



New South Wales Government
Independent Planning Commission

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46 Fitzroy Street, Carrington - Modification 1

DA-10689-Mod-1

Statement of Reasons for Decision

Juliet Grant (Chair)

23 September 2026

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1. Introduction

1. On 01 September 2026, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred the modification application DA-10689-Mod-1 (**Modification Application**) from The Trustee for The Port of Newcastle Unit (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. Development application DA-10689 was previously granted consent by the Commission on 2 February 2022 for the construction of a four-storey commercial building with associated carparking and landscaping within the Port of Newcastle (**PoN**) lease area. The PoN is located in the City of Newcastle (**Council**) local government area (**LGA**).
3. The Modification Application seeks to modify DA-10689 to accommodate changes to the level 4 plant room, minor façade changes and the installation of an external backup generator and substation (the **Project**). Approval is sought under section 4.55(2) of the *Environmental Planning and Assessments Act 1979* (**EP&A Act**).
4. The Minister for Planning and Public Spaces (**Minister**) is the consent authority under section 4.5(a) of the EP&A Act and section 5.6 of the *Transport and Infrastructure State Environmental Planning Policy* (**SEPP Transport and Infrastructure**). However, in accordance with the Minister's Instrument of Delegation dated 14 September 2011 (**Instrument of Delegation**), the Minister's function to determine the Modification Application is delegated to the Commission as the Applicant has made a reportable political donation and it is not a public authority as defined by the EP&A Act for the purpose of the Instrument of Delegation.
5. Andrew Mills, Chair of the Commission, determined that Juliet Grant (Chair), would constitute the Commission for the purpose of exercising its functions with respect to the Modification Application.
6. The Department concluded in its Assessment Report (**AR**), dated August 2026 that the proposed modification is in the public interest and that it is approvable subject to conditions.

2. The Modification Application

2.1 The Site

7. The **Site** is located at 46 Fitzroy Street, Carrington, and is within the PoN's Marine Services Precinct (**MSP**). The MSP is located on the southwestern edge of the suburb of Carrington on the eastern shore of Throsby Creek, approximately four kilometres (**km**) north of the Newcastle central business district, see **Figure 1** and **Figure 2**.

Figure 1 – Regional context map with the Site outlined in red (Source: AR, Figure 1)



Figure 2 – Aerial image of the local context with the Site outlined (Source: AR, Figure 2)



2.2 The Project

8. The Project's intended outcome is to accommodate an increase in the size of the Level 4 plant room, facilitate minor façade changes and allow for the installation of an external backup generator and substation within the approved carpark area, resulting in a reduction in the number of parking spaces. Additional conditions have also been included following the outcomes of the Department's consultation with State agencies and Council.
9. The key aspects of the Project are set out in **Table 1** below and a complete description of each component of the Project and the Site are set out in the Department's AR at Tables 2 and 3.

Table 1 – Key aspects of the modification

Aspect	Description
Height increase	The modification would increase the height of the building by 1.3 metres (m) from 20.8m Reduced Level (RL) to 22.1m RL
Gross floor area (GFA)	The modification includes a recalculation of the building's GFA to align the building's floor plan with the definition of GFA provided by the <i>Newcastle Local Environmental Plan 2012 (NLEP)</i> .
Car parking	The modification enables the provision of an external backup generator and substation located within the approved carpark area, reducing the total number of car parking spaces by 2.

3. Material Considered by the Commission

10. In this determination, the Commission has given consideration to the:
 - matters raised in public submissions received by the Commission as set out in [Appendix A – Public Submissions](#);
 - material and planning framework as set out in [Appendix B – Commission's Considerations](#); and
 - Department's whole-of-government assessment as set out in [Appendix C – Department's Assessment Report](#).

4. Public Consultation

11. The Department made the Modification Application publicly available on its website and exhibited the Project from Thursday 2 April 2026 to Wednesday 15 April 2026. The Modification Application was referred to Council and Mine Subsidence NSW for comment. The Department received 2 submissions objecting to the Project.
12. The community was offered the opportunity to make a written submission to the Commission from Thursday 3 September 2026 to Sunday 13 September 2026. The Commission received one submission during this period providing comment on Project.
13. Refer to [Appendix A – Public Submissions](#) for further detail.

5. Reasons for the Decision

14. The Commission has determined to approve the Modification Application, subject to conditions which will form part of a modified development consent. The Commission agrees with the Department's assessment (AR, Table 5) that the Project is consistent with section 4.55(2) of the EP&A Act, as the proposed modification is substantially the same as the approved development and does not require a separate development application. The Commission notes the Department's finding that the Project is in the public interest and agrees that it is approvable subject to conditions (AR, para 41).

Built form and design

15. The Modification Application would include an increase in the overall height and floor area of the Level 4 plant enclosure. The Applicant has advised (AR, para 29) that the increase in height and floor area is required for the plant room to comply with applicable Australian Standards and to accommodate the manufacturer's requirements for lift over run height.
16. The Level 4 plant room would be setback a minimum of 6.7m from the exterior building walls and similar to the approved design would be centrally located above the floor below. The plant room would exhibit material consistent with the approved development and the Commission is satisfied that the proposed height increase of 1.3m and the increased scale of the Level 4 Plant room has been suitably designed to minimise visual impact. The Commission is satisfied that the Applicant's architectural plans and supporting shadow diagrams demonstrate that the increased scale of the plant room would not result in any material increase in overshadowing impacts to neighbouring properties.
17. The minor design changes proposed for the Ground Level façade would replace the approved feature masonry with off form concrete which has been used elsewhere in the building as part of the approved material schedule and building design. The Commission agrees with the Department (AR para, 32) that the use of this material is consistent with the intent of the approved design and is a minor change that would not result in unacceptable visual impacts.
18. Accordingly, the Commission agrees with the Department (AR, para 31) that the proposed increase in floor area and building height associated with the changes to the Level 4 plant room and the minor façade changes would not result in any significant impacts beyond those previously assessed and approved.

Operational noise

19. The Modification Application would include a new backup generator located in the carpark area at the rear of the main building. The Applicant has clarified (AR, para 35) that the generator would only be operational during test procedures and during outages, and that the acoustic impacts of generator operations have been assessed in an updated Noise and Vibration Impact Assessment (**NVIA**).
20. The NVIA has modelled acoustic impacts at the nearest receivers against relevant industry standards using the applicable operational noise criteria. The NVIA confirms the cumulative operational noise impacts will not cause significant adverse acoustic impacts for affected commercial, industrial and residential receptors in the vicinity of the completed commercial development.
21. The Commission has imposed additional conditions to ensure the operation of the backup generator during routine maintenance and testing does not result in unreasonable impacts beyond those previously assessed and approved. These conditions include the requirement for an Operational Environmental Management Plan (**OEMP**) to include:

- details of the operation of the backup generator, including operation during power outages and the timing, frequency and duration of routine maintenance and test procedures, which must be conducted in accordance with the NVIA; and
 - measures to avoid impacts on residential amenity of neighbouring properties, including the prevention of any routine maintenance or testing procedures for the backup generator during nights and weekends.
22. Subject to the imposed conditions, the Commission is satisfied that the backup generator's predicted noise output, as assessed in the NVIA, would not result in unreasonable noise impacts on the surrounding area, including nearby residential receivers.

Conclusions

23. The Commission has considered other issues associated with the Project including traffic and parking, gross floor area, site access, landscaping and substation installation remediation, noise, biodiversity, stormwater and flooding (AR, Table 4). The Commission agrees with the Department's assessment of these matters and is satisfied that impacts associated with these issues can be managed through the imposed conditions of development consent.
24. The Commission finds that the Modification Application would result in minimal environmental impact and is consistent with section 4.55(2) of the EP&A Act. The Modification Application consists of minor changes that would not result in any unacceptable visual, environmental or amenity impacts. The Commission has therefore determined to approve the Modification Application subject to the conditions of consent in [Appendix D – Modification Instrument](#).
25. The reasons for the Decision are given in this Statement of Reasons for Decision dated 23 September 2026.



Juliet Grant (Chair)
Member of the Commission

Appendix A – Community Consultation Report

Department’s public exhibition of the Project

The Department exhibited the Modification Application from 2 April 2026 until 15 April 2026 and received 2 submissions objecting to the Project. Chapter 4 of the Department’s AR outlines how these submissions were taken into consideration in its assessment. The Department notified and sought comment from Council and Subsidence Advisory NSW.

The Commission’s public consultation

The Commission’s meetings

The Commission held a meeting with the Department on 10 September 2026 and the transcript from this meeting is publicly available on the Commission’s website. The Commission also extended meeting invitations to the Applicant and Council; however, both invitations were declined.

Public submissions

Individuals who had made submissions during the Department’s exhibition period were invited to make written and verbal submissions to the Commission from 3 September 2026 to 13 September 2026. The Commission received one written submission commenting on the Project.

Consideration of submissions

The Commission appreciates the time and effort the community put into their submissions. Submissions play a key role in the Commission’s decision-making process. All submissions received were carefully reviewed by the Commission.

In accordance with its statutory role, the Commission has undertaken a detailed evaluation of the specific impacts associated with the Project the subject of this Modification Application. Consideration has been given to all submissions that raised concerns about Project-specific matters, and these have informed the Commission’s findings and conclusions detailed in the Statement of Reasons for Decision.

Appendix A – Table 1 below reflects the major themes of submissions and provides a summary of the main concerns and matters people raised and how the Commission has considered them in its decision. To view all submissions, please see the [submissions tab](#) on the Commission’s website.

Appendix A – Table 1: Key matters raised in submission

Themes raised in submissions from the community	Commission’s consideration	Relevant conditions (consolidated consent)
Vehicle movements - Vehicle movements associated with operations will affect local traffic - Concern with vehicle movements entering and exiting Dennison and Fitzroy Streets	- The impacts of operational traffic on the surrounding road networks, including Dennison and Fitzroy Streets, were assessed as acceptable under the original consent and the Modification Application does not affect vehicle movements. - Conditions were imposed on the original consent to manage operational traffic and require the Applicant to manage traffic impacts on an ongoing basis throughout the life of the development.	E20 & E21

Noise impacts Operational noise	Subject to conditions of development consent, operational noise impacts have been suitably mitigated. The Applicant must prepare a detailed noise assessment to ensure noise impacts comply with relevant noise criteria and Australian Standards. Any residual impacts are capable of being appropriately managed, noting conditions of development consent require the Applicant to adhere to operational noise limits and undertake noise monitoring.	B12, B13, B20, B21, E45, E46, F4, F5 & F6

Appendix B – Commission’s Considerations

Material considered by the Commission

Appendix B – Table 1: Material considered by the Commission

Document	Date
Applicant’s Modification Report and its accompanying appendices	12 February 2026
Council’s advice to the Department	17 April 2026
Subsidence Advisory NSW’s advice to the Department	1 December 2025
All written submissions made to the Department	April 2026
Department’s Assessment Report and recommended conditions of consent	August 2026
All written submissions made to the Commission	September 2026
The Commission’s meeting with the Department	10 September 2026
Department’s advice to the Commission regarding the imposition of conditions	21 September 2026

Planning Framework

Appendix B – Table 2: Strategic and Statutory Context

Strategic context	Commission’s consideration
<i>Hunter Regional Plan 2041</i> (HRP)	The HRP is a 20-year plan which provides the strategic framework for land-use planning in the region. The Plan aims to unlock sustainable growth opportunities in the region and aligns with key infrastructure delivery strategies including the <i>Hunter Regional Transport Plan</i>, the <i>Greater Hunter Regional Water Strategy</i> and the <i>Lower Hunter Water Security Plan</i>. It outlines a vision for the Hunter as a leading regional economy with a vibrant metropolitan city at its heart where people are connected and care for Country, within sustainable 15-minute neighbourhoods. The HRP recognises the PoN as a global gateway that enhances the Hunter’s global reach. At the local scale, the PoN is positioned by the HRP as a metropolitan asset that could support the growth of the service economy and ongoing economic diversification. The Commission finds the construction and operation of a commercial development in the PoN’s MSP consistent with the HRP and the following objective: • <i>Objective 1: Diversify the Hunter’s mining, energy and industrial capability</i>
<i>Port Master Plan 2040</i> (Port Master Plan)	The Port Master Plan is intended to guide the strategic, sustainable, and economic transformation of the PoN into a diverse global gateway. It outlines a 20-year blueprint to diversify trade, attract global investments, protect transport corridors and transition the Hunter region toward a clean energy future. The Port Master Plan identifies the Carrington precinct within the PoN as a new precinct PoN land which is intended to accommodate future maritime services. The Commission finds the modification to be consistent with the Port Master Plan as it would facilitate the expansion of the MSP.

<i>Port Development Plan 2023-2028</i> (Port Development Plan)	The Port Development Plan outlines a 5-year roadmap for diversifying the PoN's trade, safeguarding regional supply chains, and driving economic resilience. A major goal of the Plan is to transition the Port so that over 50% of its revenue comes from non-coal sources by 2030. The Commission finds the modification to be consistent with objective 12 of the Port Development Plan as the new commercial building would support the ongoing provision of maritime services in line with commercial sector opportunities.
<i>Greater Newcastle Metropolitan Plan 2036</i> (Newcastle Metropolitan Plan)	The Newcastle Metropolitan Plan guides sustainable economic, housing, and infrastructure growth across the five local government areas of Cessnock, Lake Macquarie, Maitland, Newcastle, and Port Stephens. It is designed to transform the region into a globally competitive, lifestyle-oriented metropolis built around outcomes focused on: • A skilled workforce; • Enhanced environment and resilience; • Accessible housing; and • Improved connectivity The Commission finds the modification consistent with the following Newcastle Metropolitan Plan strategy: • <i>Strategy 3 Increase domestic and global trade capabilities at Newcastle Port</i>
<i>Planning Newcastle 2040: Global City, Local Character</i> <i>Local Strategic Planning Statement</i> (Newcastle 2040)	Newcastle 2040 is the City of Newcastle's plan to guide land use planning over the next 20 years. It includes implementation priorities that align with Council's Community Strategic Plan and brings together land use planning actions from Council's adopted strategies. Newcastle 2040 also gives effect to the State Government's strategic directions for the Hunter region and outlines Planning Priorities to achieve Council's land use planning vision. The Project is consistent with the following Planning Priorities: ○ <i>Planning Priority 15 Plan for the expansion and diversification of Newcastle Port</i>
The City of Newcastle Economic Development Strategy 2021 (City of Newcastle's EDS)	The City of Newcastle's EDS aims to build a skilled and innovative community supported by key city infrastructure and enhanced by a vibrant lifestyle. The EDS recognises the opportunity provided by the industrial lands surrounding the Port of Newcastle to act a catalyst for new enterprise. The EDS acknowledges the PoN's role in supporting the renewable energy sectors and the modification supports the PoN's continued operations.
Statutory context	Commission's consideration
Scope of Modification	The Department states it has reviewed the scope of the proposed modification and considers that it can be characterised as a modification involving minimal environmental impact under section 4.55(2) of the EP&A Act, as the proposed modification: • is substantially the same development as the development as approved; The Department is satisfied the proposed modification is within the scope of section 4.55(2) of the EP&A Act, and the Commission agrees with the Department's position that the Project does not constitute a new development application.
Minister's Delegate	In accordance with Schedules 1 and 2 of the Instrument of Delegation, the Minister's function can be delegated to the Commission to determine the request to modify the Minister's approval.

	The Minister's function has been delegated to the Commission as the Applicant has declared a reportable political donation.
Permissibility	The Site is located within the Port of Newcastle Lease Area and is zoned <i>SP1 (Special Activities)</i> under Chapter 5 of SEPP Transport and Infrastructure. The SP1 zone permits development for the purposes of port facilities, dredging, wharf and boating facilities and associated maritime infrastructure with consent. The Project is characterised as being part of a port facility under section 5.2 of SEPP Transport and Infrastructure and is therefore permissible with consent.
Mandatory considerations	Commission's consideration
Relevant environmental planning instruments (EPIs)	The key EPIs (in their present, consolidated form) include: • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>; and • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>; The Commission has considered these EPIs as part of its determination.
Relevant DCPs	The PoN lease area is subject to the provisions and development controls provided by Chapter 5 of SEPP Transport and Infrastructure. Accordingly, no relevant DCP applies to the modification application.
Relevant matters prescribed by the <i>Environmental Planning and Assessment Regulation 2021 (EP&A Reg)</i>	The Commission has considered matters relevant to the Modification Application, as prescribed by the EP&A Reg.
Significant likely impacts of the development	The Commission has considered the significant likely impacts of the development and has set out its reasons for decision in section 5 of this Statement of Reasons for Decision. The Commission finds the Project's impacts on the natural and built environment, as well as its social and economic impacts are broadly positive and warrant approval of the Modification Application.
Suitability of the Site for development	The Site is suitable for the following reasons: • The Modification Application remains permissible within the SP1 (Special Activities) zone under SEPP Transport and Infrastructure; • the Modification Application is consistent with the established industrial land use of the Port of Newcastle, which has previously been deemed suitable through DA 10689; • the Site has the physical capacity to accommodate the additional plant without causing additional significant impacts on the natural or built environment, or generating adverse socio-economic effects within the locality; • potential impacts on surrounding land uses have been minimised to the greatest extent practicable, with any residual impacts capable of being appropriately mitigated through conditions of the modified development consent; and • the Modification Application represents an orderly and economic use of the Site that would enable operational efficiencies and commercial floor space for third-party maritime services providers.
The public interest	The Commission has considered how the public interest (including the relevant ESD principles) would be served by its decision on this Modification Application.

	Although the imposed conditions will minimise the impacts of the Project on the locality, some residual impacts will still occur. These residual impacts are unavoidable if the benefits of the Project are to be realised. Given the contribution of the PoN to the local, regional and national economy, the construction of a commercial building that can support existing port operations serves the public interest despite its impacts on the locality.
Reasons given by the consent authority for DA-10689 (the consent sought to be modified)	The Commission has considered the reasons for the grant of consent for DA-10689 that are relevant to the proposed modification, as required by section 4.55(3)(b) of the EP&A Act. Those reasons included findings that the development constituted an orderly and economic use of the Site, that its Port-related use was appropriately located having regard particularly to its parking requirements and buffer function, and that unreasonable off-site amenity and traffic impacts would not arise. The Commission is satisfied that the Modification Application does not materially alter the basis of those findings as: • the additional building height is confined to rooftop plant and does not materially alter the scale or visual character of the principal building; • the revised GFA does not represent additional floorspace or development intensity; • the reduction of two parking spaces retains substantial surplus on-site parking and is not expected to increase demand for on-street parking; and • the proposed generator, substation and façade changes can also be accommodated without unacceptable off-site amenity impacts, subject to the modified conditions. The Commission notes that changes to building height, GFA and parking were foreshadowed during its consideration of the original application but were not then formally proposed or assessed. The Commission's decision not to accommodate those prospective changes did not amount to a finding that such changes were unacceptable. The Modification Application and supporting assessment provides the pathway for those changes to be considered. Accordingly, the Commission finds that the development, as modified, remains consistent with the relevant reasons for which consent was originally granted, and is substantially the same as the development for which consent was originally granted.

Appendix C – Department’s Assessment Report

[Department of Planning, Housing and Infrastructure’s Assessment Report, dated August 2026](#)

Appendix D – Modification Instrument

Modification of Development Consent, dated 23 September 2026



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