

**DETERMINATION AND STATEMENT OF REASONS**  
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	6 December 2021
<b>DATE OF PANEL DECISION</b>	3 December 2021
<b>DATE OF PANEL MEETING</b>	10 November 2021
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Sandra Hutton, Chris Wilson and John Mackenzie
<b>APOLOGIES</b>	Peta Winney-Baartz and Brad Luke
<b>DECLARATIONS OF INTEREST</b>	<p>Juliet Grant declared a conflict of interest as her employer, Gyde (previously known as City Plan) is reviewing the Review of Environmental Factors (REF) for a continuation of Richmond Vale Rail Trail in Cessnock LGA.</p> <p>Sandra Hutton does not have a conflict of interest, but declared for the record that Sam Reich, a registered speaker on behalf of Rail Trails Australia, is known to her as a professional contact of her husband. The Panel considered this, and agreed that this did not constitute a conflict of interest.</p>

Public meeting held by teleconference on 10 November 2021, opened at 4pm and closed at 6pm.

**MATTER DETERMINED**

PPSHCC-55 - Newcastle – DA2020/00641 at 81 King Street Shortland – Richmond Vale Rail Trail (as described in Schedule 1)

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel has had the benefit of a number of detailed briefings and site inspections of key access points to the trail.

The Panel understands that the application has been amended from the original proposal as exhibited. The amendments included:

- Removal of the Hunter Wetlands Centre leg; and
- Removal of the Tarro leg.

The amendments also included a redesign of the King Street Trail portion to specifically address accessibility and provision of amenities at the King Street Trail end at Shortland, and Woodford Street Trail Head at Minmi.

The proposed cycleway traverses part of the historic Chichester Water Pipeline and the former Richmond Vale Rail corridor. The Richmond Vale Rail Trail proposal forms part of the Council cycling plan connecting Shortland to Minmi and allows for a future connection to Kurri Kurri and Tarro. It is part of a broader network of trails across the Hunter Region e.g. Fernleigh Track.

The Panel heard from a number of submitters in support as well as submitters who raised issue with:

- Opportunities for bird watching, and ecological surveys to be able to co-exist with the use of the trail;
- Location of amenities block;
- Impacts on adjoining access to Aurizon, and
- Potential impact on Wetlands Centre access gate.

A number of issues raised in written submissions have been addressed because of amendments to the plans.

The Panel also heard from the applicant and had the opportunity to question the applicant on a range of matters regarding the:

- Interface and fencing with Aurizon lands;
- Construction access;
- Opportunities along the trail for bird watching;
- Levels at the gate of the Wetlands Centre and location of the amenities block;
- Aurizon land access arrangements; and
- Remediation strategy and unexpected find protocols.

Arising from the public meeting, the Panel sought clarification on these issues and the following additional matters:

- Clauses 11, 13, 14, 15 and 16 of the SEPP (Coastal Management) 2018;
- Relevant Koala SEPP;
- Uses permitted under the *National Parks and Wildlife Act 1974* and provisions of the E1 National Parks and Nature Reserves zone;
- Remediation; and
- Revised conditions that addressed construction, remediation, double up in conditions and consistency in wording.

The Panel requested and considered a further memo prepared by Council dated 26 November 2021 which identified a revised set of conditions addressing the above matters. The Panel has considered this memo.

The Panel is of the view that the proposed development will be an asset to the community and has economic and social benefits. The proposal has considered and mitigated environmental impacts by limiting the trail to disturbed areas within a sensitive environment. The heritage strategy is appropriate and supported. The EIS and DA assessment has considered the totality of the potential impacts of the proposal – as has the Panel.

The Panel notes that a portion of the trail will need to be the subject of a Part 5 Assessment and determination. The Panel is not the determining authority for Part 5 matters – so this aspect is proposed to be conditioned to be removed. The Panel notes that the NPWS is supportive of the proposal.

The development is complex but the Panel considers that it appropriately responds to its context and minimises impacts.

The Panel supports approval of the development subject to conditions.

### **Development application**

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* subject to the conditions in Schedule 2.

The decision was unanimous.

## REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council assessment report and the following reasons:

- The development is part of a network of trails providing opportunities for tourism, active recreation, commuting and appreciation of the natural environment within the Hunter Region and social and economic benefits; and
- The potential impacts arising from the development can be adequately mitigated.

## CONDITIONS

The development application is approved subject to the conditions in the supplementary report received on the 26 November 2021. It is noted that specific conditions have been included to:





- Limit stockpile near Aurizon land;
- Fencing detail;
- Construction access;
- Remediation;
- Location of amenities block;
- Emergency access from Hunter Wetlands Centre; and
- Removal of works requiring separate Part 5 Assessment.

## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Amenity impacts;
- Potential impacts on Aurizon operations;
- Flora/Fauna impacts;
- Waste Impacts;
- Fencing;
- Horse Riders;
- Hunter Wetlands Centre;
- Cycleway Grade; and
- Ownership.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report. Arising from verbal submissions made at the meeting, the Panel sought further clarification regarding existing land access arrangements, and construction access, as well as identification of look out points along the trail for bird watchers. Additional conditions were included to address a number of these issues.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Sandra Hutton
 Chris Wilson	 John Mackenzie

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-55 - Newcastle – DA2020/00641
2	PROPOSED DEVELOPMENT	Community Facility - Pathway - "Richmond Vale Rail Trail" – (RVRT)
3	STREET ADDRESSES/OWNERS	<ul style="list-style-type: none"> <li>• Hunter Water Corporation – Lot 1 DP 805274- 81 King St Shortland</li> <li>• Hunter Water Corporation – Lot 1 DP 611441- 83 King St Shortland</li> <li>• Hunter Water Corporation – Lot 2 DP 611518 – 4A Anderson Drive, Tarro</li> <li>• Hunter Water Corporation – Lot 148 DP 840897 – 29 Woodford St Minmi</li> <li>• Hunter Water Corporation – Lot 147 DP 1143414 – 292A Minmi Rd Fletcher</li> <li>• National Parks &amp; Wildlife Service – Lot 3-4 DP 171105 50A Sparke St Hexham</li> <li>• Department of Lands – Lot 1 DP90465 12A Railway St Hexham</li> <li>• Minister Administering the National Parks &amp; Wildlife Act 1974 – Lot 1 DP 1007615 33 Lenaghans Drive Minmi</li> <li>• Coal &amp; Allied Operations P/L – Lot 10 DP1194449 67C Maitland Road Hexham</li> <li>• Coal &amp; Allied Operations P/L – Lot 1 DP877233 52A Lenaghans Drive Minmi</li> <li>• Minister Administering the National Parks &amp; Wildlife Act 1974 – Lot 21 DP1195619 52A Lenaghans Drive, Minmi</li> <li>• City of Newcastle – Lot 324 DP 1175558 50 Kural Crescent Fletcher</li> </ul>
4	APPLICANT	City of Newcastle Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ State Environmental Planning Policy (State Significant Precincts) 2005</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>○ State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>○ State Environmental Planning Policy (Coastal Management) 2018</li> <li>○ State Environmental Planning Policy No. 44 – Koala Habitat Protection</li> <li>○ Newcastle Environmental Plan 2012</li> </ul> </li> <li>• Draft environmental planning instruments:</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Newcastle Development Control Plan 2012 (NDCP 2012)</li> <li>○ City of Newcastle's Community Participation Plan 2019</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>:</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> </ul>

		<ul style="list-style-type: none"> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Council assessment report: 3 November 2021</li> <li>Council memorandum: 18 November 2021</li> <li>Supplementary Council assessment report: 26 November 2021</li> <li>Written submissions during public exhibition: 150</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Terry Lewin on behalf of the Richmond Vale Rail Trail, Sam Reich on behalf of Rail Trails Australia, Robert Stewart on behalf of Hunter Bird Observers Club, Dr Peter Nelson on behalf of Hunter Wetlands Centre Australia and Harry Egan on behalf of Aurizon</li> <li>On behalf of the applicant – Robert Dudgeon, Kirk Rowe and Lisa King</li> </ul> </li> <li>Total number of unique submissions received by way of objection: 32</li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Briefing: 18 November 2020 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair) and Sandra Hutton</li> <li><u>Council assessment staff</u>: Damian Jaeger, Amy Ryan and Tracey Webb</li> <li><u>Department staff</u>: Leanne Harris</li> </ul> </li> <li>Briefing and site inspection: 10 March 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and Chris Wilson</li> <li><u>Council assessment staff</u>: Damian Jaeger, Amy Ryan, Priscilla Emmett, Roland Payne, Michelle Bisson and Tracey Webb</li> <li><u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>Applicant Briefing: 10 March 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and Chris Wilson</li> <li><u>Council assessment staff</u>: Damian Jaeger, Amy Ryan, Roland Payne, Michelle Bisson and Tracey Webb</li> <li><u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> <li><u>Applicant representatives</u>: Lisa King, Kirk Rowe, Kevin Moriarty, Peter Steele and Darren Green</li> </ul> <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> </li> <li>Final briefing to discuss Council's recommendation: 10 November 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Chris Wilson and John Mackenzie</li> <li><u>Council assessment staff</u>: Damian Jaeger, Amy Ryan, Roland Payne, Brian Cameron, Isabelle Rowlatt, Thomas Howell and Olivia Magrath</li> <li><u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the Council memo received 26 November 2021

## SCHEDULE 2

### SCHEDULE OF CONDITIONS

<b>Application No:</b>	DA2020/00641
<b>Applicant:</b>	City of Newcastle
<b>Land:</b>	Lot 1 DP 90465 Lot 148 DP 840897 Lot 1-2 DP 171105 Lot 2 DP 611518 Lot 1 DP 1007615 Lot 1 DP 805274 Lot 1 DP 611441 Lot 1 DP 877233 Lot 21 DP 1195619 Lot 147 DP 1143414 Lot 10 DP 1194449 Lot 324 DP 1175558
<b>Property Address:</b>	81 & 83 King Street Shortland 4A Anderson Drive, Tarro 50A Sparke Street Hexham 29 Woodford St Minmi 33 Lenaghans Drive Minmi 12A Railway Street Hexham 52A Lenaghans Drive Minmi 292A Minmi Rd Fletcher 67C Maitland Road Hexham 50 Kural Crescent Fletcher
<b>Proposed Development:</b>	Community Facility – Cycleway ("Richmond Vale Rail Trail - RVRT")

### SCHEDULE 1

#### APPROVED DOCUMENTATION

1. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
General Notes	22-18317-C1004 Rev E	GHD	3/3/21
General Arrangement Plan	22-18317-C1005 Rev E	GHD	3/3/21
Typical sections	22-18317-C1010 Rev F	GHD	12/8/21
Typical sections	22-18317-C1011 Rev D	GHD	14/1/20
Typical sections	22-18804-C050 Rev C	GHD	13/9/21
Typical sections	22-18317-C1012 Rev E	GHD	23/06/21
Shortland to Kurri Kurri	22-18317-C1100 Rev G	GHD	12/8/21
Shortland to Kurri Kurri	22-18317-C1101 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1102 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1103 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1104 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1105 Rev D	GHD	14/1/20

Shortland to Kurri Kurri	22-18317-C1106 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1107 Rev E	GHD	3/3/21
Shortland to Kurri Kurri	22-18317-C1108 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1109 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1110 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1111 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1112 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1113 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1114 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1115 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1116 Rev D	GHD	14/1/20
Shortland to Kurri Kurri	22-18317-C1117 Rev D	GHD	14/1/20
Minmi Junction to Minmi	22-18317-C3000 Rev D	GHD	14/1/20
Minmi Junction to Minmi	22-18317-C3001 Rev D	GHD	14/1/20
Minmi Junction to Minmi	22-18317-C3002 Rev F	GHD	23/6/21
Minmi Junction to Minmi	22-18317-C3003 Rev A	GHD	23/6/21
Bridge detail sketches	22-18317-C4020 Rev A	GHD	26/8/21
Minmi Junction to Fletcher	22-18317-C4000 Rev D	GHD	14/1/20
Minmi Junction to Fletcher	22-18317-C4001 Rev E	GHD	3/3/21
Fletcher connection detail plan	22-18317-C4010 Rev B	GHD	23/6/21
Fletcher connection long section	22-18317-C4011 Rev B	GHD	23/6/21
Existing timber bridges H2M1	22-18317-C4012 Rev B	GHD	23/6/21
Existing timber bridges H2M2	22-18317-C4013 Rev B	GHD	23/6/21
Existing timber bridges H2M3	22-18317-C4014 Rev B	GHD	23/6/21
Existing timber bridges H2M4	22-18317-C4015 Rev B	GHD	23/6/21
Existing timber bridges H2M5	22-18317-C4016 Rev B	GHD	23/6/21
Construction plan	22-18317-C6001 Rev A	GHD	3/3/21
Construction plan	22-18317-C6002 Rev A	GHD	3/3/21
Construction plan	22-18317-C6003 Rev A	GHD	3/3/21
Construction plan	22-18317-C6004 Rev A	GHD	3/3/21
Construction plan	22-18317-C6005 Rev A	GHD	3/3/21
King Street carpark general arrangement plan	22-18317-D1001 Rev D	GHD	13/9/21
Ironbark creek bridge general arrangement plan	22-18317-D1004 Rev B	GHD	28/11/19
Restroom block	22-18317-D1005 Rev B	GHD	29/11/19
Sheltered rest area	22-18317-D1006 Rev B	GHD	29/11/19
Sheltered rest area	22-18317-D1007 Rev B	GHD	29/11/19
Rest area general arrangement plan	22-18317-D1008 Rev B	GHD	28/11/19
Minmi junction rest area general arrangement plan	22-18317-D1009 Rev B	GHD	28/11/19
Ironbark creek bridge general arrangement	22-18317-S101 Rev D	GHD	29/11/19
Fishery creek bridge general arrangement	22-18317-S201 Rev C	GHD	29/11/19
Contaminated Site Assessment	Proj No 12544891 Rev 2	GHD	15/9/21
Remedial Action Plan	Rev 0	GHD	15/9/21
Site Auditors Interim Advice Letter No 1		Ramboll Australia	16/9/21
Heritage Response		City of Newcastle	27/8/21
Revised Bridge Design Heritage Impact Statement		Artefact	27/8/21
Preliminary Aboriginal Heritage Management Plan	Rev 2	Artefact	23/6/21

Additional Heritage Impact Assessment		Artefact	23/6/21
Acid Sulfate Soils Management Plan		GHD	11/21

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

- No development consent is given for any development or works on the following Lots as generally marked in red on the approved plans:

- Lot 3 & 4 DP 171105 – 50A Sparke Street Hexham

The associated allotments/areas do not require consent under Part 4 of the *Environmental Planning and Assessment Act, 1979* and are not included within the development consent.

#### OTHER APPROVALS REQUIRED

- The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development. The General Terms of Approval are:

General Terms of Approval (Ref: IDA20/77) dated 14 October 2020 under the *Fisheries Management Act, 1994*, as stipulated by the NSW Department of Primary Industries Fisheries.

A copy of the General Terms of Approval is attached to this determination notice at Schedule 3.

- Prior to the commencement of works, the Applicant must obtain the necessary licence(s) to authorise the development under section 151 of the National Parks and Wildlife Act 1974 (NPW Act).
- Prior to the issue of any Construction Certificate, the Applicant must obtain approval from the National Park and Wildlife Service (NPWS) for any sheltered rest areas located within lands managed by the National Park and Wildlife Service (NPWS),
- Prior to the commencement of works, the applicant must obtain the necessary licence(s) to authorise the development under section 151 of the National Parks and Wildlife Act 1974 (NPW Act).
- Prior to the commencement of any works or issue of any Construction Certificate, whichever occurs first, the Applicant must meet the Ausgrid requirements as detailed within their letter dated 14 September 2020 (Ausgrid Reference: 1900101939) as attached at Schedule 3.
- The Applicant must comply with all of Hunter Water's requirements relating to the provision of water supply and sewerage services. A copy of Hunter Water's compliance certificate (*Hunter Water Act 1991* - Section 50) must be submitted with your Construction Certificate application.
- The Applicant must seek approval from the City of Newcastle for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*. The approval is to be obtained, or other satisfactory arrangements confirmed in writing from the City of Newcastle before the issue of a Construction Certificate.
- An Aboriginal Heritage Impact Permit (AHIP) must be obtained from Heritage NSW under Part 6 of the National Parks and Wildlife Act 1974 prior to the commencement of ground disturbance works. The AHIP is to include detail regarding the completion of Aboriginal



archaeological investigations in the form of test excavations and (if required) further salvage activities.

Written evidence that the AHIP has been approved is to be provided to CN prior to the commencement of any ground disturbance works.

11. Prior to any ground disturbance works occurring on site, the Applicant must obtain a permit under Section 140 of the Heritage Act 1977 to undertake archaeological excavation of the study area. The Applicant must comply with all requirements of the permit as issued.
12. Prior to the commencement of construction, the Applicant must seek the approval of the City of Newcastle for the erection of any hoardings or part closure of footways. Any such overhead structures or protective fencing is to comply with the *Work Health and Safety Act 2011*, *Work Health and Safety Regulation 2011* and any relevant approved industry code of practice. Notice of intention of commencement is to be given to SafeWork NSW.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **ENGINEERING**

13. Any machinery and electrical equipment susceptible to damage from floodwaters are to be a minimum of 300 mm above existing ground levels. Full details are to be included in documentation submitted as part of a Construction Certificate application.
14. Prior to the issue of any Construction Certificate, the Applicant must submit a Construction Traffic Management Plan (CTMP) addressing traffic control measures to be utilised in any public road reserve during the construction phase and have obtained written approval of the (CTMP) by City of Newcastle's Regulatory, Planning & Assessment Section.
15. The Applicant must design and construct the proposed works within the King Street, Shortland public road reserve, and adjacent to the site, at no cost to Council, and in accordance with Council's guidelines and design specifications including as follows:
  - a) A maximum 5m wide commercial type driveway crossing (at the entrance to the off-street car parking) in accordance with Council's A1300 - Driveway Crossings Standard Design Details;
  - b) Kerb and gutter construction and associated pavement widening between Mort Lane the existing kerb and gutter opposite No. 100 King Street;
  - c) Kerb return at Mort Lane;
  - d) 1.5m wide concrete foot paving between Mort Lane and connecting to the existing paving at No. 101 King Street;
  - e) Footway kerb ramps in the northwest (new) and northeast kerb returns of the intersection of Mort St/Lane and King Street;
  - f) Associated drainage works; and
  - g) Associated regulatory signage and line marking.

Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval pursuant to Section 138 of the Roads Act 1993 (NSW). The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council before the issue of a Construction Certificate.

16. The Applicant must design and construct the proposed works within the Woodford Street, Minmi public road reserve, and adjacent to the site, at no cost to Council, and in accordance with Council's guidelines and design specifications including as follows:
  - a) A maximum 5m wide commercial type driveway crossing (at the entrance to the off-street car parking) in accordance with Council's A1300 - Driveway Crossings Standard

- Design Details;
- b) A Channelised Right Turn lane (type CHR(S)) in accordance with Austroads Road Design Guide providing access to the driveway crossing. (Note: A Basic Right Turn (type BAR) may be permitted in lieu of the type CHR(S) but only after it has been demonstrated to the satisfaction of the Road Authority that a type CHR(S) cannot reasonably be established);
  - c) Kerb and gutter construction, kerb side parking lane and associated pavement widening, footway area and a minimum 2.5m wide reinforced concrete shared path between the off-street carpark and the existing infrastructure at 31 Woodford Street;
  - d) Associated drainage works;
  - e) Associated street lighting upgrades/extensions; and
  - f) Associated regulatory signage and line marking.

Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval pursuant to Section 138 of the Roads Act 1993 (NSW). The approval must be obtained, or other satisfactory arrangements confirmed in writing from Council before the issue of a Construction Certificate.

- 17. The alignment of the Trail extension between Lot 148 in DP 840897 and Woodford Street at the Minmi trail head is to be re-aligned to be wholly contained within the existing right of way (refer Easements C and E on DP1111997) that benefits the Hunter Water Corporation and Lot 148 in DP 840897. Full details are to be provided with the Construction Certificate application.
- 18. Designs for the new and upgraded waterway crossings are to include detailed hydraulic modelling to demonstrate no significant change to local creek flow volumes and velocities for all design storm events up to the 1% Annual Exceedance Probability events. Full details to be provided with the Construction Certificate application.
- 19. To address the flood risk to users of the cycleway, and the wide range of flood immunity for local catchment and Hunter River flooding, a detailed Flood Risk Management Plan is to be developed and implemented (which would form part of the Emergency Management Plan). The Plan is to address assumptions for future climate change and associated reduced flood immunity and include required flood response measures including flood warning signage and cycleway gate closure arrangements. Full details to be provided with the Construction Certificate application.
- 20. Cycleway and public road signage is to be designed to meet relevant Austroads guidelines, Australian Standards and Road Rules to provide a safe environment for Trail and public road users. Full details to be provided with the application for the relevant Construction Certificate or Section 138 of the Roads Act approval.

(Note: The proposed signage within the public road reserves must be approved by the Newcastle City Traffic Committee prior to the issue of the s138 approval(s).)

- 21. The off-street car parking and vehicular access at King Street, Shortland and at Woodford St, Minmi is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included with the Construction Certificate application.
- 22. All proposed off-street driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included with the Construction Certificate application.

23. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls. Full details are to be included with the Construction Certificate application.
24. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required by the conditions of this consent are to be detailed on a comprehensive landscape plan and specification. The plan and specification are to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
- a) cross sections through the site
  - b) proposed contours or spot levels
  - c) botanical names
  - d) quantities and container size of all proposed trees
  - e) shrubs and ground cover
  - f) details of proposed soil preparation
  - g) mulching and staking
  - h) treatment of external surfaces and retaining walls where proposed
  - i) drainage, location of taps and
  - j) maintenance periods.

The plan and specification are to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

## SIGNAGE AND AMENITIES

25. Suitable signage is to be erected at all trailheads advising cyclist and the general public not to use the cycleway on days declared to be of an extreme/catastrophic fire danger rating or during flood warnings. This signage is to be erected in combination with controlled access gates that would be closed in the event of an emergency in accordance with the emergency management plan. Full details are to be included in the required operational management plan, emergency management plan and signage plan required to be submitted prior to the issue of any Construction Certificate.
26. All wastewater from the proposed amenities blocks at Shortland and Minmi is to be drained to the sewers of the Hunter Water Corporation in accordance with the requirements of Hunter Water Corporation. Full details are to be provided with the Construction Certificate application.
27. All amenities blocks are to be provided with appropriate toilet facilities and also incorporate separate external waste receptables and water fountain facilities. Full details are to be provided with the with the Construction Certificate application.
- Note:
- i) The provided water fountains should be a dual action design including a bubbler at the upper portion and a lower water bottle spigot.
  - ii) Appropriate signage detailing hours amenities are open and contact number for any maintenance issues.
28. Waste receptables are only to be co-located with the amenities blocks at the trailheads to the cycleway at Woodford Street, Minmi and King Street Trail, Shortland, plus adjacent the existing parking at Mitti Street, Fletcher associated with the Kurraka Drive sporting fields. Full details to be submitted with the required Construction Certificate.

## ACCESS AND LIGHTING

29. The recesses within the M1 Motorway and Lenthans Drive tunnels are to be fitted with security mesh fencing, or security mesh gates with appropriate locking mechanisms to enable maintenance as required. The security mesh is to remove any alcove spaces which would

pose a risk in terms of Crime Prevention Through Environmental Design principles. Full details are to be submitted with the Construction Certificate application.

30. A motion activated low-light lighting system is to be provided for the M1 Motorway and Lenghans Drive tunnels. The motion activated sensors are to be located prior to the entries of each of the tunnels so to ensure that lighting activates in advance of any cyclists entering. The proposed lighting is to be directed and provided with appropriate baffles to minimise potential impacts on micro-bats while maintaining suitable lighting for cyclists. Full details to be submitted prior to the issue of any Construction Certificate.

## FENCING

31. All fencing proposed adjacent Aurizon's rail freight facility at Hexham is to be designed, in consultation with Aurizon, to restrict any access by the public to Aurizon's land and the rail freight facility. Full details of fencing, including written documentation demonstrating consultation required under this condition, is to be submitted with the required Construction Certificate.
32. All boundary fencing, and fencing within National Parks & Wildlife Service's lands, is to be subject of a final fencing plan. The final fencing design within the plan is to be undertaken in consultation with the respective landowners (e.g. National Parks & Wildlife Service). This plan is to be completed prior to any fencing being erected or the issue of any Construction Certificate, whichever occurs first.

## HERITAGE

33. Final design diagrams for the proposed timber bridge restoration and viewing platforms (as detailed in the Heritage Issues Response report prepared by City of Newcastle 27/8/2021) are to be provided with the documentation for a Construction Certificate.
34. A heritage interpretation plan is to be prepared by an experienced heritage interpretation practitioner and submitted with the Construction Certificate application. The Heritage Interpretation Plan shall be in accordance with the Heritage Council's "Interpreting Heritage Places and Items Guidelines" (2005). The plan must interpret the multiple uses and history of the site and the former Minmi to Hexham Railway in a way that is engaging, informative and readily accessible to the majority of visitors. The Heritage Interpretation Plan is to account for nearby heritage items in the vicinity of the trail that have a shared history with the Minmi to Hexham Railway. Written approval from Council's Heritage Officer is to be obtained prior to the issue of any Construction Certificate.

## BUILDING

35. Prior to the issue of any Construction Certificate, the Applicant must ensure that the works proposed for those sections of the cycleway on National Parks & Wildlife Service (NPWS) land, or NPWS tenured land, are certified to comply with the Building Code of Australia (BCA) or relevant Australian Standards. Evidence of compliance with the BCA, Disability (Access to Premises - Buildings) Standard, and/or Australian Standards must be submitted to the satisfaction of NPWS and in accordance with the NPWS Construction Assessment Procedures (OEH 2011) prior to the commencement of works.

## MATTERS REQUIRING CONSULTATION WITH NATIONAL PARKS AND WILDLIFE

36. An operational management plan for the cycleway is to be prepared in consultation with National Parks & Wildlife Service which identifies the key management and maintenance considerations (e.g. weed control, restriction on domestic animals including dogs and horses) for the cycleway and allocates responsibility for each of these matters to ensure the cycleway is managed and maintained appropriately. Full details are to be submitted prior to the issue of any Construction Certificate.

37. Prior to the issue of a Construction Certificate, the Applicant must prepare and submit to the Principle Certifying Authority and Council a Construction Environmental Management Plan (CEMP) and an Environmental Management Plan (EMP) for construction works and the operation of the proposal. Both the CEMP and EMP must be kept on site and made available to authorised Council officers upon request. The CEMP and EMP is to be prepared in consultation with the National Parks & Wildlife Service (NPWS). The CEMP and EMP is to describe management of environmental risks associated with the activity, address all measures identified in Sections 8.2 and 8.3 of the Environmental Impact Statement prepared by GHD Pty Ltd dated October 2019, and must include but need not be limited to:

- Site waste minimisation and management plan
- Final Acid sulfate soil management plan
- Soil and water management plan
- Contaminated soils management plan
- Flora and fauna management (cross reference to biodiversity management plan as appropriate)
- Construction traffic management plan
- Noise and vibration management plan
- Environmental incident procedures including communications and reporting
- Heritage management plan
- Emergency response plan

All provisions of both the CEMP and EMP are to be implemented during the development activity on site.

38. The detailed design of the proposed culverts and bridges is to be undertaken in consultation with National Parks & Wildlife Service so to aid in the future-proofing of the structures and to avoid saltwater intrusion into Lot 1402 DP852640 and Lot 4222 DP1238665. Full details to be submitted prior to the issue of any Construction Certificate.

39. The full cycleway route, including bridges, culverts, fences and the like, is to be designed to meet access and management requirements including fire fighting vehicles (e.g., Category 9 used by National Parks & Wildlife Service - NPWS). The final design detail of the cycleway needs to be undertaken in consultation with the land owners associated with the route so to ensure adequate access is maintained. Full details must be submitted with the Construction Certificate application.

Note: NPWS vehicles require a minimum 3.0 metre clearance of obstructions including fencing.

40. An Emergency Management Plan must be prepared to address risks from bushfire and flooding (e.g. extreme/catastrophic fire danger rating or during flood warnings) and submitted for approval by City of Newcastle's Assessment Section and written approval being obtained prior to the issue of any Construction Certificate.

Note: The content of the plan is to be developed in consultation with the Manager, National Parks & Wildlife Service and must detail procedures to be followed in the event of an emergency or similar event.

## BIODIVERSITY AND ENVIRONMENT

41. Prior to the issue of a Construction Certificate, the Applicant must prepare and submit to the PCA and Council a Biodiversity Management Plan (BMP). The BMP must specify environmental safeguards to be implemented to avoid or minimise biodiversity impacts from the proposed development and is to include, but need not be limited to, all measures described in Sections 7.3.1 and 7.3.3 of the Biodiversity Development Assessment Report prepared by GHD Pty Ltd dated 15 June 2020 (those measures described in the report for inclusion in a Construction Management Plan / CEMP). All provisions of this BMP are to be implemented.

42. Prior to the issue of a Construction Certificate, the class and number of ecosystem credits in the following table must be retired to offset the residual biodiversity impacts of the development or by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator.

ZONE ID	PCT ID	PCT NAME	ECOSYSTEM CREDITS REQUIRED
1	1528	Jackwood – Lilly Pilly – Sassafras riparian warm temperate rainforest of the Central Coast	6
2	1568	Blackbutt – Turpentine – Sydney Blue Gum mesic tall open forest on the ranges of the Central Coast	4
3	1598	Forest Red Gum grassy open forest on floodplains of the lower Hunter	22
4	1718	Swamp Mahogany - Flax-leaved Paperbark swamp forest on coastal lowlands of the Central Coast	8
5	1727	Swamp Oak - Sea Rush - Baumea juncea swamp forest on coastal lowlands of the Central Coast and Lower North Coast	9
6	1747	Grey Mangrove low closed forest	9
7	1737	Typha Rushland	34

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of above condition must be provided to the Principal Certifying Authority and Council prior to issue of construction certification.

43. Prior to the issue of a Construction Certificate, the class and number of species credits in the following table must be retired to offset the residual biodiversity impacts of the development or by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator.

Species	Common Name	SPECIES CREDITS REQUIRED
<i>Calidris ferruginea</i> (breeding)	Curlew Sandpiper (breeding)	56
<i>Chalinolobus dwyeri</i>	Large-eared Pied Bat	54
<i>Limosa</i> (breeding)	Black-tailed Godwit (breeding)	37
<i>Litoria aurea</i>	Green and Golden Bell Frog	95
<i>Myotis macropus</i>	Southern Myotis	14
<i>Xenus cinereus</i> (breeding)	Terek Sandpiper (breeding)	37

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of the above condition must be provided to the Principal Certifying Authority and Council prior to issue of construction certification.

44. Domestic animals (including, but not limited to horses and dogs) are to be excluded along the full extent of the cycleway under this approval. The required operational management plan is to detail the methods of exclusion for these animals, including but not limited to signage at all trailheads to the cycleway. Full details are to be included in the required operational management plan and signage plan and submitted prior to the issue of any Construction Certificate.
45. A Biodiversity and Environmental Interpretation and Signage Plan (BEI&SP) must be prepared by the Applicant prior to the issue of any Construction Certificate. The plan is to include, at a minimum, the following details:
- interpretation and educational signage, including information on wetland environments and ecosystems and with a focus on mitigating potential impacts to avifauna

- ii. instructive and compliance signage
  - iii. waste minimisation and management based on 'leave no trace' principles and advising that waste receptacles are only located to trailheads of the cycleway and users are otherwise required to carry out any waste/items they take into the cycleway area covered by this consent.
  - iv. detailed design and siting details of signage, to ensure it is appropriately located to avoid impacts to sensitive areas along the track, including wetlands.
46. The Applicant must prepare a Soil and Water Management Plan to address the risk of potential water pollution to the local watercourses. The Plan must include a water quality monitoring scheme that is to start before construction commences to record background conditions. Full details must be provided with the Construction Certificate application.
47. The Applicant must prepare an Erosion and Sediment Control Plan in accordance with *Urban Stormwater: Soils and Construction 4<sup>th</sup> Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004, The Plan is to be submitted with the Construction Certificate application.
48. The proposed amenities building adjacent Ironbark Creek is to be built in accordance with the location shown on 22-18317-C1100 Rev G 12/8/21, as opposed to the location shown within 22-18317-D1004 Rev B 28/11/19, The Plan is to be submitted with the Construction Certificate application.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE**

### **BUILDING AND CONSTRUCTION**

49. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
- Monday to Friday, 7:00 am to 6:00 pm and
  - Saturday 8:00 am to 1:00 pm.
- No noise from construction/demolition work is to be generated on public holidays.
50. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at City of Newcastle's Summerhill Waste Management Facility or other approved site.
51. If construction / demolition work is likely to cause pedestrian or vehicular conflicts in a public place, or involves the need to enclose a public place, a hoarding or fence is to be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.
52. The work site is to be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
53. The Applicant must erect a rigid and durable sign on any site on which building or demolition work is being carried out, before the commencement of the work:
- a) showing the name, address and telephone number of the Principal Certifier for building work and subdivision work, and
  - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
  - c) stating that unauthorised entry to the work site is prohibited, and
  - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out.

54. All building work is to be carried out in accordance with the provisions of the National Construction Code.
55. The Applicant must erect the City of Newcastle's 'Prevent Pollution' signs in conspicuous locations on or adjacent to the property boundary, so they are clearly visible to the public, or at other locations on the site as otherwise directed by the City of Newcastle, for the duration of demolition and construction work.

The signs can be obtained by presenting your development application receipt at City of Newcastle's Customer Enquiry Centre, Wallsend Library or the Master Builders Association Newcastle.

56. The Applicant must erect erosion and sediment control measures prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application and Construction Certificate documentation, and with the below requirements:
- a) Control over discharge of stormwater and containment of run-off and pollutants leaving the site is to be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins; and
  - b) Erosion and sediment control measures are to be designed and installed in accordance with the requirements of the *Managing Urban Stormwater: Soils and Construction 4<sup>th</sup> Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004.
  - c) Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
57. Prior to the commencement of work, a 3.0m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand or soil is not to be stockpiled on the all-weather vehicle access.
58. All necessary measures are to be undertaken to control dust emissions from the site. These measures are to include, but are not limited to:
- a) Restricting topsoil removal;
  - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion);
  - c) Alter or cease construction work during periods of high wind; and
  - d) Erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
59. Where the proposed development involves the destruction or disturbance of any survey monuments, those monuments affected are to be relocated, at no cost to the City of Newcastle, by a surveyor registered under the *Surveying and Spatial Information Act 2002*.
60. The construction and operation of the proposed cycleway must not at any time contravene any pre-existing access conditions imposed on Aurizon's operations under their approval (MP07\_0171 – dated 10 October 2013).
61. No works, stockpiles, portable sheds or the like (temporary or otherwise) are to occur on lands owned by Aurizon Operations Limited (Lot 104 & 105 DP 1189565, Lot 1 DP 155530) or lands owned by R D Smith (Lot 312 DP 583724). This limitation is inclusive of locations shown as chainages between 3500-5350 (as follows 3500, 3600, 4200, 5300 & 5350).

Note: This condition does not any on affect use of existing access roads for construction vehicles where agreements with existing land owners are secured.



62. Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
- b) Have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- c) Be a temporary chemical closet approved under the *Local Government Act 1993*.

## EARTHWORKS

63. All earthworks are to be undertaken in accordance with the approved Construction Environmental Management Plan. Should Acid Sulfate Soils be encountered during earthworks, construction shall be undertaken in accordance with the recommendations of the submitted Acid Sulfate Soils Management Plan and CEMP.
64. All excavations and backfilling are to be executed safely and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
65. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
66. Any excavated material to be removed from the site is to be assessed and classified in accordance with the NSW Environment Protection Authority's '*Waste Classification Guidelines Part 1: Classifying Waste*' and be transported and disposed of in accordance with the provisions of the *Protection Of The Environment Operations Act 1997* and the *Protection Of The Environment (Waste) Regulation 2014*.
67. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*.
68. Documentation verifying compliance with the conditions of a relevant Resource Recovery Order and Resource Recovery Exemption are to be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Resource Recovery Exemption. This documentation is to be provided to City of Newcastle officers or the Principal Certifier on request.

## CONTAMINATION

69. The development is carried out in accordance with the Richmond Vale Rail Trail Remedial Action Plan prepared by GHD Pty Ltd and dated 15 September 2021.
70. Any additional soil contamination investigations are to be reported for review to a NSW EPA accredited site auditor in accordance with the conclusions and recommendations given in the letter Re: Interim advice letter No.1 - Richmond Vale Rail Trail prepared by Ramboll Australia Pty Ltd 16 September 2021, as attached at Schedule 3.
71. Any remediation of contamination required to satisfy human health and ecological assessment criteria is to be achieved by removal of material off-site and disposal at an appropriately licenced facility only. Under no circumstances are capping or other remediation

methods that would require on-site management and/or implementation of a long-term environmental management plan to be used.

72. A Validation Sampling and Analysis Quality Plan is to be prepared and provided for review to a NSW EPA accredited site auditor prior to any remediation of contaminated soil in accordance with the conclusions and recommendations given in the letter Re: Interim advice letter No.1 - Richmond Vale Rail Trail prepared by Ramboll Australia Pty Ltd 16 September 2021, as attached at Schedule 3.

## HERITAGE

73. Protective barriers, fencing, padding or similar is to be placed on or around significant heritage fabric in the vicinity of the proposed works during construction to protect it from inadvertent impact. This is to include any remnant heritage fabric to be left in situ, brick platforms, cuttings, culverts, footings, fences and other material associated with the Former Railway Cuttings (I331 and I340), Railway Siding (I338), and Dairy Cool Rooms (I339), and any other material as guided by the project's heritage consultant and identified in the Statement of Heritage Impact (prepared by Artefact, March 2019).
74. If unanticipated suspected Aboriginal heritage items are uncovered at any time throughout the life of the project, excavation or disturbance of the area is to stop immediately and Heritage NSW is to be notified in accordance with Section 89A of the National Parks and Wildlife Act 1974 (NPW Act). Aboriginal objects in NSW are protected under the NPW Act. Unless the objects are subject to a valid Aboriginal Heritage Impact Permit, work must not recommence until approval to do so has been provided by Heritage NSW.
75. A full archival photographic record is to be undertaken of the Minmi to Hexham Railway, including its setting, prior to any works commencing on the site. The archival record is to be in accordance with the requirements of:
- a) The NSW Heritage Office publication "How to Prepare Archival Records of Heritage Items" (1998); and
  - b) The Department of Planning's "Recording Places of Cultural Significance" (1991)

The archival photographic record is to be submitted to Council for inclusion in the City Library collection. The archival photographic record is to be completed to the written satisfaction of CN's Heritage Officer before works can commence.

Note: The documentation shall include a summary report detailing the Development Application number, project description, date and authorship of the photographic record, method of documentation and any limitations of the photographic record. Photographs are to be provided in both black and white, and colour. Written confirmation is to be included in the documentation, issued with the authority of the applicant, owner(s) and the photographer (as required), that the City of Newcastle is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties. The signatures of the applicant, owner(s) and the photographer (as required) must be included. The photographic record is to include architectural plans and negatives of all images. Digital based recording is to be submitted on CD or USB drive with images saved as JPEG, TIFF or PDF files.

76. The development is to be undertaken in accordance with the archaeological management measures in the Aboriginal Heritage Management Plan prepared by Artefact (23/6/2021).
77. The development is to be undertaken in accordance with the recommendations in the Statement of Heritage Impact prepared by Artefact (March 2019) and Addendum Statement of Heritage Impact prepared by Artefact (27/8/2021).

78. Prior to works commencing, all contractors and sub-contractors are to undergo a site induction provided by a suitably qualified heritage professional, which is to include the significance of the site and the relevant obligations under the Heritage Act 1977 and the National Parks and Wildlife Act 1974.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

### **ENGINEERING**

79. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a condition that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to City of Newcastle's satisfaction prior to the completion of demolition work or prior to the issue of any Occupation Certificate in respect of development involving building work.
80. All works within the King Street, Shortland, the Woodford St, Minmi and the Kural Crescent, Fletcher Road reserves enabled by this consent are to be completed prior to the issue of an Occupation Certificate.
81. A copy of the engineering design plans approved with the Construction Certificate and/or s138 Roads Act approvals with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and to The City of Newcastle prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor.

### **ACCESS, SIGNAGE AND LIGHTING**

82. The combination of controlled access gates and associated fencing (in accordance with City of Newcastle's Standard Drawings A3540 & A3511), plus suitable signage warning the public (e.g. walkers and cyclist) not to use the cycleway on days declared to be of an extreme/catastrophic fire danger rating or when affected by flood warnings, as detailed within the required Emergency Management Plan (inclusive of the Flood Risk Management Plan), are to be designed and installed at all access points so to restrict access when closed, prior to issue of any Occupation Certificate.
83. Signage detailed within the overall signage and interpretation plan required to be prepared in accordance with these conditions of consent, is to be installed prior to the operation of the cycleway or issue of any Occupation Certificate.
84. The required motion activated low-light lighting system are to be installed for the M1 Motorway and Lenthans Drive tunnel. The motion activated sensors are to be located prior to the entries of each of the tunnels so to ensure that lighting activates well in advance of any cyclists entering. The lighting is to be directed and provided with appropriate baffles to minimise potential impacts on micro-bats while maintaining suitable lighting for cyclists. Certification that lighting has been appropriately installed is to be provided by a suitably qualified professional prior to issue of any Occupation Certificate.
85. The recesses within the M1 Motorway and Lenthans Drive tunnels are to be fitted with security mesh fencing, or security mesh gates with appropriate locking mechanisms to enable maintenance as required, so to remove any alcove spaces which would pose a risk in terms of Crime Prevention Through Environmental Design principles. The required security fencing and gates are to be installed prior to the issue of any Occupation Certificate.
86. All required waste receptables are to be installed prior to the issue of any Occupation Certificate.

## HERITAGE

87. The Heritage Interpretation Plan is to be implemented to the written satisfaction of City of Newcastle's heritage officer prior to the issue of any Occupation Certificate.

## CONTAMINATION

88. Prior to the issuing of the Occupation Certificate, a Site Audit Statement prepared by a NSW EPA accredited Site Auditor is to be submitted to the Principal Certifying Authority and Council. The Site Audit Statement is to confirm that the site is suitable for the proposed land use following the completion of the development and any required remediation. The site auditor is to review all documents relating to the assessment of contamination and any required remediation, validation and long-term management prior to finalisation of the Site Audit Statement.

Part of Lot 1 DP 90465  
Lot 148 DP 840897  
Lot 1-2 DP 171105  
Lot 2 DP 611518  
Lot 1 DP 1007615  
Lot 1 DP 805274  
Lot 1 DP 611441  
Lot 1 DP 877233  
Lot 21 DP 1195619  
Lot 147 DP 1143414  
Lot 10 DP 1194449  
Lot 324 DP 1175558

## CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

### ACCESS

89. The controlled access gates are to be closed so as to restrict access by the public (e.g. walkers and cyclist) on days declared to be of an extreme/catastrophic fire danger rating or when affected by flood warnings as detailed within the required Emergency Management Plan (inclusive of the Flood Risk Management Plan).
90. The Emergency Management Plan is to be reviewed every 5 years following its adoption and updated as necessary having regard to the surrounding bushfire and flood environments. The applicant is to maintain a record of associated reviews and provide a copy of any updated Emergency Management Plan to the City of Newcastle for its records as these updates occur.
91. All controlled access gates must be provided with a locking system that allows all related land owners/associated authorities to access the land on which the cycleway route is proposed (e.g. National Parks & Wildlife Service).
92. The use and operation of the cycleway is to be undertaken in a manner which does not restrict emergency access to the Hunter Wetland Centres existing gate adjacent the proposed cycleway and Ironbark Creek.

### LIGHTING AND AMENITIES

93. No artificial lighting is to be provided along the trail, other than for the tunnel crossings below the M1 (Pacific Motorway) and Lenaghans Drive.
94. Waste receptables, required signage, and amenities blocks are to be suitably cleaned and maintained at all times.

## NATIONAL PARKS AND WILDLIFE REQUIREMENTS

95. The use of the cycleway shall occur in accordance with the operational management plan prepared to the satisfaction of National Parks & Wildlife Service (NPWS), for the sections of the cycleway on NPWS managed lands. The Applicant is required to manage and maintain that part of the cycleway on NPWS managed lands.
96. All events proposed to occur on the cycleway which traverse National Parks & Wildlife Service lands will require a consent under the NPW Regulation and are to be undertaken in accordance with the NPWS Events, functions and venues policy at all times.
97. Domestic animals (including, but not limited to horses and dogs) are to be excluded along the full extent of the cycleway at all times.

## FLOODING

98. Any machinery and electrical equipment susceptible to damage from floodwaters are to be a minimum of 300 mm above existing ground levels.

## POEO REQUIREMENTS

99. The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the *Protection of the Environment Operations Act 1997*.

Should City of Newcastle consider that offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant, verifying that the recommended acoustic measures have been satisfactorily implemented, will be required to be submitted to City of Newcastle prior to the expiration of the nominated period.

100. The use and occupation of the premises is not to give rise to the emission of any 'air impurity' as defined under the *Protection of the Environment Operations Act 1997*, that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.

Should City of Newcastle consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emission of air impurities to an acceptable level and such measures will be required to be implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to City of Newcastle, confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors, before the expiration of the nominated period.

## ADVISORY MATTERS

- If archaeological deposits or relics not considered in the supporting documents for this consent are discovered, work must cease in the affected area(s) and the Heritage Council of NSW notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Heritage Council of NSW can be contacted on 02 9873 8500 or [heritagemailbox@environment.nsw.au](mailto:heritagemailbox@environment.nsw.au). A 'relic' is any deposit, object or material evidence that relates to the settlement of New South Wales, not being Aboriginal settlement, and is of State or local significance. It is an offence under the provisions

of the Heritage Act 1977 (NSW) for a person to disturb or excavate any land on which the person has discovered a relic except in accordance with a gazetted exemption or an excavation permit issued by the Heritage Council of NSW.

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the Applicant's expense and to the requirements of the City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Part 6 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
  - a) A Construction Certificate is to be obtained; and
  - b) A Principal Certifier is to be appointed for the building works and the City of Newcastle is to be notified of the appointment; and
  - c) The City of Newcastle is to be given at least two days notice of the date intended for commencement of building works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (i.e. 'on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice (i.e. 'on-the-spot fine') or prosecution.

## **END OF CONDITIONS**

## **SCHEDULE 2**

### **REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

### **REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

- Confirm and clarify the terms of the determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.

## SCHEDULE 3



Department of  
Primary Industries

Our Ref: IDA20/77

14 October 2020

Your Ref: CNR-10502

Newcastle City Council  
c/o: ePlanning Portal

Dear Newcastle City Council,

**Proposal:** IDA referral for Richmond Vale Rail Trail – boardwalk and bridge construction  
**Property:** 81 King St, Shortland – Ironbark Creek, Fishery Creek, Hexham Swamp

Thank you for your referral of 30/7/2020 seeking comment on this proposal from DPI Fisheries, a division of NSW Department of Primary Industries.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the *Fisheries Management Act 1994* (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated *Policy and Guidelines for Fish Habitat Conservation and Management (2013)*. In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks and aquatic reserves within NSW.

DPI Fisheries has reviewed the proposal in light of these provisions and has no objections, subject to the proponent meeting the General Terms of Approval that follow. As per s.4.47(3) of the *Environmental Planning and Assessment Act 1979*, any consent issued by Council must be consistent with these GTAs.

1. The proponent must apply for and obtain a Part 7 permit for dredging, reclamation and to harm marine vegetation under the FM Act from DPI Fisheries **prior to any works on site**. Permit application forms are available from the DPI Fisheries website at: <http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>; and
2. Environmental safeguards (sediment fences, silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms; and
3. The boardwalk design must not obstruct overland flow paths.

If Council or the proponent require any further information, please do not hesitate to contact me on (02) 8437 4981.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Conacher'.

**Sarah Conacher**  
Acting Senior Fisheries Manager, Coastal Systems

IDA20/77

**DPI Fisheries**  
Mail to: R. Philips, 1243 Bruxner Hwy, Wollongbar NSW 2477  
Email: [ahp.central@dpi.nsw.gov.au](mailto:ahp.central@dpi.nsw.gov.au)  
ABN 20770707468

Page 1 of 1