

|                                 |  |
|---------------------------------|--|
| <b>DATE OF DETERMINATION</b>    | 6 December 2021  |
| <b>DATE OF PANEL DECISION</b>   | 3 December 2021  |
| <b>DATE OF PANEL MEETING</b>    | Not applicable   |
| <b>PANEL MEMBERS</b>            | Alison McCabe (Chair), Juliet Grant and Sandra Hutton  |
| <b>APOLOGIES</b>                | None   |
| <b>DECLARATIONS OF INTEREST</b> | <p>John MacKenzie declared a conflict of duties as he is a member of the Art Gallery Expansion Working Party.</p> <p>Peta Winney-Baartz declared a conflict of interest because of her public support, as a Councillor, of the proposed redevelopment.</p> <p>Brad Luke declared a conflict of interest as he has voted, as a Councillor, on funding the redevelopment, and publicly stated views on the proposal.</p> |

Papers circulated electronically on 10 November 2021.

#### **MATTER DETERMINED**

PPSHCC-79 – Newcastle – MA2021/00192 at 1 Laman St, Cooks Hill – modification to approved redevelopment of Newcastle Art Gallery (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 had the benefit of a briefing from the Council and the applicant. Arising from the Panel's deliberation, the Panel requested a Supplementary memo from Council to provide clarification of requirements for public art contributions, identification of low scale planting that could occur on Darby Street and a document that set out how the conditions of the original consent were proposed to be changed. This memo was provided on 25 November 2021 and has been considered by the Panel.

The Panel noted that the original consent was issued in 2012, and had previously sought advice regarding physical commencement. Legal advice has been provided and reviewed. The Panel is satisfied the consent has been physically commenced.

The extent of change between the originally approved development and as proposed to be modified has been clearly documented and addressed. The Panel is satisfied that the proposal as modified meets the substantially the same development test under Section 4.55(2)(a).

The consent as issued resulted in the removal of vegetation on site, (Queen Street) and in the Darby Street Road Reserve – Condition 3 of the consent required replacement planting in Darby Street. Condition 67 required 17 replacement trees to be provided and planted, including the planting in Darby Street.

In the consideration of this modification application – notwithstanding replacement planting in Darby Street continued to be proposed – it became clear that through a combination of engineering, flooding constraints, and the location of a bus stop, that canopy trees could not be included in either the Darby Street footpath or carriageway, and were not supported by the Council assessment.

The greening of the public domain is particularly important in the consideration of development. Had this application been a new DA and not a modification, the Panel would have required canopy tree planting on the site, where planting in the public domain directly in front of the site was not an option. This is not available given the current approval and the approved siting of the building.

The Panel accepts the building is skilfully designed and will result in an acceptable urban response to the corner. If there is an opportunity through detailed design to introduce more greenery into the Darby Street façade given the absence of street tree canopy, this would be encouraged, but is not conditioned.

The Panel accepts that the proposal has broader social and economic benefits to the community as a cultural centre.

The Panel has amended condition 3 to provide low scale planting in the footpath to Council's satisfaction and specified a designated the area where compensatory planting should occur – (condition 67).

The Panel is satisfied of the merits of the modification and considers that the impact arising from the changes are acceptable.

The modification requires changes to conditions as outlined in Schedule 2.

The proposal could be approved subject to the modification of conditions outlined in Schedule 2.

### **Development application**

The Panel determined to approve the modification to the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979* subject to the modification to the conditions outlined in Schedule 2.

The decision was unanimous.

### **REASONS FOR THE DECISION**

The Panel determined to approve the modification application for the reasons outlined in Schedule 2 and the following reasons:

1. The proposed development is substantially the same development when compared against the development as approved.
2. The proposed changes to the development do not result in unreasonable impacts.

### **CONDITIONS**

The modification to the development application was approved subject to the modification to the conditions of development consent identified in Schedule 2.




The changes included additional matters from those originally identified in the public report and included:

- Addition of Condition 1B clarifying no approval for works in Darby Street;
- Condition 3 deleted and replaced to require a landscape plan for Darby Street; and
- Condition 67 amended to specify where area proximate to the site to accommodate replacement planting was to be located.

Schedule 3 is a full set of conditions as modified.

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

| PANEL MEMBERS  |   |
|--|---|
| <br>Alison McCabe (Chair) | <br>Sandra Hutton |
| <br>Juliet Grant          |   |

| SCHEDULE 1 |   |  |
|------------|---|--|
| 1          | PANEL REF – LGA – DA NO.                              | PPSHCC-79 – Newcastle – MA2021/00192   |
| 2          | PROPOSED DEVELOPMENT                                  | Section 4.55(2) modification to DA2010/1278 – community facility and retail (redevelopment of Newcastle Art Gallery) – change to floor plans, elevations and landscape including deletion of Darby Street retail premises  |
| 3          | STREET ADDRESS  | 1 Laman St, Cooks Hill   |
| 4          | APPLICANT/OWNER                                       | Newcastle City Council   |
| 5          | TYPE OF REGIONAL DEVELOPMENT                          | Section 4.55(2) Modification Application   |
| 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 (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>Newcastle Local 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</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:</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> <li>The public interest, including the principles of ecologically sustainable development</li> </ul> |
| 7          | MATERIAL CONSIDERED BY THE PANEL                      | <ul style="list-style-type: none"> <li>Council assessment report: 10 November 2021</li> <li>Council assessment memorandum: 25 November 2021</li> <li>Written submissions during public exhibition: nil (therefore no public meeting required)</li> </ul>   |
| 8          | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> <li>Briefing: 21 July 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton</li> <li><u>Council assessment staff</u>: Elle Durrant, Amy Ryan and Tracey Webb</li> <li><u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>Site inspections: <ul style="list-style-type: none"> <li>Sandra Hutton: 1 November 2021</li> <li>Juliet Grant: 1 November 2021</li> </ul> </li> <li>Final briefing to discuss Council's recommendation: 17 November 2021</li> </ul>  |

|    |                               |   |
|----|-------------------------------|---|
|    |                               | <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton</li> <li>○ <u>Council assessment staff</u>: Elle Durrant, Amy Ryan, Isabelle Rowlatt, Matthew Swan, Brian Cameron, Daniel O'Brien and Olivia Magrath</li> <li>○ <u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> <ul style="list-style-type: none"> <li>• Applicant Briefing: 17 November 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton</li> <li>○ <u>Council assessment staff</u>: Elle Durrant, Amy Ryan, Isabelle Rowlatt, Matthew Swan, Brian Cameron, Daniel O'Brien and Olivia Magrath</li> <li>○ <u>Department staff</u>: Leanne Harris and Lisa Foley</li> <li>○ <u>Applicant representatives</u>: Matthew Bennett, Kerry Clare, Dane Everett, Penelope Hoyle Philip, Alaine Roff and Naomi Ryan</li> </ul> </li> </ul> <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p> |
| 9  | <b>COUNCIL RECOMMENDATION</b> | Approval  |
| 10 | <b>DRAFT CONDITIONS</b>       | Attached to the Council assessment report   |

## INSTRUMENT OF MODIFICATION

|                                     |  |
|-------------------------------------|--|
| <b>Modification Application No:</b> | MA2021/00192   |
| <b>Development Application No:</b>  | DA2010/1278  |
| <b>Land:</b>                        | Lots 10, 11, 12, 13, 14 & 15, DP 1122031;<br>Lot 1, DP 63100;<br>Lot 1 DP 516670; and<br>Pt Lot 18, Sec G DP 978941  |
| <b>Property Address:</b>            | 1 Laman Street Cooks Hill NSW 2300   |
| <b>Development Consent:</b>         | Redevelopment of Newcastle Art Gallery   |
| <b>Proposed Development:</b>        | Sec 4.55(2) modification to DA2010/1278 - Community Facility and Retail (Redevelopment of Newcastle Art Gallery) - change to floor plans, elevations and landscape including deletion of Darby Street retail premises. |

In accordance with Section 4.55 of the *Environmental Planning and Assessment Act 1979*, Development Consent No. DA2010/1278 is to be modified by:

***Inserting Condition No. 1A to read:***

1A 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:

- a) Subsidence Advisory NSW, ref: TBA21-00305 & TBA21-02116, dated 12 October 2021

A copy of the General Terms of Approval are attached to this determination notice.

(Inserted under MA2021/00192)

***Inserting Condition No. 1B to read:***

1B Development consent has not been granted to the following elements of the proposal (as marked in red on the approved plans):

- a) Streets tree planting within Darby Street, including associated tree planting enclosures and paving works; and
- b) Low height planting within the Darby Street footway for the extent of any Bus Zone

Note: Condition 3 requires low height planting within the Darby Street footway for the frontage of the development excluding the extent of the Bus Zone.

Works not approved are to be excluded from documentation submitted for a Construction Certificate application.

**Amending Condition No. 2 to read:**

- 2 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      |
|--|-------------------|--|------------|
| DA-A-000<br>Title Sheet & Locality Plan                | Rev K             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-010<br>Site Demolition Plan                       | Rev G             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-011<br>Demolition Plan Level 1 & Mezzanine        | Rev F             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-012<br>Overall Site Plan                          | Rev I             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-032<br>Landscape Plan – Cover Sheet               | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-033<br>Landscape Plan – Existing Site Plan        | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-034<br>Landscape Plan – Site Masterplan           | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-035<br>Landscape Plan – Laman Street Elevation    | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-036<br>Landscape Plan – Darby Street Elevation    | Rev C             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-037<br>Landscape Plan – Plan Details (1)          | Rev B             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-038<br>Plan Details (2)                           | Rev C             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-039<br>Landscape Plan – Proposed Planting Species | Rev B             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-100<br>Proposed Lower Ground Floor Plan           | Rev M             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-101<br>Proposed Ground Floor Plan                 | Rev N             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-102<br>Proposed First Floor Plan                  | Rev K             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-103<br>Proposed Roof Plan                         | Rev I             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-200<br>Elevations (North & East)                  | Rev J             | Smith & Tzannes in association with Clare Design | 02/11/2021 |

|                                       |          |  |            |
|---------------------------------------|----------|--|------------|
| DA-A-201<br>Elevations (South & West) | Rev J    | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-202<br>Sections                  | Rev H    | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-903<br>Materials and Colours     | Rev D    | Smith & Tzannes in association with Clare Design | 29/10/2021 |
| DA-A-910<br>Perspective               | Rev A    | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| STZ-0196-ID1 1of2<br>Signage          | Issue v1 | Smith & Tzannes in association with Clare Design | 29/10/2013 |
| STZ-0196-ID1 2of2<br>Signage          | Issue v1 | Smith & Tzannes in association with Clare Design | 29/10/2013 |

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.

(Amended under MA2021/00192)

***Amending Condition No. 2A to read:***

- 2A. Additional details of the materials and finishes are to be submitted to the Development and Building Section of Council for approval prior to the issue of the Construction Certificate, and such details to be complied with and included in the details and schedule(s) for the Construction Certificate. Such details are to be consistent with the approved material and colours (Drawing No. DA-A-903, prepared by Smith & Tzannes in association with Clare Design, dated 29/10/2021) in type and quality.

(Amended under MA2021/00192)

***Amending Condition No. 3 to read:***

- 3 The Developer designing and constructing the following works in connection with the proposed development within the Darby Street and Queen Street public road reserve, adjacent to the site, will provide at no cost to Council and in accordance with Council's guidelines and design specifications:
- a) Footpath replacement to Council requirements
  - b) Kerb and gutter replacement along Darby Street frontage
  - c) New driveway crossing on Queen Street
  - d) Associated drainage works
  - e) Installation of low height planting such as shrubs, grasses, or ground covers to Council's requirements within the Darby Street footway for the frontage of the development site excluding the extent of any Bus Zone. Each garden bed is to be 3m long and 600mm wide, offset 200mm from the Darby Street kerb. Spacing between garden beds is to be 3m.
  - f) The existing 3 metre long, 225mm size stormwater pipe downstream of the existing kerb inlet pit at the corner of Laman and Darby Streets is to be upgraded to a 375mm pipe.

Engineering and landscape 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.

(Amended under MA2021/00192)

***Amending Condition No. 7 to read:***

- 7 All stormwater runoff from the proposed development being managed in accordance with the requirements of the Section 7.06 'Stormwater' of Newcastle Development Control Plan 2012 and the associated Technical Manual and the latest issue of AS 3500.3 where applicable, as indicated on the stormwater management concept plan prepared by Arup (Job No. 278551, Drg. No. SK-H-001 (Drawings 1 to 7), dated 29.10.2021). Full details to be included in documentation for a Construction Certificate application.

(Amended under MA2021/00192)

***Deleting Condition No. 15***

***Amending Condition No. 16 to read:***

16. Prior to any ground disturbance works occurring on site, the applicant must obtain an approved Section 140 application under the Heritage Act 1977 to undertake archaeological excavation of the study area. The applicant must comply with all the approval conditions of the Section 140 approval. Full details are to be included in documentation for a Construction Certificate application.

(Amended under MA2021/00192)

***Amending Condition No. 17 to read:***

17. Prior to the work commencing and before the release of the Construction Certificate an archival record of the building, both internally and externally is to be made that is consistent with the NSW Heritage Office publications:
- a) How to Prepare Archival Records of Heritage Items (1998); and
  - b) Photographic Recording of Heritage Items using Film or Digital Capture (2006).

The archival record is to be submitted to Council for inclusion in the City Library collection prior to the issue of the Construction Certificate. Confirmation that the records have been submitted to Council shall be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

(Amended under MA2021/00192)

***Amending Condition No. 18 to read:***

18. The building floor level of the, plant room, main switch board room and communications area being set a minimum of 300mm above the local 1 in 100 year ARI flood level. Details to be indicated on plans for a Construction Certificate application.

(Amended under MA2021/00192)

***Inserting Condition No. 18A to read:***

- 18A. The proposed awning is to be designed in a manner that is consistent with Element 7.10 'Street Awnings and Balconies' of the Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under DA2010/1278.02 - 3 September 2012)

***Inserting Condition No. 18B to read:***

- 18B The existing 3 metre long, 225mm size stormwater pipe downstream of the existing kerb inlet pit at the corner of Laman and Darby Streets is to be upgraded to a 375mm pipe.

A separate application must be lodged and consent obtained from Council for all works within the road reserve 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.

(Inserted under MA2021/00192)

***Inserting Condition No. 18C to read:***

- 18C The stormwater design is to ensure post-development stormwater flows do not exceed pre-development flows to both Queen Street and Darby Street in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012. Full details are to be provided as part of a construction certificate application.

(Inserted under MA2021/00192)

***Inserting Condition No. 18D to read:***

- 18D The applicant is required to engage an electrical consultant or contractor to complete an online application to Ausgrid for the connection of the approved development to the adjacent electricity network infrastructure.

(Inserted under MA2021/00192)

***Inserting Condition No. 18E to read:***

- 18E Provision is to be made on the site for the installation of a 'kiosk' type electricity substation should such be required by the electricity authority and any such 'kiosk' being located in public reserves and/or private land and are not to be located within road reserves. Any such substation is to be appropriately screened to ensure the visual amenity of the streetscape is maintained. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under MA2021/00192)

***Inserting Condition No. 18F to read:***

- 18F A title search of the development site should be completed to check for existing electricity easements. If easements are present, Ausgrid must assess the proposed activity within the easement. Reference should be given to Ausgrid's "Living with Electricity Easements" brochure. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under MA2021/00192)

***Inserting Condition No. 18G to read:***

- 18G The internal floor level of the 'Lower Ground Floor' is not to be any lower than RL 7.4 AHD as indicated in the approved plans. Basement or similar structures below this level will require a separate application to Council. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under MA2021/00192)

***Amending Condition No. 20 to read:***

20. A commercial type vehicular crossing up to 13.5m with appropriate splays being constructed across the public footway at the proposed driveway entrance/exit at no cost to Council and in accordance with Crossing Standard Details A1300.

(Amended under MA2021/00192)

***Inserting Condition No. 21A to read:***

- 21A Any structure on or over the public road reserve, including balconies and awnings, is to be the subject of a separate consent from Council, under Section 138 of the *Roads Act 1993*, prior to commencement of work.

Note: A separate approval from Council must be obtained for all structures within the public road reserve pursuant to Section 138 of the *Roads Act 1993*. For further information contact Council's Strategic Property and Fleet Management Services on 4974 2000 to request a Road Consent. A fee will be payable in this regard.

(Inserted under DA2010/1278.02 - 3 September 2012)

***Inserting Condition No. 21B to read:***

- 21B Prior to the commencement of any works within the public road reserve, details shall be submitted with the Roads Act Application for the proposed awning, demonstrating compliance with the following:

- a) Appropriate lighting being provided for the carpark and pedestrian pathways in accordance with AS 1158 - Lighting and AS 4282 - Control of the Obtrusive Effects of Outdoor Lighting.
- b) The design of the awning is to include cutout segments (if needed) to accommodate street trees.

(Inserted under DA2010/1278.02 - 3 September 2012)

***Inserting Condition No. 53A to read:***

- 53A There are existing overhead electricity network assets in Queen and Darby Street, adjacent to the development site. Workcover Code of Practice 2006 Work Near Overhead Powerlines outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction phase. Any relocation of overhead mains required to maintain minimum safety clearances is at the cost of the person having the benefit of this consent.

(Inserted under MA2021/00192)

***Inserting Condition No. 53B to read:***

- 53B The development is in proximity to underground electricity assets. In addition to DBYD searches a ground search is to be conducted to locate electricity assets immediately prior to commencing work to check for updates of installed utilities. During construction work is to be undertaken in accordance with Ausgrids's Network Standard 156 – Working near or around underground cables. Any alterations to Ausgrid's underground electricity main will be contestable works and funded by the person having the benefit of this consent.

(Inserted under MA2021/00192)

***Inserting Condition No. 53C to read:***

53C 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*.

(Inserted under MA2021/00192)

***Inserting Condition No. 53D to read:***

53D The development is to be undertaken in accordance with the recommendations in the Historical Archaeological Assessment and Statement of Heritage Impact prepared by Austral Archaeology (dated 4 November 2021).

(Inserted under MA2021/00192)

***Inserting Condition No. 53E to read:***

53E 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.

(Inserted under MA2021/00192)

***Inserting Condition No. 53F to read:***

53F Construction works are to be carried out in accordance with the recommendations of;

- a) Report: Douglas Partners Pty Ltd (February 2021) Report on Groundwater Sampling R.001.Rev0; and
- b) Letter: Douglas Partners Pty Ltd (8 November 2021) Proposed Rainwater Tank. R.001.Rev0.

(Inserted under MA2021/00192)

***Inserting Condition No. 53G to read:***

53G Monitoring for volatile gases shall be conducted by a suitably qualified and experienced environmental consultant during the excavations for the rainwater tank. If volatile gases are detected which exceed appropriate guidelines, works are to immediately cease and advice is to be sought from the environmental consultant and recommendations in respect to the management of health or environmental risk are to be implemented in accordance with appropriate guidelines and legislation.

(Inserted under MA2021/00192)

***Amending Condition No. 66 to read:***

66. The building floor level of the plant room, main switch board room and communications area being set a minimum of 300mm above the local 1 in 100 year ARI flood level. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor's Certificate is to be forwarded to the Principal Certifying Authority.

(Amended under MA2021/00192)

**Amending Condition No. 67A to read:**

67A 17 suitable replacement trees either on/adjoining the subject site, or off site within a distance of 400 meters as measured from any point along the development site boundary, are required in order to replace the trees being removed as part of the development. All replacement trees are to be planted prior to the issue of an Occupation Certificate, and a list provided to the certifying authority.

(Amended under MA2021/00192)

**Amending Condition No. 67B to read:**

67B The awning on the Darby Street, Queen Street and Laman Street frontages is required to be constructed prior to the issue of the Occupation Certificate for the development the subject of this consent.

(Amended under DA2010/1278.02 - 3 September 2012)

**Deleting Condition No. 67C**

**Inserting Condition No. 67D to read:**

67D Prior to the release of the Occupation Certificate, the Applicant must demonstrate to the written satisfaction of Council, that they have satisfied the requirements for lodging all final archaeological excavation reports required under any and all s.140 applications under the *Heritage Act 1977* which have been approved by the Heritage Council of NSW for this site.

(Inserted under MA2021/00192)

**Deleting Condition No. 68**

**Amending Condition No. 69 to read:**

69. The maximum number of patrons permitted within the café and associated terrace area is to be restricted to 100 persons in total. A sign must be displayed in a prominent position in the cafe stating the maximum number of patrons, as specified in the development consent, that are permitted in the café.

(Amended under MA2021/00192)

**Amending Condition No. 70 to read:**

70. The hours of operation or trading of the premises are to be not more than from:

| DAY       | START | FINISH |          |
|-----------|-------|--------|----------|
| Monday    | 6am   | 10pm   | Same day |
| Tuesday   | 6am   | 10pm   | Same day |
| Wednesday | 6am   | 10pm   | Same day |
| Thursday  | 6am   | 10pm   | Same day |
| Friday    | 6am   | 10pm   | Same day |
| Saturday  | 6am   | 10pm   | Same day |
| Sunday    | 6am   | 10pm   | Same day |

unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

(Amended under MA2021/00192)

***Deleting Condition No. 71***

***Deleting Condition No. 74***

***Deleting Condition No. 75***

***Deleting Condition No. 76***

***Deleting Condition No. 77***

***Deleting Condition No. 78***

***Deleting Condition No. 79***

***Inserting Condition No. 86A to read:***

86A Provision is to be made for regular maintenance to ensure the continuing structural integrity and attractive appearance of the street awning. A maintenance plan is to be developed and include:

- a) annual inspection of structural components
- b) repainting, as required
- c) regular maintenance to guttering and downpipes
- d) regular cleaning and replacement of defective lighting, advertising or other deteriorated components of the awning
- e) regular cleaning of awning glazing, where installed.

(Inserted under DA2010/1278.02 - 3 September 2012)

***Inserting Condition No. 96 to read:***

96 If archaeological deposits or relics not identified and 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.gov.au](mailto:heritagemailbox@environment.nsw.gov.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.

(Inserted under MA2021/00192)

**Inserting Schedule 2 to read:**

## **SCHEDULE 2**

### **SUBSIDENCE ADVISORY NSW**

#### **GENERAL TERMS OF APPROVAL**

Issued in accordance with Section 4.47 of the *Environmental Planning & Assessment Act 1979* for the subdivision / development of land.

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As delegate for Subsidence Advisory NSW under delegation executed 12 October 2021, general terms of approval are granted for the development described in Schedule 1, subject to the conditions attached in Schedule 2.

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#### **SCHEDULE 1**

|                           |   |
|---------------------------|---|
| Ref:                      | <b>TBA21-00305 &amp; TBA21-02116</b>  |
| DA:                       | <b>MA/2021/00192</b>  |
| Site Address:             | <b>1 LAMAN STREET COOKS HILL</b>  |
| Lot and DP:               | <b>LOTS 11-14 &amp; PT LOT 15 DP 1122031, LOT 1 DP 63100, LOT 1 DP 516670 AND PART LOT 18 SEC G DP 9789</b> |
| Proposal:                 | <b>ART GALLERY EXPANSION – ALTERATIONS AND ADDITIONS</b>  |
| Mine Subsidence District: | <b>NEWCASTLE</b>  |

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## SCHEDULE 2

### GENERAL TERMS OF APPROVAL

| GENERAL                               |  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
|---------------------------------------|--|----------|------------------------------|---------|----|-----------------------------------|----------|----|---------------|--------|----|------------------------------|------|
| Plans, Standards and Guidelines       |  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 1.                                    | <p>These General Terms of Approval (GTAs) only apply to the development described in the plans and associated documentation relating to development application and provided to Subsidence Advisory NSW.</p> <p>Any amendments or subsequent modifications to the development may render these GTAs invalid.</p> <p>If the proposed development is amended or the development consent modified, Subsidence Advisory NSW must be notified to determine if any variations to these GTAs are required.</p>  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 2.                                    | <p>This approval expires 5 years after the date the approval was granted if construction work has not physically commenced.</p>  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| PRIOR TO COMMENCEMENT OF CONSTRUCTION |  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 3.                                    | <p><b>Prescribed Design Parameters</b></p> <p>Provide certification from a qualified structural engineer that the proposed additions are capable of remaining "safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' damage in accordance with AS2870 (Damage Classification), and readily repairable" if subjected to the subsidence parameters outlined in the Douglas Partners report on 'Pillar Stability and Subsidence Modelling", dated 27 August 2021 with maximum values of:</p> <table><tr><td>a)</td><td>Maximum Vertical Subsidence:</td><td>50 mm/m</td></tr><tr><td>b)</td><td>Maximum Horizontal Strains (+/-):</td><td>1.8 mm/m</td></tr><tr><td>c)</td><td>Maximum Tilt:</td><td>3 mm/m</td></tr><tr><td>d)</td><td>Maximum Radius of Curvature:</td><td>5 km</td></tr></table> | a)       | Maximum Vertical Subsidence: | 50 mm/m | b) | Maximum Horizontal Strains (+/-): | 1.8 mm/m | c) | Maximum Tilt: | 3 mm/m | d) | Maximum Radius of Curvature: | 5 km |
| a)                                    | Maximum Vertical Subsidence:   | 50 mm/m  |                              |         |    |                                   |          |    |               |        |    |                              |      |
| b)                                    | Maximum Horizontal Strains (+/-):  | 1.8 mm/m |                              |         |    |                                   |          |    |               |        |    |                              |      |
| c)                                    | Maximum Tilt:  | 3 mm/m   |                              |         |    |                                   |          |    |               |        |    |                              |      |
| d)                                    | Maximum Radius of Curvature:   | 5 km     |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 4.                                    | <p><b>'Yard' / Dudley Seam Workings Grouting</b></p> <p>Remove the risk of mine subsidence via grouting of the mine workings in the Yard (Dudley) Seam workings in accordance with the "Douglas Partners Report on Grouting and Verification Plan for 'Yard' / Dudley Seam Workings", dated 14 September 2021.</p>   |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 5.                                    | <p><b>Borehole Seam Workings Grouting</b></p> <p>Submit a final grout proposal in accordance with "Douglas Partners report on Pillar Stability and Subsidence Modelling", dated 27 August 2021 to mitigate the risk of mine subsidence such that the residual parameters are in accordance with those identified in</p>  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |



|                          |  |
|--------------------------|--|
|                          | <p>the above report. The final report submitted prior to commencing work is to include:</p> <ol style="list-style-type: none"> <li><b>Grout Implementation Plan;</b> including a site plan, grout locations (dimensioned in plan and elevation), proposed bore locations, and grout designer's endorsement.</li> <li><b>Grout Verification Plan;</b> showing the location of verification holes and the grout designer's endorsement.</li> </ol>   |
| 6.                       | On completion of grouting submit a <b>Grout Verification Output Report</b> endorsed by the grout designer and site verification engineers for compliance with the accepted Grouting Plans.   |
| 7.                       | <p>Submit an "Engineering Impact Statement" prior to commencement of detailed design for acceptance by SA NSW, which shall identify the:</p> <ol style="list-style-type: none"> <li>Mine Subsidence Parameters used for the design.</li> <li>Main building elements and materials.</li> <li>Risk of damage due to mine subsidence</li> <li>Design measures proposed to control the risks.</li> <li>Provide certification that the design will ensure the improvement remains "<i>safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' in accordance with AS2870 (Damage Classification), and readily repairable</i>".</li> <li>Comment on the: <ul style="list-style-type: none"> <li>likely building damage in the event of mine subsidence.</li> <li>sensitivity of the design to greater levels of mine subsidence.</li> </ul> </li> </ol> |
| 8.                       | Submit a final design incorporating the design methodology contained in the " <i>Engineering Impact Statement</i> ", for acceptance by Subsidence Advisory NSW prior to commencement of construction. It shall include certification by a qualified structural engineer including a statement to the effect that the improvements will remain " <i>safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' damage in accordance with AS2870 (Damage Classification), and readily repairable</i> " taking into consideration the mine subsidence parameters outlined above.   |
| <b>POST CONSTRUCTION</b> |  |
| 9.                       | <p>Establish 4 survey monitoring reference marks on and around the circumference of the building(s) so that building movement can be monitored should mine subsidence occur.</p> <p>A plan with the position including Easting, Northing and RL of each monitoring reference marks and original RLs are to be forwarded to Subsidence Advisory NSW.</p>  |
| 10.                      | Upon completion of construction, work-as-executed certification by a qualified engineer will be required by Subsidence Advisory NSW confirming that construction was in accordance with the plans accepted by Subsidence Advisory NSW.   |

#### Dispute Resolution

If you are dissatisfied with the determination of this application an appeal may be formally submitted with the Chief Executive Officer for an independent internal review. The application must be made in writing and must provide reasons why the determination should be changed.

***Inserting Schedule 3 to read:***

### **SCHEDULE 3**

#### **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 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.
- 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.

(Inserted under MA2021/00192)

## SCHEDULE OF CONDITIONS

|                              |  |
|------------------------------|--|
| <b>Application No:</b>       | MA2021/00192   |
| <b>Land:</b>                 | Lots 10, 11, 12, 13, 14 & 15, DP 1122031;<br>Lot 1, DP 63100;<br>Lot 1 DP 516670; and<br>Pt Lot 18, Sec G DP 978941  |
| <b>Property Address:</b>     | 1 Laman Street Cooks Hill NSW 2300   |
| <b>Proposed Development:</b> | Sec 4.55(2) modification to DA2010/1278 - Community Facility and Retail (Redevelopment of Newcastle Art Gallery) - change to floor plans, elevations and landscape including deletion of Darby Street retail premises. |

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### SCHEDULE 1

#### REASONS FOR CONDITIONS

- 1 The conditions of this consent have been imposed in accordance with Section 80A of the *Environmental Planning and Assessment Act 1979* (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

#### ADMINISTRATIVE CONDITIONS

- 1A 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:
  - a) Subsidence Advisory NSW, ref: TBA21-00305 & TBA21-02116, dated 12 October 2021

A copy of the General Terms of Approval are attached to this determination notice.

(Inserted under MA2021/00192)

#### WORKS NOT APPROVED

- 1B Development consent has not been granted to the following elements of the proposal (as marked in red on the approved plans):
  - a) Streets tree planting within Darby Street, including associated tree planting enclosures and paving works; and
  - b) Low height planting within the Darby Street footway for the extent of any Bus Zone

Note: Condition 3 requires low height planting within the Darby Street footway for the frontage of the development excluding the extent of the Bus Zone.

Works not approved are to be excluded from documentation submitted for a Construction Certificate application.

(Inserted under MA2021/00192)

## APPROVED DOCUMENTATION

- 2 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      |
|--|-------------------|--|------------|
| DA-A-000<br>Title Sheet & Locality Plan                | Rev K             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-010<br>Site Demolition Plan                       | Rev G             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-011<br>Demolition Plan Level 1 & Mezzanine        | Rev F             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-012<br>Overall Site Plan                          | Rev I             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-032<br>Landscape Plan – Cover Sheet               | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-033<br>Landscape Plan – Existing Site Plan        | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-034<br>Landscape Plan – Site Masterplan           | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-035<br>Landscape Plan – Laman Street Elevation    | Rev B             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-036<br>Landscape Plan – Darby Street Elevation    | Rev C             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-037<br>Landscape Plan – Plan Details (1)          | Rev B             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-038<br>Plan Details (2)                           | Rev C             | Smith & Tzannes in association with Clare Design | 15/10/2021 |
| DA-A-039<br>Landscape Plan – Proposed Planting Species | Rev B             | Smith & Tzannes in association with Clare Design | 11/10/2021 |
| DA-A-100<br>Proposed Lower Ground Floor Plan           | Rev M             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-101<br>Proposed Ground Floor Plan                 | Rev N             | Smith & Tzannes in association with Clare Design | 02/11/2021 |
| DA-A-102<br>Proposed First Floor Plan                  | Rev K             | Smith & Tzannes in association with Clare Design | 02/11/2021 |

|  |          |   |            |
|--|----------|---|------------|
| DA-A-103<br>Proposed Roof Plan           | Rev I    | Smith & Tzannes in association<br>with Clare Design | 11/10/2021 |
| DA-A-200<br>Elevations (North &<br>East) | Rev J    | Smith & Tzannes in association<br>with Clare Design | 02/11/2021 |
| DA-A-201<br>Elevations (South &<br>West) | Rev J    | Smith & Tzannes in association<br>with Clare Design | 02/11/2021 |
| DA-A-202<br>Sections                     | Rev H    | Smith & Tzannes in association<br>with Clare Design | 02/11/2021 |
| DA-A-903<br>Materials and Colours        | Rev D    | Smith & Tzannes in association<br>with Clare Design | 29/10/2021 |
| DA-A-910<br>Perspective                  | Rev A    | Smith & Tzannes in association<br>with Clare Design | 02/11/2021 |
| STZ-0196-ID1 1of2<br>Signage             | Issue v1 | Smith & Tzannes in association<br>with Clare Design | 29/10/2013 |
| STZ-0196-ID1 2of2<br>Signage             | Issue v1 | Smith & Tzannes in association<br>with Clare Design | 29/10/2013 |

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.

(Amended under MA2021/00192)

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

- 2A. Additional details of the materials and finishes are to be submitted to the Development and Building Section of Council for approval prior to the issue of the Construction Certificate, and such details to be complied with and included in the details and schedule(s) for the Construction Certificate. Such details are to be consistent with the approved material and colours (Drawing No. DA-A-903, prepared by Smith & Tzannes in association with Clare Design, dated 29/10/2021) in type and quality.

(Amended under MA2021/00192)

- 3 The Developer designing and constructing the following works in connection with the proposed development within the Darby Street and Queen Street public road reserve, adjacent to the site, will provide at no cost to Council and in accordance with Council's guidelines and design specifications:
- a) Footpath replacement to Council requirements
  - b) Kerb and gutter replacement along Darby Street frontage
  - c) New driveway crossing on Queen Street
  - d) Associated drainage works
  - e) Installation of low height planting such as shrubs, grasses, or ground covers to Council's requirements within the Darby Street footway for the frontage of the development site excluding the extent of any Bus Zone. Each garden bed is to be 3m long and 600mm wide, offset 200mm from the Darby Street kerb. Spacing between garden beds is to be 3m.
  - f) The existing 3 metre long, 225mm size stormwater pipe downstream of the existing kerb inlet pit at the corner of Laman and Darby Streets is to be upgraded to a 375mm pipe.

Engineering and landscape 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.

(Amended under MA2021/00192)

- 4 The building is to be provided with adequate means of access for persons with disabilities in order to comply with the Building Code of Australia and the *Disability Discrimination Act 1992*.

In this regard, the applicant is to submit a design detail which has been certified by a qualified Access Advisor\* with the application for a Construction Certificate.

Note:

- i) Compliance with the Building Code of Australia only can still leave a building professional or building owner in contravention of the *Disability Discrimination Act 1992*.
  - ii) \* A qualified Access Advisor is a current member of –  
Association of Consultants in Access Aust Inc  
326 Autumn Street, HERNE HILL, VIC. 3218.  
Ph (03) 5221 2820  
[www.access.asn.au](http://www.access.asn.au)
  - iii) A qualified Access Advisor should carry current and relevant public liability and public indemnity insurances for the practice of their trade.
- 5 All proposed 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 in documentation for a Construction Certificate application.
- 6 Landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.
- 7 All stormwater runoff from the proposed development being managed in accordance with the requirements of the Section 7.06 'Stormwater' of Newcastle Development Control Plan 2012 and the associated Technical Manual and the latest issue of AS 3500.3 where applicable, as indicated on the stormwater management concept plan prepared by Arup (Job No. 278551, Drg. No. SK-H-001 (Drawings 1 to 7), dated 29.10.2021). Full details to be included in documentation for a Construction Certificate application.
- (Inserted under MA2021/00192)
- 8 All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.
- 9 All existing trees on the site outside the envelope of the proposed building are to be preserved where practicable and all such trees being indicated on the required comprehensive landscape design plan and being adequately protected against damage during the building construction period. Full details are to be included in the documentation for a Construction Certificate application.
- 10 The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's certificate of compliance is to be included in documentation for a Construction Certificate application.

- 11 Adequate facilities are to be provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements being made for regular removal and disposal of same. The required garbage facility is to be suitable for the accommodation of Council approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a Construction Certificate application.
- 12 The premises are to be provided with adequate toilet facilities and wash hand basins for each sex in accordance with the provisions of the Building Code of Australia. Full details are to be included in the documentation for a Construction Certificate application.
- 13 The design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the Construction Certificate application.
- 14 The proposed lighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard 4282:1997 - Control of the obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.
- 15 (Deleted under MA2021/00192)
- 16 Prior to any ground disturbance works occurring on site, the applicant must obtain an approved Section 140 application under the Heritage Act 1977 to undertake archaeological excavation of the study area. The applicant must comply with all the approval conditions of the Section 140 approval. Full details are to be included in documentation for a Construction Certificate application.

(Amended under MA2021/00192)

- 17 Prior to the work commencing and before the release of the Construction Certificate an archival record of the building, both internally and externally is to be made that is consistent with the NSW Heritage Office publications:
  - a) How to Prepare Archival Records of Heritage Items (1998); and
  - b) Photographic Recording of Heritage Items using Film or Digital Capture (2006).

The archival record is to be submitted to Council for inclusion in the City Library collection prior to the issue of the Construction Certificate. Confirmation that the records have been submitted to Council shall be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

(Amended under MA2021/00192)

- 18 The building floor level of the plant room, main switch board room and communications area being set a minimum of 300mm above the local 1 in 100 year ARI flood level. Details to be indicated on plans for a Construction Certificate application.

(Amended under MA2021/00192)

- 18A The proposed awning is to be designed in a manner that is consistent with Element 7.10 'Street Awnings and Balconies' of the Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under DA2010/1278.02 - 3 September 2012)

- 18B The existing 3 metre long, 225mm size stormwater pipe downstream of the existing kerb inlet

pit at the corner of Laman and Darby Streets is to be upgraded to a 375mm pipe.

A separate application must be lodged and consent obtained from Council for all works within the road reserve 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.

(Inserted under MA2021/00192)

- 18C The stormwater design is to ensure post-development stormwater flows do not exceed pre-development flows to both Queen Street and Darby Street in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012. Full details are to be provided as part of a construction certificate application.

(Inserted under MA2021/00192)

- 18D The applicant is required to engage an electrical consultant or contractor to complete an online application to Ausgrid for the connection of the approved development to the adjacent electricity network infrastructure.

(Inserted under MA2021/00192)

- 18E Provision is to be made on the site for the installation of a 'kiosk' type electricity substation should such be required by the electricity authority and any such 'kiosk' being located in public reserves and/or private land and are not to be located within road reserves. Any such substation is to be appropriately screened to ensure the visual amenity of the streetscape is maintained. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under MA2021/00192)

- 18F A title search of the development site should be completed to check for existing electricity easements. If easements are present, Ausgrid must assess the proposed activity within the easement. Reference should be given to Ausgrid's "Living with Electricity Easements" brochure. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under MA2021/00192)

- 18G The internal floor level of the 'Lower Ground Floor' is not to be any lower than RL 7.4 AHD as indicated in the approved plans. Basement or similar structures below this level will require a separate application to Council. Full details are to be included in documentation for a Construction Certificate application.

(Inserted under MA2021/00192)

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

- 19 A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.

- 20 A commercial type vehicular crossing up to 13.5m with appropriate splays being constructed across the public footway at the proposed driveway entrance/exit at no cost to Council and in accordance with Crossing Standard Details A1300.

(Amended under MA2021/00192)

- 21 Any proposed work within the public road reserve, including driveway works, reinstatement of a kerb or installation of drainage, is to be the subject of the separate approval of Council prior



to commencement.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the *Roads Act 1993* (NSW). For further information contact Council's Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

- 21A Any structure on or over the public road reserve, including balconies and awnings, is to be the subject of a separate consent from Council, under Section 138 of the *Roads Act 1993*, prior to commencement of work.

Note: A separate approval from Council must be obtained for all structures within the public road reserve pursuant to Section 138 of the *Roads Act 1993*. For further information contact Council's Strategic Property and Fleet Management Services on 4974 2000 to request a Road Consent. A fee will be payable in this regard.

(Inserted under DA2010/1278.02 - 3 September 2012)

- 21B Prior to the commencement of any works within the public road reserve, details shall be submitted with the Roads Act Application for the proposed awning, demonstrating compliance with the following:

- a) Appropriate lighting being provided for the carpark and pedestrian pathways in accordance with AS 1158 - Lighting and AS 4282 - Control of the Obtrusive Effects of Outdoor Lighting.
- b) The design of the awning is to include cutout segments (if needed) to accommodate street trees.

(Inserted under DA2010/1278.02 - 3 September 2012)

- 22 Prior to commencement of site works the developer submitting to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.

Note: The required plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve. The plan is to be prepared in accordance with Australian Standard 1742.3 – 2002.

- 23 Prior to the commencement of any works in the public road reserve, the developer providing written notification to the adjoining landowners of the intention to start works, advising details of the scheduling of works and nominating a contact person. A legible prominent sign stating the name of the developer and contractor and a 24 hour contact telephone number is to also be displayed on-site during the construction period.

- 24 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* (NSW), or
- c) be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).

- 25 A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services)

and the demolisher prior to commencement of work.

- 26 Any demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
- a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development;
  - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW;
  - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request;
  - d) Seven working days notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900);
  - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
- 27 The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority's requirements prior to demolition.
- 28 Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council's Summerhill Waste Management Facility or other approved site.
- 29 At a minimum, the following waste management measures shall be implemented during the construction phase:
- a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste.
  - b) The waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets.
  - c) Appropriate provision is to be made to prevent wind blown rubbish leaving the site.
  - d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.
- Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW).
- 30 If construction / demolition work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the need to enclose a public place, a hoarding or fence must 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.

An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the *Occupational Health and Safety Act 2000* (NSW), *Occupational Health and Safety Regulation 2001* (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

- 31 The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 32 A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c) stating that unauthorised entry to the work site is prohibited. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- 33 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 34 All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
- 35 If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.

The above requirements does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to the requirements not applying.

- 36 The proposed remediation works being carried out in accordance with the requirements of the submitted Remedial Action Plan (RAP) prepared by Douglas Partners Pty Ltd (February 2012), the requirements and the conditions of this consent.
- 37 A copy of the ongoing environmental management plan is to be kept on the premises at all times and implemented as required in relation to site maintenance and future works involving excavation.
- 38 Remediation works being carried out in accordance with the requirements of Element 4.2 (*Contaminated Land Management*) and associated technical manual.
- 39 Any excavated material to be removed from the site is to be assessed, classified, transported

and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.

- 40 Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
- 41 Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.
- 42 All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
- 43 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.
- 44 All loading bays are to be permanently marked out on the pavement surface, being clearly indicated by signs.
- 45 The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings.
- 46 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;
  - Saturday, 8:00 am to 1:00 pm;

No noise from construction/demolition work is to be generated on Sundays or Public Holidays.

- 47 Council's 'PREVENT POLLUTION' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council's 'PREVENT POLLUTION' sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter at 282 King Street Newcastle.

- 48 Erosion and sediment control measures are to be implemented 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 with the below requirements:
  - a) Control over discharge of stormwater and containment of run-off and pollutants leaving the site must 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.
  - b) Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the *Managing Urban Stormwater: Soils and Construction 4th Edition – Vol. 1 (the 'Blue Book')* published by Landcom, 2004.

- 49 Prior to the commencement of work, a 3m 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 shall not be stockpiled on the all weather vehicle access.
- 50 A temporary protective crossing is to be provided over the footway for vehicular traffic before demolition or building operations are commenced. This approval does not permit access to the property over any adjacent private or public land.
- 51 All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are 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;
  - 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.
- 52 Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW).
- 53 All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.
- 53A There are existing overhead electricity network assets in Queen and Darby Street, adjacent to the development site. Workcover Code of Practice 2006 Work Near Overhead Powerlines outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction phase. Any relocation of overhead mains required to maintain minimum safety clearances is at the cost of the person having the benefit of this consent.

(Inserted under MA2021/00192)

- 53B The development is in proximity to underground electricity assets. In addition to DBYD searches a ground search is to be conducted to locate electricity assets immediately prior to commencing work to check for updates of installed utilities. During construction work is to be undertaken in accordance with Ausgrid's Network Standard 156 – Working near or around underground cables. Any alterations to Ausgrid's underground electricity main will be contestable works and funded by the person having the benefit of this consent.

(Inserted under MA2021/00192)

- 53C 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*.

(Inserted under MA2021/00192)

- 53D The development is to be undertaken in accordance with the recommendations in the Historical Archaeological Assessment and Statement of Heritage Impact prepared by Austral Archaeology (dated 4 November 2021).

(Inserted under MA2021/00192)

- 53E 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.

(Inserted under MA2021/00192)

53F Construction works are to be carried out in accordance with the recommendations of;

- a) Report: Douglas Partners Pty Ltd (February 2021) Report on Groundwater Sampling R.001.Rev0; and
- b) Letter: Douglas Partners Pty Ltd (8 November 2021) Proposed Rainwater Tank. R.001.Rev0.

(Inserted under MA2021/00192)

53G Monitoring for volatile gases shall be conducted by a suitably qualified and experienced environmental consultant during the excavations for the rainwater tank. If volatile gases are detected which exceed appropriate guidelines, works are to immediately cease and advice is to be sought from the environmental consultant and recommendations in respect to the management of health or environmental risk are to be implemented in accordance with appropriate guidelines and legislation.

(Inserted under MA2021/00192)

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE**

54 Street lighting being upgraded at the cost of the developer to Standard P3 in accordance with AS 1158.1.1 – Road Lighting on Darby Street across the frontage of the site. The lighting upgrade works being completed prior to the occupation of the portion of the premise the subject of this application.

Note: The developer is to liaise with Energy Australia in relation to the design and construction of the street lighting.

55 Following implementation of the RAP and prior to occupation of the land, a validation report and ongoing environmental management plan is to be prepared by a suitably qualified consultant in accordance with relevant NSW State Government Guidelines and provided to the Principal Certifier and Council.

56 Prior to selection and location of mechanical plant, (including air conditioning, refrigeration and ventilation systems), noise emission data for the equipment is to be reviewed by an appropriately qualified acoustic consultant. Written certification by the acoustic consultant regarding the appropriateness of the equipment and installation location is to be provided to the Principal Certifier and Council prior to the issue of any Occupation Certificate for the premises.

57 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council'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.

58 Any redundant existing vehicular crossing is to be removed at no cost to Council and the public footway and kerb being restored to match the existing infrastructure and be completed prior to the issuing of any Occupation Certificate for the proposed development.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the *Roads Act 1993* (NSW). For further information contact Council's Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

- 59 The whole of the land to which the art gallery relates is to be consolidated into a single title and documentary evidence of the lodgement for registration of a survey plan of consolidation with NSW Government Land & Property Information being submitted to Council prior to the issuing of an Occupation Certificate for the proposed development.
- 60 A copy of the stormwater drainage design plans approved with the Construction Certificate with "work as executed" levels indicated, shall be submitted to Newcastle City Council prior to occupation of the building. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.
- 61 A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
- 62 The Landscape Architect is to submit a Certificate of Practical Completion to the Principal Certifying Authority which verifies that the street tree planting works have been undertaken in accordance with the planting detail provided and to a professional standard. Refer to Council's standard Practical Completion Report form. Council's Landscape Project Officer may be contacted on Ph: (02) 4974 2675 to inspect the works at any stage.
- 63 A *Landscape Establishment Report* is to be submitted to Newcastle City Council at 52 weeks after the date of Practical Completion. This report shall state the actual maintenance carried out on site, including maintenance records such as site work report sheets, diary entries or log books which show frequency of watering, weeding, mulching, personnel and any other remediation or rectification works carried out.
- 64 The applicant preparing and implementing a Traffic Management Plan for the operation of the Queen Street loading dock to control vehicle and pedestrian activity during service operations, such being operational prior to the issue of an Occupation Certificate for the premises.
- 65 The developer being responsible for the provision of additional regulatory signage in Darby and Queen Streets adjacent to the site frontage and all adjustments to and/or relocation of existing regulatory signage necessary as part of this development, at no cost to Council and in accordance with Council requirements, such works being implemented prior to the occupation of the portion of the premise the subject of this application.

Note: The provision of additional regulatory signage and alterations to existing regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval prior to installation.

- 66 The building floor level of the plant room, main switch board room and communications area being set a minimum of 300mm above the local 1 in 100 year ARI flood level. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor's Certificate is to be forwarded to the Principal Certifying Authority.

(Amended under MA2021/00192)

- 67 Prior to issue of an Occupation Certificate, any food business must notify the relevant enforcement agencies, under the *Food Act 2003* (NSW) and (for licensed food businesses) under the *Food Regulation 2010* (NSW). Notification is to be provided to Council and the NSW Food Authority.

Note: To arrange notification of the food business with Council go to [www.newcastle.gov.au](http://www.newcastle.gov.au) and download a copy of the 'Council Food Business Notification Form' or contact Council's Environmental Health Services on (02) 4974 2525. To notify with the NSW Food Authority go to [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) and follow the instructions.

67A 17 suitable replacement trees either on/adjoining the subject site, or off site within a distance of 400 meters as measured from any point along the development site boundary, are required in order to replace the trees being removed as part of the development. All replacement trees are to be planted prior to the issue of an Occupation Certificate, and a list provided to the certifying authority.

(Amended under MA2021/00192)

67B The awning on the Darby Street, Queen Street and Laman Street frontages is required to be constructed prior to the issue of the Occupation Certificate for the development the subject of this consent.

(Amended under DA2010/1278.02 - 3 September 2012)

67C (Deleted under MA2021/00192)

67D Prior to the release of the Occupation Certificate, the Applicant must demonstrate to the written satisfaction of Council, that they have satisfied the requirements for lodging all final archaeological excavation reports required under any and all s.140 applications under the *Heritage Act 1977* which have been approved by the Heritage Council of NSW for this site.

(Inserted under MA2021/00192)

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

68 (Deleted under MA2021/00192)

69 The maximum number of patrons permitted within the café and associated terrace area is to be restricted to 100 persons in total. A sign must be displayed in a prominent position in the cafe stating the maximum number of patrons, as specified in the development consent, that are permitted in the café.

(Amended under MA2021/00192)

70 The hours of operation or trading of the premises are to be not more than from:

| DAY       | START | FINISH |          |
|-----------|-------|--------|----------|
| Monday    | 6am   | 10pm   | Same day |
| Tuesday   | 6am   | 10pm   | Same day |
| Wednesday | 6am   | 10pm   | Same day |
| Thursday  | 6am   | 10pm   | Same day |
| Friday    | 6am   | 10pm   | Same day |
| Saturday  | 6am   | 10pm   | Same day |
| Sunday    | 6am   | 10pm   | Same day |

unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

(Amended under MA2021/00192)

71 (Deleted under MA2021/00192)

72 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* (NSW).

Should Council consider 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 appropriate 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 confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

- 73 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* (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.

Should Council 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 emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council 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.

- 74 (Deleted under MA2021/00192)

- 75 (Deleted under MA2021/00192)

- 76 (Deleted under MA2021/00192)

- 77 (Deleted under MA2021/00192)

- 78 (Deleted under MA2021/00192)

- 79 (Deleted under MA2021/00192)

- 80 No flashing, chasing or scintillating lighting or promotional material of a visually intrusive nature is to be installed or displayed on the exterior of the premises.

- 81 Any flags, bunting or other promotional material of a like nature are to be arranged and properly maintained in a manner which does not detract from the appearance of the premises or the streetscape and which does not represent a hazard to the public.

- 82 The driveway crossing, loading areas and stormwater management system are to be properly maintained for the life of the development.

- 83 Vehicles are to be loaded or unloaded standing wholly within the premises and within loading bays designated on the submitted plans or as otherwise provided in accordance with the conditions of this consent and under no circumstances are vehicles to be loaded or unloaded at the kerbside, across the public footpath or in a manner which obstructs vehicular access to the site.

- 84 Proposed driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

- 85 The maximum size vehicle that shall access the Queen Street loading dock is to be a heavy rigid vehicle (HRV) or vehicle (MRV) as defined in AS 2890.2. Under no circumstances should an articulated vehicle enter the site.

- 86 Any liquid wastes from the premises, other than stormwater are to be either discharged to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or collected and disposed of by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change 'Waste Classification Guidelines Part 1: Classifying Waste'.

- 86A Provision is to be made for regular maintenance to ensure the continuing structural integrity

and attractive appearance of the street awning. A maintenance plan is to be developed and include:

- a) annual inspection of structural components
- b) repainting, as required
- c) regular maintenance to guttering and downpipes
- d) regular cleaning and replacement of defective lighting, advertising or other deteriorated components of the awning
- e) regular cleaning of awning glazing, where installed.

(Inserted under DA2010/1278.02 - 3 September 2012)

## ADVISORY MATTERS

- 87 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.
- 88 Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- 89 Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (the 'Act') are to be complied with:
  - a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
  - b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
  - c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.
- 90 A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.
- 91 Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
- 92 A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
- 93 An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* (NSW) is to be submitted to Council and a copy

(together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

- 94 It is an offence under the provisions of the Protection of the *Environment Operations Act 1997* (NSW) 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 ('on-the-spot fine') or prosecution.
- 95 Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- 96 If archaeological deposits or relics not identified and 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.gov.au](mailto:heritagemailbox@environment.nsw.gov.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.

(Inserted under MA2021/00192)

## SCHEDULE 2

### SUBSIDENCE ADVISORY NSW

#### GENERAL TERMS OF APPROVAL

Issued in accordance with Section 4.47 of the *Environmental Planning & Assessment Act 1979* for the subdivision / development of land.

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As delegate for Subsidence Advisory NSW under delegation executed 12 October 2021, general terms of approval are granted for the development described in Schedule 1, subject to the conditions attached in Schedule 2.

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#### SCHEDULE 1

|                           |   |
|---------------------------|---|
| Ref:                      | <b>TBA21-00305 &amp; TBA21-02116</b>  |
| DA:                       | <b>MA/2021/00192</b>  |
| Site Address:             | <b>1 LAMAN STREET COOKS HILL</b>  |
| Lot and DP:               | <b>LOTS 11-14 &amp; PT LOT 15 DP 1122031, LOT 1 DP 63100, LOT 1 DP 516670 AND PART LOT 18 SEC G DP 9789</b> |
| Proposal:                 | <b>ART GALLERY EXPANSION – ALTERATIONS AND ADDITIONS</b>  |
| Mine Subsidence District: | <b>NEWCASTLE</b>  |

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## SCHEDULE 2

### GENERAL TERMS OF APPROVAL

| GENERAL                               |  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
|---------------------------------------|--|----------|------------------------------|---------|----|-----------------------------------|----------|----|---------------|--------|----|------------------------------|------|
| Plans, Standards and Guidelines       |  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 1.                                    | <p>These General Terms of Approval (GTAs) only apply to the development described in the plans and associated documentation relating to development application and provided to Subsidence Advisory NSW.</p> <p>Any amendments or subsequent modifications to the development may render these GTAs invalid.</p> <p>If the proposed development is amended or the development consent modified, Subsidence Advisory NSW must be notified to determine if any variations to these GTAs are required.</p>  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 2.                                    | <p>This approval expires 5 years after the date the approval was granted if construction work has not physically commenced.</p>  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| PRIOR TO COMMENCEMENT OF CONSTRUCTION |  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 3.                                    | <p><b>Prescribed Design Parameters</b></p> <p>Provide certification from a qualified structural engineer that the proposed additions are capable of remaining "safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' damage in accordance with AS2870 (Damage Classification), and readily repairable" if subjected to the subsidence parameters outlined in the Douglas Partners report on 'Pillar Stability and Subsidence Modelling", dated 27 August 2021 with maximum values of:</p> <table><tr><td>a)</td><td>Maximum Vertical Subsidence:</td><td>50 mm/m</td></tr><tr><td>b)</td><td>Maximum Horizontal Strains (+/-):</td><td>1.8 mm/m</td></tr><tr><td>c)</td><td>Maximum Tilt:</td><td>3 mm/m</td></tr><tr><td>d)</td><td>Maximum Radius of Curvature:</td><td>5 km</td></tr></table> | a)       | Maximum Vertical Subsidence: | 50 mm/m | b) | Maximum Horizontal Strains (+/-): | 1.8 mm/m | c) | Maximum Tilt: | 3 mm/m | d) | Maximum Radius of Curvature: | 5 km |
| a)                                    | Maximum Vertical Subsidence:   | 50 mm/m  |                              |         |    |                                   |          |    |               |        |    |                              |      |
| b)                                    | Maximum Horizontal Strains (+/-):  | 1.8 mm/m |                              |         |    |                                   |          |    |               |        |    |                              |      |
| c)                                    | Maximum Tilt:  | 3 mm/m   |                              |         |    |                                   |          |    |               |        |    |                              |      |
| d)                                    | Maximum Radius of Curvature:   | 5 km     |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 4.                                    | <p><b>'Yard' / Dudley Seam Workings Grouting</b></p> <p>Remove the risk of mine subsidence via grouting of the mine workings in the Yard (Dudley) Seam workings in accordance with the "Douglas Partners Report on Grouting and Verification Plan for 'Yard' / Dudley Seam Workings", dated 14 September 2021.</p>   |          |                              |         |    |                                   |          |    |               |        |    |                              |      |
| 5.                                    | <p><b>Borehole Seam Workings Grouting</b></p> <p>Submit a final grout proposal in accordance with "Douglas Partners report on Pillar Stability and Subsidence Modelling", dated 27 August 2021 to mitigate the risk of mine subsidence such that the residual parameters are in accordance with those identified in</p>  |          |                              |         |    |                                   |          |    |               |        |    |                              |      |

|                          |  |
|--------------------------|--|
|                          | <p>the above report. The final report submitted prior to commencing work is to include:</p> <ol style="list-style-type: none"> <li><b>Grout Implementation Plan;</b> including a site plan, grout locations (dimensioned in plan and elevation), proposed bore locations, and grout designer's endorsement.</li> <li><b>Grout Verification Plan;</b> showing the location of verification holes and the grout designer's endorsement.</li> </ol>   |
| 6.                       | On completion of grouting submit a <b>Grout Verification Output Report</b> endorsed by the grout designer and site verification engineers for compliance with the accepted Grouting Plans.   |
| 7.                       | <p>Submit an "Engineering Impact Statement" prior to commencement of detailed design for acceptance by SA NSW, which shall identify the:</p> <ol style="list-style-type: none"> <li>Mine Subsidence Parameters used for the design.</li> <li>Main building elements and materials.</li> <li>Risk of damage due to mine subsidence</li> <li>Design measures proposed to control the risks.</li> <li>Provide certification that the design will ensure the improvement remains "<i>safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' in accordance with AS2870 (Damage Classification), and readily repairable</i>".</li> <li>Comment on the: <ul style="list-style-type: none"> <li>likely building damage in the event of mine subsidence.</li> <li>sensitivity of the design to greater levels of mine subsidence.</li> </ul> </li> </ol> |
| 8.                       | Submit a final design incorporating the design methodology contained in the " <i>Engineering Impact Statement</i> ", for acceptance by Subsidence Advisory NSW prior to commencement of construction. It shall include certification by a qualified structural engineer including a statement to the effect that the improvements will remain " <i>safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' damage in accordance with AS2870 (Damage Classification), and readily repairable</i> " taking into consideration the mine subsidence parameters outlined above.   |
| <b>POST CONSTRUCTION</b> |  |
| 9.                       | <p>Establish 4 survey monitoring reference marks on and around the circumference of the building(s) so that building movement can be monitored should mine subsidence occur.</p> <p>A plan with the position including Easting, Northing and RL of each monitoring reference marks and original RLs are to be forwarded to Subsidence Advisory NSW.</p>  |
| 10.                      | Upon completion of construction, work-as-executed certification by a qualified engineer will be required by Subsidence Advisory NSW confirming that construction was in accordance with the plans accepted by Subsidence Advisory NSW.   |

#### Dispute Resolution

If you are dissatisfied with the determination of this application an appeal may be formally submitted with the Chief Executive Officer for an independent internal review. The application must be made in writing and must provide reasons why the determination should be changed.

### **SCHEDULE 3**

#### **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 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.
- 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.

(Inserted under MA2021/00192)