prospective tenants;
  - port-related tenants may operate fleets of vehicles and may benefit from the amount of car parking proposed, and this requirement is more readily accommodated at the Site than in the Newcastle city centre;
  - port-related uses may benefit from occasional 24-hour operations, and are more appropriately located at the Site than in the Newcastle city centre, to avoid sensitive receivers; and
  - the development would provide a buffer between the existing industrial land use to the south and residences to the north.
35. The Commission considers that, in this instance, the Applicant has adequately demonstrated that the Site is suitable for the proposed land use – particularly noting the anticipated parking demand of port-related uses and the opportunity to provide a suitable buffer between industrial and residential land uses. The Commission also agrees with the Department’s finding that the Application addresses relevant objectives of the SP1 zone and finds that the Site is suitable for the proposed land use.
36. The Commission notes, however, that any future office-based development in the Port of Newcastle lease area could result in cumulative impacts on the Newcastle city centre by drawing away commercial activity, which is unlikely to accord with Council’s strategic direction. Detailed economic analysis would be necessary to gain a thorough understanding of such cumulative impacts of future projects.

## 7.2 Parking

37. Public submissions raised concerns regarding an existing shortage of on-street parking and the potential for the proposed development to compound this issue. Submissions noted that informal parking currently occurs on the verge between the Site and Denison Street.
38. The Department's AR applied the NDCP 2012 recommended parking rates as a guideline, and notes that the proposed car park (172 spaces) exceeds the DCP's guidance (129 spaces) based on the proposed GFA of 6,432 m<sup>2</sup> (ARP 6.3.4).
39. The Department finds at AR para. 6.3.8 that the proposed amount of onsite parking is appropriate for the following reasons:
  - the proposal will not add to demand for on-street parking and will not generate unacceptable traffic impacts;
  - the proposal enables a variety of travel modes for Site users;
  - port-related businesses are likely to have greater parking requirements to allow for fleet vehicles, worker parking, and to cater for shift change-overs; and
  - the Department has recommended conditions requiring the Applicant to deliver 172 car parking spaces, 50 bicycle rack spaces, 5 motorbike parking spaces and to implement the Green Travel Plan which promotes mode share targets and green travel options for future tenants.
40. The Commission has considered concerns raised in public submissions regarding potential impacts on the availability and orderliness of on-street vehicle parking, including the potential continuation of informal parking currently occurring on the verge between the Site and Denison Street.
41. The Commission has imposed conditions requiring the Applicant to submit an Operational Traffic Management Plan, including a Driver Code of Conduct with measures to ensure staff and visitors use dedicated onsite parking when attending the Site. The Commission considers that community concerns regarding parking on the verge fronting Denison Street will be addressed through the provision of surplus onsite parking, the proposed planting of the verge with street trees, and the required Driver Code of Conduct.
42. Subject to the conditions imposed, the Commission agrees with the Department's finding that the proposed amount of onsite car parking is appropriate.

## 7.3 Operational Traffic

43. Public submissions raised concerns regarding traffic generated by the proposed development and potential impacts on the local road network. A submission to the Commission also noted that siting the proposed building closer to Denison Street would allow for the majority of parking to be relocated to front Fitzroy Street, and could reduce the traffic impacts on Denison Street, which is partially residential.
44. The Department's AR states that the proposed development could generate an additional 611 vehicle trips per day which are likely to be split between Fitzroy Street and Denison Street. The Department states that operational traffic is not expected to exceed the capacity of the surrounding road network (AR para. 6.4.2.8) and that the traffic impacts of the proposal are considered acceptable, subject to recommended conditions (AR para. 6.4.2.9).

45. The Commission acknowledges the written submission suggesting that the majority of carparking should be moved towards Fitzroy Street (by relocating the proposed building) to decrease the traffic impacts on Denison Street, which is partially residential. The Commission notes that all proposed car parking can be accessed via both Fitzroy Street and Denison Street, and the configuration of the carparking would therefore be unlikely to materially change the distribution of trips between Fitzroy and Denison Street.
46. The Commission has imposed conditions requiring submission of an Operational Traffic Management Plan to manage the traffic impacts on the local road network and a Green Travel Plan to promote the uptake of sustainable modes of transport. Subject to the conditions imposed, the Commission agrees with the Department's finding that the traffic impacts of the development are acceptable.

#### **7.4 Hours of Operation**

47. The Department's AR notes that the office premises are proposed to generally operate in the hours 6.00 am – 6.00 pm, Monday to Friday, but that some port-related businesses may operate seven days a week and outside of these hours (AR Table 1). The Department also identifies a need to balance the operating hours of future tenants of the Site with the residential amenity of surrounding premises (AR para. 6.5.3.3).
48. To reduce impacts on residential amenity, the Department recommended a condition of consent that would restrict the hours of operation for the development to:
  - Commercial use - 6:00 am to 6:00 pm, Monday to Friday
  - Café use - 7:00 am to 4:00pm, Monday to Friday
49. The Commission raised the hours of operation in its meetings with the Department and the Applicant (see section 5.2 of this report) with respect to whether it is necessary to curtail the utilisation of the office premises in this manner.
50. The Applicant's letter to the Commission, received 17 January 2022, confirmed that the hours of operation for the office premises specified in the SEE were indicative and that some port-related tenants may need to operate seven days per week.
51. In correspondence to the Commission, dated 19 January 2022, the Department agreed it would be appropriate to extend the operating hours of the office use to 7:00 am to 6:00 pm on Saturday and Sunday.
52. The Commission has imposed a condition restricting the hours of operation for the proposed café in accordance with the Department's recommendation; however, the Commission did not impose a condition restricting the hours of operation of the office premises, and imposed alternative conditions to ensure that after-hours and weekend use of the Site do not cause any unacceptable impacts on neighbouring residential amenity, as discussed further in section 7.5 below.

#### **7.5 Residential Amenity**

53. Submissions made to the Department raised concerns regarding potential amenity impacts of the development on residences on Denison Street, including noise from traffic and operations outside of typical business hours.
54. The Department finds at AR para. 6.5.4.1 that the proposed development is appropriately located within a multi-use area and will not have significant visual, traffic or noise impacts on the residential properties of Denison Street, subject to recommended conditions of consent.
55. The Commission has however imposed conditions requiring the Applicant to detail in the OEMP, required by condition E45, how residential amenity will be safeguarded during weekend and night operations. The OEMP must include measures to:

- prevent the use of the Denison Street carpark to avoid noise from vehicle movements impacting on the closest sensitive receivers; and
  - prevent the use of balconies, to avoid noise impacts to sensitive receivers.
56. The Commission also imposed conditions requiring that plant and equipment do not exceed project noise trigger levels, to be developed through a site-specific noise assessment.
57. Subject to the imposed conditions of consent, the Commission agrees with the Department's finding that the proposed development will not cause undue impacts on residential amenity.

## **7.6 Pedestrian Linkages**

58. The Application includes a concrete pedestrian pathway along the Denison Street frontage of the Site, to connect the Site to the local pedestrian network.
59. Council, in a submission to the Department, recommended construction of an additional section of footpath providing a missing connection between Cowper Street South and Cowper Street North, on the western side of Denison Street.
60. The Department considered the additional connection to be appropriate to further encourage the use of public transport and improve the visual amenity and connectivity of the local area (AR Table 4), and recommended a condition of consent to require this work to be undertaken.
61. The Applicant's written submission to the Commission, received 17 January 2022, noted that there is an existing pedestrian connection to Cowper Street North via the pedestrian pathway on the eastern side of Denison Street and requested that the requirement for the additional linkage is not imposed.
62. The Commission in its meeting with the Council (see section 5.2 of this report) asked for clarification on the location of the missing link in the pedestrian network and questioned whether the existing connection would be adequate. The Council confirmed the location of the required section of footpath and stated that the additional link is necessary to provide appropriate pedestrian connectivity to the Site and to avoid unnecessary deviations.
63. The Commission considers that the additional linkage recommended by the Council and Department is necessary to aid the usability of the local pedestrian network and to improve connectivity to the public transport network via the Cowper Street North bus stop. The Commission accordingly imposed a condition requiring the Applicant to provide both the pedestrian pathway along the Denison Street frontage of the Site and a new connection between Cowper Street South and Cowper Street North, on the western side of Denison Street.

## **7.7 Developer Contributions**

64. Council's submission to the Department requested a condition of consent requiring the Applicant to pay contributions under Council's Section 7.12 Newcastle Local Infrastructure Contributions Plan.
65. The Department states that it is satisfied that the contributions plan applies to both the development and Site and recommended a condition of consent requiring the Applicant to pay contributions before the commencement of construction (AR Table 4).
66. The Commission notes that a Ministerial Direction (undated) was issued under the former section 94E of the EP&A Act indicating that contributions are not required for works within the PON lease area for developments where Council is the consent authority.

67. It is the Commission's position the Ministerial Direction only applies to development for which Council is the consent authority. As the Minister's delegate, the Commission is not bound to impose conditions authorised or allowed by Council's Section 7.12 Newcastle Local Infrastructure Contributions Plan when determining this Application, and subject to compliance with section 7.13(2) of the EP&A Act, the Commission has the discretion to determine the quantum of levies applicable.
68. The Commission has had regard to the principles governing the levying of development contributions and is satisfied that the application and timing of the 1% levy in this instance are fair and reasonable given the likely nexus between the construction and operation of the Project and the demand for increased services within the wider LGA. Consequently, the Commission has imposed the condition recommended by the Department, with an updated reference to Council's current Section 7.12 Newcastle Local Infrastructure Contributions Plan, which was adopted on 26 October 2021.

## **7.8 Independent Audit Requirements**

69. The Department recommended a condition of consent requiring that independent environmental audits of the development must be conducted and carried out in accordance with the Department's published Independent Audit Post Approval Requirements (2020). These requirements apply to all State significant developments where an audit is required by the conditions of consent, and specifies the required process, content, and frequency of independent audits.
70. The Commission, in its meeting with the Council (see section 5.2 of this report) asked, as a point of reference, whether the Council typically requires independent environmental audits of commercial developments it approves. The Council's email to the Commission dated 25 January 2022 responded that, following internal discussions, no examples were identified of such conditions being imposed by Council.
71. The Applicant, in its submission to the Commission received on 17 January 2022 requested that the audit requirements not be imposed on the basis that the Application is not State significant development (SSD).
72. The Commission imposed the Department's recommended condition requiring that the Applicant completes audits in accordance with the Independent Audit Post Approval Requirements (2020) unless otherwise agreed by the Planning Secretary. The Commission considers that the condition, as amended and imposed, is appropriate as it will provide the Applicant an opportunity to demonstrate that the audit requirements should be removed or reduced, commensurate with the use, scale and progress of the development.

## **7.9 Other Issues**

73. The Department includes an assessment of other issues in Table 4 of the AR, including stormwater management, landscaping, local infrastructure contribution, mine subsidence, signage, Building Code of Australia compliance, flooding, construction impacts, and access to services and open space. The Department finds that these issues are all acceptable, with conditions of consent recommended where necessary.
74. The Commission has considered the additional issues assessed within Table 4 of the Department's AR and has imposed the relevant conditions of consent recommended by the Department. Subject to the conditions of consent imposed, the Commission finds that the proposed development would not cause any unacceptable impacts in relation to the matters assessed in Table 4 of the Department's AR.

## **8 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION**

75. The views of the community were expressed through public submissions and comments received as part of the Department's exhibition of the Application and as part of the Commission's determination process. The Commission carefully considered these views in making its decision.
76. The Commission has carefully considered the Material before it as set out in section 5.4 of this report. Based on its consideration of the Material, the Commission finds that the Application should be approved subject to conditions of consent for the following reasons:
- the Project is permissible with consent under clause 23 of the Ports SEPP;
  - the Application is an orderly and economic use of the Site that is fit for purpose;
  - the proposed port-related development is appropriately located on this Site and provides an environmental buffer between industrial and residential land uses;
  - appropriate access is provided to the Site and there are not expected to be any unreasonable, off-site impacts; and
  - impacts on surrounding land uses have been minimised and are capable of being further mitigated through the imposed conditions.
77. For the reasons set out in paragraph 76, the Commission has determined that consent should be granted subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
  - set standards and performance measures for acceptable environmental performance;
  - require regular monitoring and reporting; and
  - provide for the ongoing environmental management of the development.
78. The reasons for the Decision are given in the Statement of Reasons for Decision dated 2 February 2022.



**Chris Wilson (Chair)**  
Member of the Commission