

Commercial Building, Carrington

Part 4 Development Application (DA 10689)

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Glossary

| Abbreviation | Definition |
|--------------------|---|
| AHD | Australian Height Datum |
| Applicant | Port of Newcastle Operations Pty Ltd |
| Council | City of Newcastle |
| DA | Development Application |
| Department | Department of Planning, Industry and Environment |
| Development | The development as described in the SEE and RTS for the Fitzroy Street Commercial Facility |
| EP&A Act | Environmental Planning and Assessment Act 1979 |
| EP&A Regulation | Environmental Planning and Assessment Regulation 2000 |
| EPI | Environmental Planning Instrument |
| ESD | Ecologically Sustainable Development |
| LEP | Local Environmental Plan |
| Minister | Minister for Planning and Public Spaces |
| Planning Secretary | Secretary of the Department of Planning, Industry and Environment |
| RFI | Request for Information |
| RTS | Response to Submissions letter titled <i>46 Fitzroy Street, Carrington (DA 10689) Response to Submissions</i> by Ramboll dated 24 September 2021 |
| SA NSW | Subsidence Advisory NSW |
| SEE | Statement of Environmental Effects titled <i>Commercial Facility, Carrington Statement of Environmental Effects</i> by Ramboll dated 11 June 2021 |
| SEPP | State Environmental Planning Policy |

Executive Summary

Introduction

This report provides an assessment of a DA 10689 seeking approval to construct a commercial building at 46 Fitzroy Street, Carrington. The proposal comprises of four levels of office spaces, a café, landscaping, car parking, seating and communal spaces, a waste disposal area, water tanks and signage.

The Applicant is Port of Newcastle Operations Pty Ltd and the site is located within the Newcastle City Council local government area. The Minister for Planning and Public Spaces is the consent authority for the development under clause 8(a) of the State Environmental Planning Policy (Three Ports) 2013 as the development is located on land within the Port of Newcastle Lease Area. However, as the Applicant disclosed a reportable political donation under Section 10.4 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), the Independent Planning Commission is the consent authority for the application under the Minister's delegation of 14 September 2011.

Engagement

The Department publicly exhibited the application for 14 days from 9 July 2021 to 22 July 2021. In response to the exhibition, During the exhibition period, the Department received five submissions from the public, received comments from Council and Ausgrid and General Terms of Approval from Subsidence Advisory NSW. Of these submissions, two public submissions objected to the proposal.

Key issues raised in public submissions related to traffic, parking, noise, impacts on Denison Street, residential amenity and building orientation

In response to issues raised in submissions, the Applicant submitted a Response to Submissions report which provided additional information, justification and amended plans for the proposal. Council provided a further submission providing comments in response to the Response to Submissions. An addendum Response to Submissions and additional information was submitted in response to further comments provided by Council, particularly in respect to stormwater and landscaping comments.

Assessment

The Department has considered the merits of the proposed development in accordance with the relevant matters under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act), the issues raised in the submissions and the Applicant's response.

The key issues associated with the proposed development are site suitability, parking, operational traffic and residential amenity.

The Department has carefully considered the proposal as well as the issues raised in submissions and is satisfied the proposal is acceptable for the following reasons:

- the proposal is consistent with the objectives of the Hunter Regional Plan 2036, Greater Newcastle Metropolitan Plan 2036, Port Master Plan 2040 and the Newcastle Local Strategic Planning Statement
- the height and scale of the proposal appropriately relates to the existing site context

- and surrounding features and would not result in any unreasonable amenity impacts
- it would not result in any significant traffic impacts and has demonstrated that the road network has adequate capacity to cater for the additional trips
 - it is expected to create approximately 100 construction jobs and approximately 644 ongoing operational jobs
 - all other issues have been appropriately addressed by recommended conditions of approval.

Conclusion

The Department is satisfied the proposed development would result in a positive contribution to the Carrington Precinct and facilitate port related businesses, will support the diversification and growth of the Carrington precinct of the Port and will be complementary to the Carrington Precinct's undergoing transition.

The Department is also satisfied the proposed development is consistent with the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036 and it would result in a number of public benefits including up to 100 construction jobs and 644 ongoing jobs within Newcastle.

The Department's assessment concludes the site is suitable for the proposed development and the proposal is in the public interest. The Department consider the potential impacts can be mitigated and would not result in any adverse impact to the visual amenity of the local area.

The Department therefore recommends the application be approved, subject to conditions.

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1 Introduction

1.1 The Department's Assessment

- 1.1.1 This report details the Department of Planning, Industry and Environment's (the Department) assessment of development application DA 10689 (the application), by the Port of Newcastle Operations Pty Ltd (the Applicant). The Applicant seeks approval for the construction and operation of a commercial building and ancillary café (the proposed development) which is located on land legally described as Lot 33 DP 1078910, Fitzroy Street, Carrington (the site), in the Port of Newcastle (PON) Lease Area, which is located within the Newcastle local government area (LGA) (see **Figure 1**).
- 1.1.2 The proposed development involves the construction of a single building to operate as primarily office premises. The office premises will comprise of four levels of office spaces, a café, landscaping, car parking, seating and communal spaces, a waste disposal area, water tanks and signage. The Department notes that at this stage, the Applicant has not identified any specific tenants for the development.
- 1.1.3 The Department's assessment has considered all documentation submitted by the Applicant, including the Statement of Environmental Effects (SEE), Response to Submissions (RTS), Addendum RtS, additional information and advice from government agencies and Newcastle City Council (Council). The Department's assessment also considered the legislation and planning instruments relevant to the site and the development.
- 1.1.4 This report describes the development, surrounding environment, relevant strategic and statutory planning provisions and the issues raised by Council and the Department. The report evaluates the key issues associated with the development and provides recommendations for managing any impacts.

1.2 Port of Newcastle

- 1.2.1 Newcastle harbour is the largest and oldest export port on the eastern seaboard of Australia, with over 2,200 trade vessels visiting the port every year and export activities dating back to 1799. The Port of Newcastle is a significant export location for bulk commodities such as coal, ore and grain, with up to 164 million tonnes of cargo passing through the port annually.
- 1.2.2 The development site is located in the Port of Newcastle lease area and is currently undeveloped. The site has historically been used for warehousing and commercial facilities evolving from a series of shed like structures in earlier years, to one large shed and then two distinct shed/warehouse structures. The warehouses were demolished in January 2018 and all onsite infrastructure has been removed. The site is currently occupied by a remaining concrete slab.

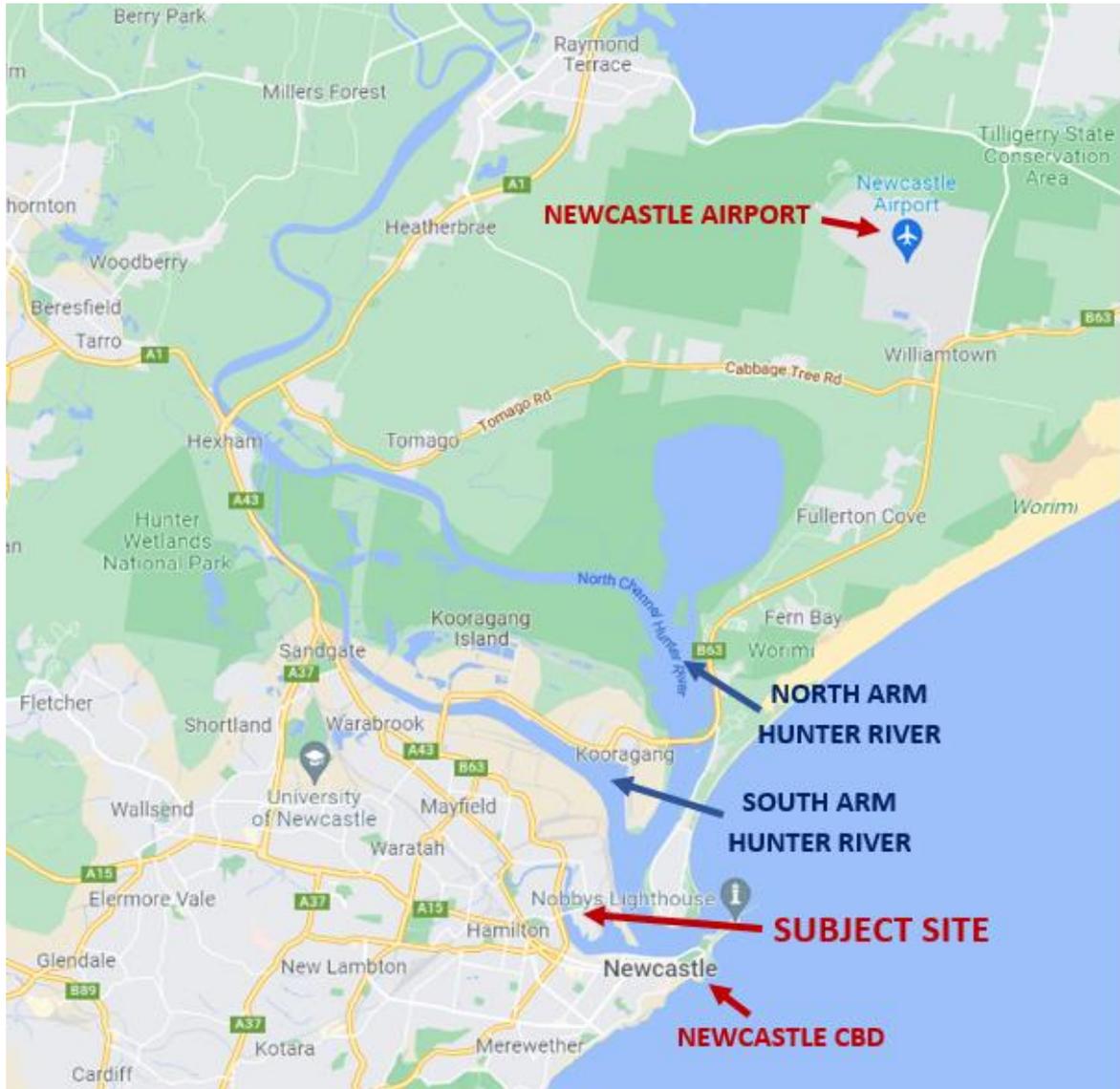


Figure 1 | Regional context (Base source: Google Maps)



Figure 2 | Surrounding context and site location (Base source: Nearmap)

1.3 Site Description

- 1.3.1 The site is located at 65 Denison Street and 46 Fitzroy Street, Carrington approximately 1.5 kilometres north west of the Newcastle CBD within the Local Government Area (LGA) of the City of Newcastle (**Figure 2**). The site is legally defined as Lot 33 in DP 1078910.
- 1.3.2 The site is zoned as 'SP1 Special Activities' under *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP) and is located within the Port of Newcastle Lease Area, as identified on the Lease Area Map in the Three Ports SEPP. The site is 8,684m² in area and is currently a large vacant flat lot with a concrete slab and some security fencing remaining from a previous development.

1.4 Surrounding Land Uses and Road Network

- 1.4.1 The general use of the area is a mix of residential, commercial, light industrial and heavy industrial. To the north of the site is the Hi-Vis Group sign shop on Fitzroy Street and residential properties on Denison Street. To the south of the site is the Thales Newcastle building which is a ship repair, maintenance and dockyard management operation. The site is bound by Denison Street to the east and Fitzroy Street to the west with Marsden Street (effectively a laneway) behind the residences on the western side of Denison Street.
- 1.4.2 Further south of the site is a mix of residential and industrial development, with the industrial development situated to utilise access to the port. Further west of the site includes a mix of light industrial and commercial uses including an electrical wholesaler, an infrastructure services consultancy firm, a protective clothing supplier and the Australian Government Marine Safety Authority building.
- 1.4.3 Residential development is located along Denison Street are traditional workers' cottages in character. A cafe located nearby on Cowper Street South, north-east of the site on Denison Street, and there is a brewery located north-east of the site along Wilson Street.

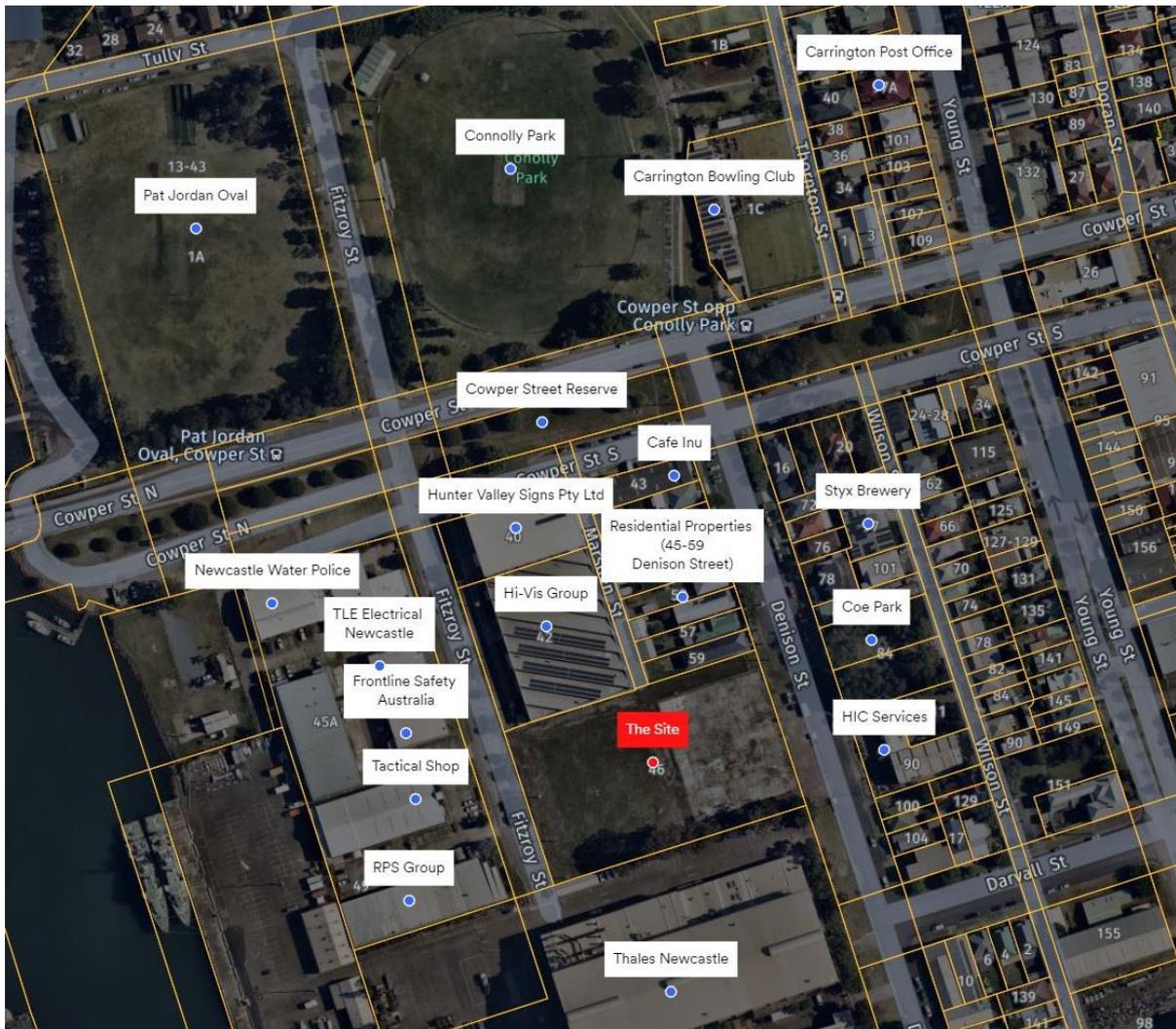


Figure 3 | Local context and project site (Base source: Nearmap)

2 Project

2.1 Description of the Development

2.1.1 The DA seeks consent for the construction and operation of a four-storey commercial development at 46 Fitzroy Street, Carrington. The main components of the development are described in **Table 1** below and described in full in the SEE and RTS report included in **Appendix A**. The layout and design of the proposal are included as **Figure 4 and Figure 5**.

Table 1 | Main Components of the Project

| Aspect | Description |
|--|--|
| Development Summary | <ul style="list-style-type: none"> Construction of a single building to operate as a commercial building, comprising of office premises, a café, landscaping, car parking, seating and communal spaces, a waste disposal area, water tanks and signage |
| Site Area and Development Footprint | <ul style="list-style-type: none"> The site is 8,685m² in area The total Gross Floor Area for the proposal is 6,432 square metres. However, with the area of surplus car parking included in the calculations, in accordance with the <i>Newcastle Development Control plan 2012</i> (NDCP 2012), the revised Gross Floor Area is 7,035.72 square metres with a Floor Space Ratio of 0.81:1 |
| Parking | <ul style="list-style-type: none"> 172 at grade car parking spaces (secure undercover) comprising: <ul style="list-style-type: none"> 138 external staff parking including one accessible space 10 external visitor parking including one accessible space 15 staff spaces (secure undercover) 8 spaces suitable for charging of electric vehicles (secure undercover) 1 loading space 15 bike rack spaces 8 motorbike parking spaces |
| Building Dimensions | <ul style="list-style-type: none"> Maximum Height of Building (including plant room) 18.458 m (approximate 20.8 m RL) Setback of 12.3 m from Denison Street Setback of 6.5 m from Fitzroy Street |
| Operational Traffic | <ul style="list-style-type: none"> 611 trips per day |
| Hours of Operation | <ul style="list-style-type: none"> Operation of the office is proposed to generally be between 6:00am and 6:00pm on Monday to Friday, however as the proposal is expected to attract port related businesses, some tenants may operate seven days a week and outside of these hours. |

- The café is proposed to be operational between 7:00am to 4:00pm Monday to Friday and would generally serve the occupants of the building.

**Construction
Employment**

- 100 jobs estimated

**Operational
Employment**

- 644 jobs estimated

Cost of Development

- \$28,445,100.20
-

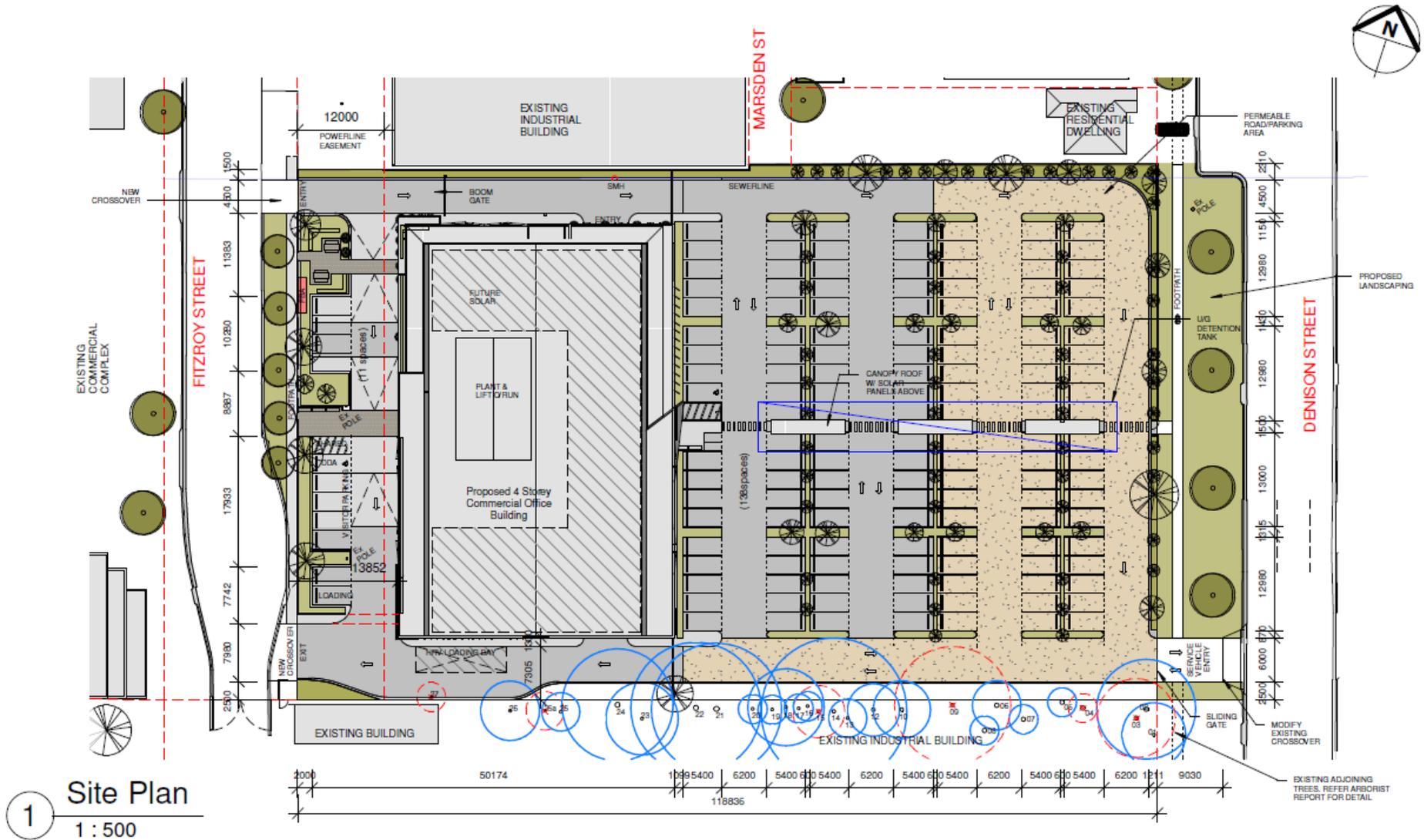


Figure 4 | Site Layout (Source: Applicant's documentation)



Figure 5 | Building Perspective looking South-West (Denison Street Frontage) (Source: Applicant's documentation)

2.2 Applicant's Need and Justification for the Development

- 2.2.1 The Applicant outlines that the proposed commercial building would attract port related office-based businesses. The proposal would support the current operations of the Port of Newcastle, and the potential growth and diversification of the Port remaining responsive to changes arising from global demand. Additionally, the proposal has the potential to support technology-based services that encourage the advancement of efficient port operations.
- 2.2.2 Further, the proposal will accommodate a maximum additional 644 operational jobs for the Port of Newcastle, increasing job opportunities.

3 Strategic context

3.1 Hunter Regional Plan 2036

- 3.1.1 The Hunter Regional Plan 2036 (HRP) is a 20-year blueprint for the future of the Hunter region by providing an overarching framework to guide future detailed land use plans, development proposals and funding decisions.
- 3.1.2 The HRP identifies the PON as being a vital hub for exporting agricultural produce and coal to external markets and notes that increasing numbers of visitors are arriving to Newcastle on cruise ships which utilise the PON (the Department acknowledges that cruise ship movements with passengers have not been possible in recent times during the COVID-19 pandemic, but anticipates these activities will resume). The HRP expresses the importance of improving connectivity between freight routes and the PON, which in turn will improve freight movements to global markets and drive regional economic growth. The HRP identifies a need for the PON's facilities and services to remain responsive to changes in markets and demands.
- 3.1.3 Direction Two acknowledges that the PON has the capacity to generate associated industries with subsequent employment benefits and promotes the diversification of operations at the PON and enhanced connectivity. The plan recognises that the Port's facilities and services will need to remain responsive to changes arising from global demand and national economic policy. The Port of Newcastle is identified as placing high demand on land and infrastructure, affecting surrounding land and requiring levels of separation from adjoining land uses.
- 3.1.4 The Department has considered the strategic context of the development against the objectives of the HRP and is satisfied that the establishment of a port related office premise is consistent with the intent of the HRP as the development supports the diversification of land within the PON area and provides a particular focus on supporting potential port related operations.

3.2 Greater Newcastle Metropolitan Plan 2036

- 3.2.1 The Greater Newcastle Metropolitan Plan 2036 (GNMP) is intended to support the overarching strategic planning framework established by the HRP. One of the key outcomes of the GHMP is the creation of a workforce which is skilled and ready for the new economy. This outcome is to be supported by increasing domestic and global trade capabilities at the PON, and the diversification of activities, including the establishment of the Newcastle Cruise Terminal.
- 3.2.2 The Department has considered the strategic context of the development against the objectives of the GHMP and is satisfied that the establishment of a port related office premise is consistent with the intended outcomes of the GHMP. The development supports the diversification of land within the PON and provides a particular focus on supporting potential freight-oriented operations without constraining existing and future land uses within the PON.

3.3 Port Master Plan 2040

- 3.3.1 The Port Master Plan 2040 intends to outline key strategic development and trade opportunities for the Port of Newcastle and the broader region to 2040. The plan provides a strategic approach to identifying future development and opportunities including supporting the Maritime Precinct in Carrington. The plan promotes capacity of the Port and provides details on further berths at The Port, one being proposed in Carrington.
- 3.3.2 The Department has considered the strategic context of the development against the objectives of the Port Master Plan 2040 and is satisfied that the office and café uses will support the diversification and growth of the Carrington precinct of the Port and will be complementary to the Carrington Precinct's undergoing transition.

3.4 Newcastle Local Strategic Planning Statement

- 3.4.1 The Newcastle Local Strategic Planning Statement (LSPS) guides land-use planning over the next 20 years, giving effect to and implementing land use planning actions in other adopted plans and strategies.
- 3.4.2 The Newcastle LSPS identifies the Port of Newcastle as a Catalyst Area in the Greater Newcastle Metropolitan Plan 2036. The LSPS outlines the importance of land use and infrastructure planning for the success of the Catalyst Areas, with importance placed on well-connected areas and new opportunities for employment generating uses. Planning Priority 15 outlines the plan for the expansion and diversification of Newcastle Port. The Port has the potential to benefit from the availability of office-based services within close proximity to the operational and industrial areas of the Port to support these operations.
- 3.4.3 The Department has considered the strategic context of the development against the objectives of the Newcastle LSPS as it would support the potential growth and diversification of the Port and allow for increased employment opportunities whilst minimising impacts on surrounding land.

3.5 Wickham Master Plan 2017

- 3.5.1 The Wickham Master Plan outlines the future character of the Wickham Area and outlines strategies to achieve this. The proposal is located across Throsby Creek from Wickham and is linked by the Cowper Street Bridge. One of the main challenges outlined in the Wickham Master Plan is the pedestrian and cycling connectivity to the Throsby Creek which is challenged by the high volumes of traffic and lack of parking space.
- 3.5.2 The Department has considered the strategic context of the proposal against the Wickham Master Plan, specifically the challenge of traffic and parking and is satisfied that the proposal will not create any off-site parking impacts within the Wickham Master Plan area. The proposal includes parking for vehicles, bikes and motorbikes during operation and construction vehicles will be contained within the site.

3.6 Newcastle Employment Lands Strategy

3.6.1 The City of Newcastle Council adopted the Newcastle Employment lands Strategy in 2013 to inform demand for employment uses and to encourage economic growth. the 2019 Updated Newcastle Employment Lands Strategy informs the planning direction of employment generating lands including the special activities zones and includes an employment strategy for Ports land. The planning principles for Ports and are to:

- ensure that development does not curtail the current or future potential operation of the Port of Newcastle
- preserve land for long-term employment opportunities
- potential uses of the BHP Intertrade site

3.6.2 The Department has considered the strategic context of the development against the planning principles of Ports land within the Newcastle Employment Land Strategy and is satisfied that the proposal does not curtail the current or future operation of the Port as the operational traffic will not exceed the capacity of the road network, will not incur significant light or noise impacts, and support the potential expansion and diversification of the Port.

3.7 NSW Freight and Ports Strategy

3.7.1 The 2013 NSW Freight and Ports Strategy outlines that the Port of Newcastle is one of the largest in regard to coal export ports. The strategy highlights the pressure on ports is increasing and therefore port capacity is vital, particularly at the Port of Newcastle. The strategy recognises that the Port of Newcastle contains potential for development and future growth, potentially including a new T4 coal facility.

3.7.2 The Department has considered the strategic context of the development against the intent of the NSW Freight and Ports Strategy and considered that the proposal aligns with the strategy by supporting existing port facilities and future growth.

4 Statutory Context

4.1 Part 4 development

- 4.1.1 The development is located at Carrington in the PON lease area, as identified under the Three Ports SEPP, and:
- is permissible with development consent under the Three Ports SEPP
 - has a capital investment value (CIV) of less than \$100 million
 - is not designated development under Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).
- 4.1.2 Accordingly, the development does not meet the criteria for State significant development as outlined in clause 27 of the Three Ports SEPP and is subsequently classified as a Part 4 development under the Environmental Planning and Assessment Act 1979 (EP&A Act).
- 4.1.3 The proposal is 'integrated development' pursuant to Division 4.8 of the EP&A Act as in order for it to be carried out, the development requires development consent and another approval under specified acts. The site is within a mine subsidence district and as such requires approval from Subsidence Advisory NSW under Section 22 of the *Coal Mine Subsidence Act 2017*.

4.2 Permissibility

- 4.2.1 The site is zoned SP1 Special Activities under the Three Ports SEPP. Office premises are permitted as an additional permitted use under Clause 23 of the Three Ports SEPP.
- 4.2.2 The development meets the relevant objectives of the SP1 zone as discussed further in **Section 6.2**.

4.3 Consent Authority

- 4.3.1 Under clause 8(a) of the Three Ports SEPP, the Minister is the consent authority for Part 4 applications on land within the Lease Area of the Port.
- 4.3.2 On 14 September 2011, the then Minister for Planning and Infrastructure delegated functions to determine Part 4 applications to the former Planning Assessment Commission (now known as the Independent Planning Commission (Commission)) where:
- there are more than 50 public submissions in the nature of objections, or
 - the relevant local council has made an objection, or
 - a political disclosure statement has been made.
- 4.3.3 Council did not object to the development and less than 50 public objections were received during the exhibition period. However, reportable political donations were made by the Applicant within the last two years. Accordingly, the development is to be determined by the Commission under delegation.

4.4 Mandatory Matters for Consideration

- 4.4.1 Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department's consideration of these matters is set out in **Section 6** and **Appendix B**.
- 4.4.2 Under Section 4.15 of the EP&A Act, the consent authority, when determining a development application, must take into consideration the provisions of any environmental planning instrument (EPI) and draft EPI (that has been subject to public consultation and notified under the EP&A Act) that apply to the development.
- 4.4.3 The Department has considered the development against the relevant provisions of several key EPIs including:
- State Environmental Planning Policy (Infrastructure) 2007
 - State Environmental Planning Policy (Three Ports) 2013
 - State Environmental Planning Policy (Koala Habitat Protection) 2021
 - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
 - State Environmental Planning Policy (Coastal Management) 2018
 - State Environmental Planning Policy No. 55 – Remediation of Land
 - draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)
 - State Environmental Planning Policy No. 64 – Advertising and Signage
- 4.4.4 The Newcastle Local Environmental Plan 2012 (NLEP) and Newcastle Development Control Plan 2012 (NDCP) do not apply to the site. However, the Department has used controls within the NDCP 2012 as a guideline in this assessment.
- 4.4.5 Detailed consideration of the provisions of all EPIs that apply to the development is provided in **Appendix C**. The Department is satisfied the development generally complies with the relevant provisions of these EPIs.

4.5 Public Exhibition and Notification

- 4.5.1 In accordance with Section 2.22 and Schedule 1 to the EP&A Act, the development application and any accompanying information of a development application (which is not designated development, nominated integrated development, threatened species development or State significant development) are required to be publicly exhibited for at least 14 days. This aligns with the minimum exhibition period set out in the Department's Community Participation plan for a development application of this nature.
- 4.5.2 The application was on public exhibition from Friday 9 July 2021 until Thursday 22 July 2021. Details of the exhibition process and notifications are provided in **Section 5.1**.

4.6 Objects of the EP&A Act

- 4.6.1 In determining the application, the consent authority should consider whether the development is consistent with the relevant objects of the EP&A Act. These objects are detailed in Section 1.3 of the EP&A Act.
- 4.6.2 The Department has fully considered the relevant objects of the EP&A Act, including the encouragement of Ecologically Sustainable Development (ESD), in its assessment of the application (see **Table 2**).

Table 2 | Considerations Against the Objects of the EP&A Act

| Object | Consideration |
|--|---|
| (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources, | The development will promote: <ul style="list-style-type: none"> the proper management and development of suitably identified land improved social and economic welfare of the State through the creation of 100 construction jobs and up to 644 operational jobs a suitable environment through appropriate environmental management during construction and operation. |
| (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment, | The Department has considered ecologically sustainable development (ESD) in its assessment of the development (see Section 4.7). The Department is satisfied the development can be carried out in a manner that is consistent with the principles of ESD. |
| (c) to promote the orderly and economic use and development of land, | The operation of the site will promote the economic use of land and be consistent with the transitional industrial and commercial character of the land which is compatible with the overall character of the locality as a working port facility. |
| (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities, | The site has been subject to historical disturbance along with the broader locality with minimal existing vegetation located within the site. No biodiversity values have been identified due to the disturbed nature of the site. |
| (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage), | No impacts to built and cultural heritage have been identified due to the historical disturbance of the site and locality. |
| (g) to promote good design and amenity of the built environment, | The Department considers that the development promotes acceptable design and amenity in a locality that has been historically and currently dominated by general industrial land uses. |
| (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, | The Department has recommended a number of conditions of consent to ensure the construction and maintenance of the development is undertaken in accordance with the relevant legislation, guidelines, policies and procedures. |

| | |
|---|---|
| (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, | The Department referred the development to relevant government agencies and Council during the exhibition period and invited them to comment. The Department has given due consideration to their advice. |
| (j) to provide increased opportunity for community participation in environmental planning and assessment. | The Department publicly exhibited the development application as outlined in Section 5.1 . Property owners within the vicinity of the development were directly notified in writing. |

4.7 Ecologically Sustainable Development

4.7.1 The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- a) *the precautionary principle*
- b) *inter-generational equity*
- c) *conservation of biological diversity and ecological integrity*
- d) *improved valuation, pricing and incentive mechanisms.*

4.7.2 The potential environmental impacts of the development have been assessed and, where potential impacts have been identified, mitigation measures and environmental safeguards have been recommended. As demonstrated by the Department's assessment in **Section 6** of this report, the development is not anticipated to have any adverse impacts on native flora or fauna, including threatened species, populations and ecological communities, and their habitats as the site is devoid of vegetation and there is no vegetation clearing proposed. As such, the Department considers that the development would not adversely impact on the environment and is consistent with the objectives of the EP&A Act and the principles of ESD.

5 Engagement

5.1 Consultation by the Department

5.1.1 The Department undertook consultation with relevant local and State authorities as well as affected landowners during the exhibition of the application and SEE and throughout the assessment of the development. These consultation activities included:

- making the application and SEE publicly available from Friday 9 July 2021 until Thursday 22 July 2021 on the NSW Planning Portal
- notifying landowners in the vicinity of the site about the public exhibition by letter
- notifying and inviting comment from relevant State government authorities and Council

5.2 Submissions and Advice

5.2.1 During the exhibition period, the Department received five submissions from the public, as well as comments from Council, Ausgrid and General Terms of Approval from Subsidence Advisory NSW.

5.2.2 A summary of the submissions is provided below. A link to the full copy of the advice is provided in **Appendix A**.

5.3 Key issues raised in submissions

Key Issues – Public Authorities

5.3.1 **Newcastle City Council** did not object to the proposal and sought clarification on several issues which included the development's consistency with the SP1 Zone objectives, consistency with planning strategies, noise impacts, the layout and design of the café, Aboriginal heritage, traffic and parking, alternate transport and pedestrian network, landscaping and waste management. Council also requested the payment of section 7.12 contributions.

5.3.2 **Ausgrid** did not object and provided comments including guidance on the proposed undergrounding of the overhead mains adjacent to the site, and the requirement of the existing mains to be assessed by a qualified service provider to confirm compliance with Ausgrid and Australian Standards if changes are proposed.

5.3.3 **Subsidence Advisory NSW** issued General Terms of Approval (GTA) on 27 September 2021 to satisfy the approval required under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*.

Key Issues – Community

5.3.4 Five submissions from members of the community were received during exhibition. Of these, two objected to the proposal and three provided comments. The submissions raised concerns regarding traffic, parking, noise, impacts on Denison Street, residential amenity and building orientation.

5.4 Response to submissions

- 5.4.1 On 24 September 2021, the Applicant provided a Response to Submissions (RtS) on the issues raised by the public authorities and community members during the exhibition of the development (see **Appendix A**).
- 5.4.2 The RTS was provided to Council to consider whether it adequately addressed the issues raised. Council was satisfied with most the information provided by the Applicant and recommended a number of conditions including for example - Section 7.12 contributions, car parking and access, vegetation, stormwater management and noise management. Council also raised concerns with the SP1 Zone objectives and consistency with planning strategies again. Further consideration of Council's comments can be found in the Department's assessment of issues in **Table 4**.
- 5.4.3 The Applicant provided an Addendum RtS on 1 November 2021 addressing additional comments received from Council regarding engineering matters including the design of the proposed rain gardens, overland flow paths and the proposed tree planting.
- 5.4.4 The Department has considered the issues raised in submissions from public authorities, the community and the RtS in its assessment of the development.

6 Assessment

6.1.1 The Department has considered the SEE, the issues raised by public authorities and the community and the Applicant's RTS in its assessment of the development. The Department considers the key assessment issues to be site suitability, parking, operational traffic and residential amenity.

6.1.2 A number of other issues have also been considered and assessed in **Table 4**.

6.2 Site Suitability

6.2.1 Council and the Department raised concerns regarding the suitability of an office premise within the Port of Newcastle Lease Area and the SP1 Special Activities zone.

6.2.2 Office premises are permitted as an additional permitted use under Clause 23 of the Three Ports SEPP. Additionally, the proposal is required to meet the objectives of the SP1 zone which are:

- to provide for special land uses that are not provided for in other zones
- to facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land
- to maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities
- to enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure
- to provide for port related facilities and development that support the operations of the PON
- to facilitate development that by its nature or scale requires separation from residential areas and other sensitive land uses
- to encourage employment opportunities

6.2.3 In response to concerns raised, the Applicant did not specify any future tenants, or categories of tenants, and instead updated the SEE to state that the development is likely to attract tenants which include port related office-based businesses.

6.2.4 The Department generally agrees with the Applicant's statement, that the location of the commercial building will be optimal for port related businesses, however there is no guarantee that this will occur. The Department acknowledges that the site is suitable for a mix of tenancies being those that are directly related to the port and others that are support based services and technical advisors for the port and surrounding businesses

6.2.5 However, Council raised concerns that the proposal does not meet the objectives of SP1, specifically to provide special land uses that are not provided for in other zones. Council outlined that the city centre is also well placed to accommodate port related office-based businesses.

6.2.6 The Department notes that whilst an office premise can be provided for in the city centre, a port related business which has the potential to be operating out of normal office hours, seven days a week, which

may not be considered appropriate within the city centre. Further, the site offers unique characteristics for port related business premises that cannot be accommodated in the city centre or other development sites, and therefore the specialized use in this location is appropriate.

- 6.2.7 To meet the objectives of the SP1 zone, the Department recommends a condition requiring an Operational Environmental Management Plan (OEMP) be prepared and must detail how tenancy arrangements will ensure the land is maintained for port related uses that support the operation of the Port of Newcastle, including identifying the categories of tenants permitted to occupy the premises.
- 6.2.8 On balance, the proposal (subject to recommended conditions) addresses the relevant objectives of the SP1 zone as it will provide for port related business premises that will support the operations of the PON and aid in the efficient operation of the port. In addition, the nature and scale of this land use provides a suitable buffer between other industrial uses that require separation from neighbouring residential areas and other sensitive land uses. The proposal offers improved amenity and compatibility in comparison to previous light industrial uses, whilst providing increased employment opportunities in the area.

6.3 Parking

- 6.3.1 Members of the community raised concerns regarding the traffic impacts of the development and noted the already struggling parking situation. The surrounding environment currently sees cars parked on Denison Street and the grass verge on the eastern boundary of the site as overflow parking for the surrounding businesses. Concerns were raised that the proposed development would further add to this problem and further reduce the availability of street parking for residents.
- 6.3.2 The proposed development provides for 172 on-site car spaces. The 172 spaces include:
- 138 external staff parking (rear) spaces including one accessible space
 - 10 external visitor parking (front) spaces including one accessible space
 - 15 staff spaces (secure undercover)
 - 8 spaces suitable for charging of electric vehicles (secure undercover)
 - 1 loading space (front)
- 6.3.3 The proposed car parking layout is as shown in **Figure 6**.
- 6.3.4 As a guideline, the Department has completed an assessment against the NDCP 2012, which identifies the need for 1 space per 50m² GFA for office premises. For the proposed development (with a GFA of 6,432 m²) this requirement would equate to 129 spaces, and the proposal provides an extra 43 spaces over and above this guideline .
- 6.3.5 The proposal also promotes other modes of transport, including 50 bicycle rack spaces and 5 motorbike parking spaces. For reference, the NDCP 2012 requires 1 bicycle space per 200m² GFA (33 bicycle spaces) and 1 motorbike space per 20 car spaces (8.6 motorbike spaces). Therefore, the proposal offers an additional 17 bicycle spaces 1 less motorbike space than prescribed.
- 6.3.6 The Applicant considers the additional car spaces to be appropriate due to the sites location, within the Port Lease Area, the needs of anticipated port related tenants and having regard to the existing parking

issues in the area. The Applicant has not identified any specific tenants for the development, however the proposal intends on providing for port related business premises and therefore there is potential for significant fleet or staff vehicles to be required on site and the need to cater for shift change overs.

6.3.7 The Department notes that neither the community or Council raised concerns over the number of car parking spaces proposed and the immediate area faces difficult parking challenges, with parking overflow from existing industrial uses currently occupying street parking and grass verges. The provided Parking Strategy, prepared by SECA Solution, dated 7 September 2021 acknowledges the role of parking in influencing travel choices, however it also addresses the challenges of providing enough parking spaces to support reasonable access by car while making changes that support more walking, riding, public transport and shared arrangements.

6.3.8 On balance, the Department considers that the proposed provision of on-site parking is appropriate as:

- the proposal will not add to the existing on street parking demand or generate unacceptable traffic impacts;
- the proposed development caters for a variety of travel modes for future tenants;
- the proposed nature of port related tenants is likely to require increased parking provision onsite to allow for fleet vehicles, worker parking and to cater for shift change overs; and
- the Department has recommended conditions requiring the Applicant to deliver 172 car parking spaces, 50 bicycle rack spaces, 5 motorbike parking spaces and to implement the Green Travel Plan which promotes mode share targets and green travel options for future tenants.

6.4 Operational Traffic

6.4.1 Submissions

- 6.4.1.1 Members of the community raised concerns regarding the proposed operational traffic generated by the development in regard to Denison Street, which includes residential uses. The Department notes that Council did not raise any concerns regarding traffic impacts of the proposal.

6.4.2 Road Capacity

- 6.4.2.1 The traffic impacts of the proposal have been assessed by SECA Solution in accordance with the NDCP 2012, SEPP (Three Ports) 2013, the Carrington Greenspace Masterplan (City of Newcastle 2020) and the RMS Guide Traffic Generating Developments. A Traffic Impact Statement dated 1 April 2021 and a Traffic Addendum dated 13 September 2021 were provided to address the traffic impacts of the proposal. The reports include an assessment of the impact on the local road network using traffic data and projections.
- 6.4.2.2 The Applicant's traffic assessment addendum that the environmental capacity for a local residential road is a desirable 200 vehicles per hour (vph) with an upper limit of 300 vph. As a collector road, the desirable limit is 300 vph with an upper limit of 500 vph. In this case, Denison Street functions as a collector road due to its operation providing access to various port industries. However, given the street has a variety of land uses, and members of the community raised concerns regarding the increase in traffic, the Department has also assessed the desired limits for a local residential road.
- 6.4.2.3 Applying the RMS Guide to Traffic Generating Development rates, the site could generate an additional 611 trip per day (305 inbound, 306 outbound). Daily flows are likely to be split between Fitzroy Street and Denison Street.
- 6.4.2.4 The Applicant's traffic assessment considered the worst case scenario to determine the road capacity when 100% of users accessed the development on Denison Street. This will increase daily flows to 1451 vehicles per day (vpd) from approximately 840 vpd. Allowing for the upper limit of a local residential road being 300 vph, acceptable daily flows on Denison Street could reach 3000 vpd. Therefore, Denison Street has adequate capacity to accommodate 100% of the development's proposed operational traffic when considered a local residential road.
- 6.4.2.5 However, the Department notes that the Applicant's traffic modelling estimates that only approximately 60% of vehicles will access the development from Denison Street (the residential street). Therefore, the anticipated increase of vehicles per day would be by 367, totalling 1207 vpd increasing from the current 840 vpd. At 1207 vpd, Denison Street has adequate capacity to accommodate 60% of the development's proposed operational traffic when considered a local residential road.
- 6.4.2.6 The traffic assessment estimates the proposed development will result in a morning peak of 92 vehicle trips and an afternoon peak of 122 vehicle trips. These trips would be distributed across both Fitzroy Street and Denison Street. The report demonstrates the local road network has capacity to accommodate these traffic projections. The level of service for both intersections will remain at an 'A' for both AM and PM peak periods when including the additional traffic generation of the development, meaning vehicles are almost completely unimpeded within the traffic stream.

- 6.4.2.7 The peak flows generated by the development will be distributed across the intersections of Cowper Street with Fitzroy Street and Denison Street. Currently, both intersections are operating with minimal delays. An assessment was undertaken to ensure that a right turn into Denison Street would be safe with adequate capacity to accommodate the additional peak hour demands.
- 6.4.2.8 The Department considers that the operational traffic will not exceed the road capacity of the surrounding road network or result in unacceptable traffic impacts.
- 6.4.2.9 Subject to conditions, specifically the Green Travel plan discussed below in **Section 6.4.3**, the traffic impacts of the proposal are considered acceptable.

6.4.3 Green Travel Plan

- 6.4.3.1 The Applicant provided a Green Travel Plan, prepared by SECA Solution to support the proposal. The plan predicts the transport mode shift based on Journey to Work (JtW) data for Newcastle LGA, a base level mode split and the mode split based on the sustainable transport initiatives being implemented successfully (**Table 3**).

Table 3 | Mode split based on sustainable transport initiatives

| Transport Mode | Mode split based on JtW data for Newcastle LGA | Base Level Mode Split | Mode Split based on sustainable transport initiatives |
|--------------------------------|--|-----------------------|---|
| Car- Driver | 67.6% | 61% | 50% |
| Car - Passenger | 4.7% | 7% | 7% |
| Public Transport | 4% | 5% | 9% |
| Walked or Cycled | 5.8% | 7% | 9% |
| Worked from Home | 3.5% | 10% | 20% |
| Other (inc did not go to work) | 14.4% | 10% | 5% |

- 6.4.3.2 After completing the above analysis, an action plan was developed to support the site to successfully implement sustainable modes of travel from the outset. This included educating staff on their travel choices, provide public transport information as part of orientation, encouraging carpooling, promote walking for staff who live within 2km and monitoring the use of the parking within the site.
- 6.4.3.3 The Department has recommended conditions to ensure the Green Travel Plan provided is to be updated to include Public Transport Routes and Bicycle Network and is to be made available to the tenants. The Public Transport and Bicycle Network Plans are to be installed in common areas prior

to the issue of the Final Occupation Certificate and use of alternative modes of transport is to be encouraged.

6.4.3.4 The Department considers that the recommended condition to update the Green Travel plan will further encourage an appropriate modal split and further reduce the impacts of operational traffic.

6.4.4 Conclusion

6.4.4.1 The Department considers that the traffic impacts and the proposed parking provision to be acceptable and the proposal has adequately demonstrated the existing road network can accommodate the development without the need for external road upgrades.

6.5 Residential Amenity

6.5.1 Submissions

6.5.1.1 Community members raised concerns regarding potential amenity impacts of the development on the residential properties along Denison Street, including traffic, noise, visual impacts as well as the impact of the proposed operational hours.

6.5.2 Bulk, Scale and Visual Impacts

6.5.2.1 Residential development is located opposite to the Denison Street frontage and adjacent to the site to the north on Denison Street. The design of the proposal has been developed to integrate with the surrounding context. Community members raised concerns regarding the orientation of the building.

6.5.2.2 The Department notes that the building is orientated towards Fitzroy Street to distance the bulk of the development from residential properties fronting Denison Street and minimise any associated visual privacy and amenity impacts. The car parking being located on the Denison Street frontage with landscaping and a footpath provides a substantial buffer from the bulk and scale of the 4 storey building from the Denison Street frontage. The landscaping and carparking along the Denison Street frontage will improve the visual amenity of the interface between the streetscape and the site, improving on the existing concrete slab that is often used as temporary informal carparking.

6.5.2.3 The proposal is comparable in height to the surrounding development, acting as a transitional building between the neighbouring Thales building (larger in scale) and the neighbouring Hi-Vis Group shop (smaller in scale) as seen in **Figure 7, Figure 8 and Figure 9**. This transition creates a gradual decrease in height from the industrial land use, through commercial towards the residential uses. Further, the shadow diagrams for the proposal demonstrate that no residential properties or public spaces will experience increased shadowing as a result of the development.



Figure 7 | Artist impression of bulk and scale of proposal in context of neighbouring properties (Denison Street frontage) (Source: Applicant's documentation)



Figure 8 | Artist impression of bulk and scale of proposal in context of residential properties (Denison Street frontage) (Source: Applicant's documentation)



Figure 9 | Street Elevations of both Fitzroy and Denison Street frontages (Source: Applicant's documentation)

6.5.3 Operational Hours

- 6.5.3.1 The Department notes that at this stage, the Applicant has not identified any specific tenants for the development. The SEE outlines that the operational hours would generally be between 6:00am and 6:00pm Monday to Friday and the café 7:00am to 4:00pm Monday to Friday, however some tenants may operate outside of these hours and/or seven days a week.
- 6.5.3.2 To reduce the proposal's impact on residential amenity, the Department has recommended a condition of consent has been included to restrict the operation of the premise to:
- Commercial use 6:00 am to 6:00 pm Monday to Friday
 - Café use 7:00am to 4:00pm Monday to Friday
- 6.5.3.3 These proposed areas are to balance the needs of future tenants, who may require operational hours consistent with the construction industry or port operational hours, with the potential impacts on the surrounding residential properties such as noise and traffic impacts.
- 6.5.3.4 The Preliminary OEMP outlines that the development is predicted to increase traffic noise levels by less than 3dB(A) and that predicted noise levels from the general operation of the car park are less than 47 dB(A) at all existing identified residential receivers which satisfies noise trigger levels. Internal noise levels for the development are expected to meet internal noise goals.

6.5.4 Conclusion

6.5.4.1 The Department is satisfied that the proposed development is appropriately located within a multi-use area and will not have significant visual, traffic or noise impacts on the residential properties of Denison Street, subject to recommended conditions of consent.

6.6 Other issues

6.6.1 The Department's assessment of other issues is provided in **Table 4**.

Table 4 | Other Issues

| Issue | Findings | Recommendations |
|------------------------------|---|--|
| Stormwater Management | <p>A stormwater management system is proposed as part of the development including:</p> <ul style="list-style-type: none"> • a 190 cubic metre onsite detention tank • rainwater reuse tanks with a minimum 16 kilolitre capacity • bioretention rain gardens within the landscaped areas of the eastern and western carparks. <p>Council raised concerns regarding the proposed rain gardens and how they will interface with the surrounding parking areas. The Applicant advised that detailed designs would be provided at Construction Certificate stage and provided a typical cross section of a rain garden.</p> <p>Further, Council raised concerns regarding the design of the overland flow path causing an unrelieved low point between the 3rd and 4th parking aisles which could cause ponding during major storm events. The Applicant advised that the car parking area has been designed to have ponding in the area of question of a maximum depth of 200mm in order to maximise the treatment in the biofiltration and permeable paving.</p> <p>The Department is satisfied that the Applicant has adequately addressed Council's concerns and that further information will be provided at the Construction Certificate stage.</p> | No further action required. |
| Landscaping | <p>A landscaping plan has been prepared for the proposal including landscaping on the ground plane and the upper levels of the building. The Landscaping Plan includes deep soil planting, low level mass planted beds, street tree planting and raised garden beds.</p> <p>Council requested that the four 'Angophora costata' trees proposed to be planted along the Denison Street frontage be replaced with species more suitable. The Applicant revised the proposal to include 'Buckingham celissima' trees in accordance with Council's Street Tree Technical Detail'. Council proposed a condition of consent to require the four trees to be either 'Syzygium jambos', 'Glochidion ferndinandi' or 'Buckingham celissima'.</p> <p>The Applicant provided revised landscaping plans on 9 December 2021 to address Council's request above.</p> | A condition has been recommended requiring the certification that the landscaping has been undertaken in accordance with the approved updated plans. |

The Applicant provided revised landscaping plans on 9 December 2021 in response to Council's request above.

Council provided comments recommending the proposed tree planting within the car park complies with Section 7.02 of the NDCP 2012 for landscaping within external car parks.

The NDCP 2012 outlines one generous shade trees are to be planted at a rate of at least one shade tree per six carparking spaces with an aim to achieve at least 50% shade cover of the area.

Shade trees are proposed at a rate of one shade tree per five spaces with the exception of the central aisle. The proposed garden beds in the car park are 1.2 metres wide and the tree coverage is in the order of 19% of the total car parking area. 39% of the car park is proposed to be permeable medium rather than bitumen/concrete. Therefore, approximately 58% of the total car parking area is comprised of measures that will reduce heat and glare generation.

The Department is satisfied that the intent of the requirements of Section 7.02 of the NDCP 2012 have been met and appropriate external car parking landscaping is proposed.

| | | |
|--|---|---|
| Local Infrastructure Contribution | <p>Council has requested a condition of consent to require the Applicant to pay contributions in accordance with Council's Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019.</p> <p>The Department is satisfied that the contributions plan applies to both the development and site and has included Council's recommended condition of consent requiring the Applicant to pay contributions prior to the commencement of construction.</p> | <p>Require the Applicant to pay the relevant Section 7.12 contributions to Council.</p> |
| Pedestrian Linkages | <p>The proposal includes the extension of the existing footpath along the length of the Denison Street frontage.</p> <p>Council requested the provision of a pedestrian pathway on Denison Street linking to the existing bus stop in Cowper Street (north). The Department considers this appropriate to further encourage the use of public transport and increase the visual amenity and connectivity to the local area.</p> | <p>The Department recommends a condition requiring the Applicant to provide a pedestrian pathway as outlined.</p> |
| Mine Subsidence | <p>The site is identified within a mine subsidence area. Consultation with Subsidence Advisory NSW has occurred, and approval has been provided, subject to conditions.</p> | <p>The Department recommends a condition requiring compliance with the conditions imposed by Subsidence Advisory NSW in their approval issued on 27 September 2021.</p> |
| Signage | <p>The application proposes a non-illuminated business identification sign as seen in Appendix 1 of the SEE.</p> | <p>The Department recommends a condition of consent requiring the proposed sign to comply with SEPP</p> |

A high level assessment of the sign against SEPP 64 (**Appendix C**) concludes that the proposal is generally consistent with the objectives and assessment criteria. As detailed plans and elevations including specifications of the signage were not provided in support of the application, the Department recommends a condition requiring these plans to be submitted to the satisfaction of the Planning Secretary prior to the issue of a construction certificate.

64, for it to be non-illuminated and for detailed plans and elevations to be submitted to the satisfaction of the Planning Secretary prior to the issue of a construction certificate.

BCA Compliance

The Department notes that the information submitted does not assess the proposed works for compliance with the BCA, instead it identifies key provisions of the BCA relevant to the scope of works. A BCA assessment report would review the plans and information accompanying the application, list all areas of non-compliances and give due consideration to the appropriate pathways to achieve compliance.

The Certifier will be required to carry out an assessment of the building against the BCA and the Applicant will be required to provide information to the effect to demonstrate compliance. Any substantial variation to the design for the construction certificate, because of any non-compliances, may require modifications to this consent.

The Department recommends a condition requiring the Applicant to submit a detailed BCA Report to the satisfaction of the Certifier prior to the issue of a Construction Certificate.

Flooding

The proposal site is mapped on the City of Newcastle's flood mapping as Very Low and Low flood risk.

Prior to the lodgement of the DA, the Applicant prepared a Scoping Report for Council. Council indicated that the site is subject to flooding and a Flood Information Certificate should be obtained from Council.

The Applicant has obtained the Flood Certificate from Council which advised that the minimum floor level for occupiable rooms is 2.70m AHD. This floor level has been incorporated into the design.

Council did not raise any flooding concerns within their submissions.

The Department recommends a condition to require the minimum floor levels of occupiable rooms to be in accordance with the Council Flood Certificate and that this be included in the detailed plans prior to the issue of a Construction Certificate to the satisfaction of the Certifier and carried out to the satisfaction of the Planning Secretary and the Certifier prior to the issue of an Occupation Certificate.

Construction Impacts

The proposal has the potential for the construction traffic to add to the existing parking demand within the surrounding area, specifically on Denison Street.

To ensure that construction traffic associated with the development does not utilise public and residential streets or public parking facilities, the Department has recommended that sufficient parking is provided on site for construction parking. Further, a Construction Environmental Management Plan (CEMP) is recommended to be prepared to further support the reduction of construction impacts including sediment and erosion, contamination, waste, traffic, noise and vibration and flooding.

The Department recommends a condition of consent to ensure that the Applicant provides sufficient parking facilities on site, including for heavy vehicles and for site personnel.

Further, a recommended condition of consent has been included requiring a CEMP.

Access to services and open space

The proposal is located within proximity to existing neighbourhood shops in Carrington (within 300m), a local café (80m), directly opposite a small pocket park (known as Coe Park) and has access to nearby active recreational areas.

The proposal does not provide for on-site open space, however it does provide for ancillary café use for future tenants, onsite landscaping and parking, which will link the site to the existing open space directly opposite on the eastern side of Denison street.

The Department considers the proposal has suitable access to services and open space for future tenants. However, recommends that existing footpaths be upgraded to improve pedestrian walkability to these areas.

The Department recommends a condition requiring an extension to existing footpaths and ancillary wayfinding signage to improve access to services and open space for future occupants.

7 Evaluation

- 7.1.1 The Department's assessment of the application has fully considered all relevant matters under Section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development. The Department has considered the development on its merits, taking into consideration strategic plans that guide development in the area, the EPIs that apply to the development and advice received from the relevant public authorities, including Council.
- 7.1.2 None of the State government agencies or Council have objected to the development and the Department has sought to address any issues raised by the objections of community members or raised by Council through consultation with both Council and the Applicant.
- 7.1.3 The Department's assessment of the development identified site suitability, operational traffic, parking and residential amenity as the key issues for consideration.
- 7.1.4 The Department concludes the development would be managed to an acceptable level of environmental performance and has recommended a range of conditions to support this. For example, recommended conditions include provisions to limit operational hours to maintain environmental amenity, implement an Operational Environmental Management Plan to ensure future tenants are port related businesses, provide an appropriate level of on-site parking to reduce on-street parking impacts and update and implement the Green Travel Plan to encourage mode share and green travel options. The Department has also recommended conditions for the payment of development contributions.
- 7.1.5 Overall, the Department's assessment has concluded the development would:
- provide additional commercial infrastructure within the Port of Newcastle area
 - generate up to 100 construction jobs and 644 operational jobs
 - be consistent with the strategic direction of the Carrington and Port of Newcastle areas.
- 7.1.6 Following on from its assessment of the development, the Department considers the development is approvable, subject to conditions of consent. This assessment report is hereby presented to the Independent Planning Commission for determination.

Endorsed by:



Keiran Thomas
Director
Regional Assessments

Endorsed by:



Anthea Sargeant
Executive Director
Key Sites and Regional Assessments

Appendices

Appendix A – List of Documents

The Department relied upon the following key documents during its assessment of the proposed development:

Statement of Environmental Effects

- Statement of Environmental Effects – ‘*Commercial Facility, Carrington Statement of Environmental Effects*’ Rev 0 prepared by Ramboll dated 11 June 2021

As part of the Response to Submissions documentation, the Applicant submitted a revised SEE to reflect additional information as requested by the Department. The amended and approved SEE is as follows:

- Statement of Environmental Effects – ‘*Commercial Facility, Carrington Statement of Environmental Effects*’ Rev 1 prepared by Ramboll dated 24 September 2021

Submissions

- All submissions received from relevant public authorities and Council

Response to Submissions

- Response to Submissions ‘*46 Fitzroy Street, Carrington (DA10689) Response to Submissions*’ prepared by Ramboll dated 24 September 2019
- Addendum Response to Submissions ‘*46 Fitzroy Street, Carrington (DA10689) Response to Submissions Addendum*’ prepared by Ramboll dated 1 November 2021

Additional Information

- Design Specification NCC 2019 – Volume 1 prepared by Trevor R Howse dated 19 March 2021
- Design Specification Accessibility prepared by Trevor R Howse dated 19 March 2021

Statutory Documents

- Relevant considerations under section 4.15 of the EP&A Act (see **Appendix B**)
- Relevant environmental planning instruments, policies and guidelines (see **Appendix C**)

All documents relied upon by the Department during its assessments of the application may be viewed at: <https://www.planningportal.nsw.gov.au/daex/under-consideration/46-fitzroy-street-carrington-commercial-facility>

Appendix B – Considerations under Section 4.15 of the EP&A Act

Matters for Consideration under Section 4.15 of the EP&A Act

| Matter | Consideration |
|---|---|
| a) the provisions of: <ul style="list-style-type: none"> i.) any environmental planning instrument, and | The Department has considered the relevant environmental planning instruments in its assessment of the development. Details of the assessment is provided in Appendix C . |
| <ul style="list-style-type: none"> ii.) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and | The Department has considered the relevant draft environmental planning instruments in its assessment of the development. Details of the assessment is provided in Appendix C . |
| <ul style="list-style-type: none"> iii.) any development control plan, and | The Newcastle Development Control Plan 2012 (NDCP) does not apply to the site in accordance with Section 1.00 of the NDCP as the site is located within the PON lease area. |
| <ul style="list-style-type: none"> iii.) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and | The Applicant has not entered into a planning agreement under Section 7.4 of the EP&A Act. |
| <ul style="list-style-type: none"> iv.) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates, | The Department has assessed the development in accordance with all relevant matters prescribed by the regulations, the findings of which are contained in this report. |
| b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, | The Department has considered the likely impacts of the development in detail in Section 6 of this report. The Department concludes that all environmental impacts can be appropriately managed and mitigated through the recommended conditions of consent. |
| c) the suitability of the site for the development, | The development is permissible with consent and the site is suitable for occupation by the development as it is located on suitably zoned SP1 Special Uses and is located within an existing transitional use precinct. |
| d) any submissions made in accordance with this Act or the regulations, | All matters raised in submissions have been summarised in Section 5 of this report and given due consideration as part of the assessment of the development in Section 6 of this report. |
| e) the public interest. | The development would generate up to 100 jobs during construction, 644 operational jobs in the Newcastle LGA. The environmental impacts of the development would be appropriately managed via the recommended conditions. The Department considers the development is in the public interest. |

Appendix C – Consideration of Environmental Planning Instruments

To satisfy the requirements of Section 4.15(1) of the EP&A Act, the following EPIs were considered as part of the Department's assessment:

- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Three Ports) 2013
- State Environmental Planning Policy (Koala Habitat Protection) 2021
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy No. 55 – Remediation of Land
- draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)
- State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to certain types of infrastructure development, and providing for consultation with relevant public authorities about certain types of development during the assessment process.

The scale and location of the development does not trigger Schedule 3 of the ISEPP and referral to Transport of NSW was not required.

State Environmental Planning Policy (Three Ports) 2007 (Three Ports SEPP)

The Three Ports SEPP aims to provide a consistent and effective planning regime for development, re-development and protection of lands within the ports of Botany, Port Kembla and Newcastle. The Three Ports SEPP also specifies matters to be considered in determining to grant development consent and to ensure the land around the lease areas is maintained for port-relation and industrial land-uses.

The site is zoned SP1 Special Uses under the Three Ports SEPP and the development of an office premise is permissible with consent in the zone. As identified in paragraph 4.2.1 of this report the Department is satisfied the development is consistent with the zone objectives.

State Environmental Planning Policy (Koala Habitat Protection) 2021 (Koala SEPP)

The Koala SEPP aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

Clause 11 of the Koala SEPP applies to land with an area of at least one hectare that does not have a Koala Plan of Management. The Department is satisfied that there is minimal vegetation on the site (as confirmed by the Applicant) with only landscape trees and grasses and therefore the development will have no impact on koalas or koala habitat.

State Environmental Planning Policy (Coastal Management) 2018

The Coastal Management SEPP commenced on 3 April 2018. The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal Management SEPP gives effect to the objectives of the Coastal Management Act 2016 (NSW) from a land use planning perspective. It defines four coastal management areas and specifies assessment criteria that are tailored for each coastal management area. The consent authority must apply those criteria when assessing proposed developments for development that fall within one or more of the mapped areas.

The site is mapped as a coastal environment area and as a coastal use area under the Coastal Management SEPP. These relevant matters are addressed in **Table 5** below.

Table 5 | Consideration of SEPP (Coastal Management) 2018

| Criteria | Department's Consideration | Compliance |
|--|--|------------|
| Division 3 Coastal environmental area | | |
| (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following: | | |
| (a) The integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment. | The proposal would not have a significant impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment. | Yes |
| (b) The coastal environmental values and natural coastal processes. | The site is within an existing developed urban area and on a highly disturbed site. As such, it is not expected the proposal will have an impact on the coastal environmental and natural coastal processes. | Yes |
| (c) The water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes. | The proposal will not impact on the Marine Estate or any sensitive coastal lakes. | Yes |
| (d) Marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. | The site is void of any significant vegetation. | Yes |
| (e) Existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability. | The site does not contain existing public open space or provide access to and along the foreshore. | Yes |
| (f) Aboriginal cultural heritage, practices and places. | The proposal will not impact upon any Aboriginal cultural heritage, practices and places. | Yes |
| (g) The use of the surf zone. | The site is not located within a surf zone. | Yes |

Division 4 Coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority

| | | |
|---|--|-----|
| (a) has considered whether the proposed development is likely to cause an adverse impact on the following: | | |
| (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability | The development is wholly contained within the site boundary and will not impede or diminish public access to the foreshore. | Yes |
| (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores | The development will not overshadow the foreshore and will not result in a loss of views from a public place. | Yes |
| (iii) the visual amenity and scenic qualities of the coast, including coastal headlands | The high standard of the building's architectural design will have a positive impact on the scenic qualities of the area. | Yes |
| (iv) Aboriginal cultural heritage, practices and places | | |
| (v) cultural and built environment heritage | The proposal will not impact upon any Aboriginal cultural heritage, practices, places and built environment heritage. | Yes |

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

The aims of the Vegetation SEPP is to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

There are 27 off site trees with retention value located along the south-western boundary and within the Fitzroy Street verge. As a result, tree protection measures have been incorporated into the design of the proposal. The Department is satisfied that there is minimal vegetation on the site (as confirmed by the Applicant) with only landscape trees and grasses and off site trees are to be retained, therefore the development will have no impact on koalas or koala habitat.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 aims to provide a State-wide approach to the remediation of contaminated land. In particular, SEPP 55 aims to promote the remediation of contaminated land to reduce the risk of harm to human health and the environment by specifying:

- under what circumstances consent is required
- the relevant considerations for consent to carry out remediation work
- the remediation works undertaken meet certain standards and notification requirements.

The Applicant submitted a Detailed Site Contamination Assessment and a Phase One and Phase 2 Contamination Assessment. The Assessment included detailed fieldwork analysis which included the collection and analysis of soil samples located on the site.

The Assessment concluded that the site is suitable for the development but as a precaution an Unexpected Finds Procedure should be included in the Construction Environmental Management Plan. The Department has recommended its standard condition to address this.

Draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)

The draft Remediation SEPP seeks to retain the key operational framework of the current SEPP 55, while also adding new provisions relating to changes in categorisation and introducing modern approaches to the management of contaminated land. The development has been assessed against SEPP 55 (see above), and the Department is satisfied the development would be consistent with the

draft Remediation SEPP.

State Environmental Planning Policy No 64 – Advertising and Signage

State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64) applies to all signage that under an EPI can be displayed with or without development consent and is visible from any public place or public reserve.

The development includes building identification signage on the Fitzroy Street façade.

Under clause 8 of SEPP 64, consent must not be granted for any signage unless the development is consistent with the objectives of the SEPP and with the assessment criteria contained in Schedule 1. The Department considers the development to be compatible with the desired amenity and visual character of the area, provide effective communication and is of high-quality design and is therefore consistent with the objectives of SEPP 64. The Department’s assessment of Schedule 1 of SEPP 64 is provided in **Table 6** below.

Table 6 | Consideration of Schedule 1 Assessment Criteria, SEPP 64

| Assessment criteria | Department’s consideration | Compliance |
|--|---|------------|
| 1 Character of the area | | |
| Is the development compatible with the existing or desired future character of the area or locality in which it is proposed to be located? | The proposed signage is located within the Carrington precinct and is considered compatible with the surrounding character of the site. | Yes |
| Is the development consistent with a particular theme for outdoor advertising in the area or locality? | The development does not include any advertising however includes building identification signage which is consistent with the theme of the locality. | Yes |
| 2 Special areas | | |
| Does the development detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The proposed signage appears that it will not detract from the amenity or visual quality of the surrounding area. The Department has recommended a condition requiring detailed plans of the signage be submitted to the Planning Secretary for review and approval prior to issue of construction certificate. | Yes |
| 3 Views and vistas | | |
| Does the development: <ul style="list-style-type: none"> obscure or compromise important views? dominate the skyline and reduce the quality of vistas? respect the viewing rights of other | The proposed signage: <ul style="list-style-type: none"> will not obscure any views, including important views. does not dominate the existing skyline will not disturb the viewing rights | Yes |

| | | |
|--------------|---------------------------------------|--|
| advertisers? | of other advertisers in the vicinity. | |
|--------------|---------------------------------------|--|

4 Streetscape, setting or landscape

| | | |
|---|--|-----|
| Is the scale, proportion and form of the development appropriate for the streetscape, setting or landscape? | The scale, proportion and form of the proposed signage is appropriate for the setting of the proposed development. | Yes |
| Does the development contribute to the visual interest of the streetscape, setting or landscape? | The proposed signage will contribute to the visual interest of the building by providing identification and recognition of the site. | Yes |
| Does the development reduce clutter by simplifying existing advertising? | The site does not contain any existing advertising. | N/A |
| Does the development screen unsightliness? | The proposed signage is integrated into a new development that exhibits design excellence, therefore there is no unsightliness. | Yes |
| Does the development protrude above buildings, structures or tree canopies in the area or locality? | The proposed signage is integrated into the building façade and does not protrude above the building. | Yes |
| Does the development require ongoing vegetation management? | The proposed signage does not require any ongoing vegetation management | N/A |

5 Site and building

| | | |
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| Is the development compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? | The proposed signage is compatible with the scale, proportion and other characteristics of the building. | Yes |
| Does the development respect important features of the site or building, or both? | The proposed signage will not detract from the important features of the site and building. | Yes |
| Does the development show innovation and imagination in its relationship to the site or building, or both? | The proposed signage is innovatively located and appropriately relates to the building. | Yes |

6 Associated devices and logos with advertisements and advertising structures

| | | |
|---|---|-----|
| Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? | The proposed signage is for business identification only. | Yes |
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7 Illumination

| | | |
|--|--------------------------------------|-----|
| Would illumination: result in unacceptable glare? affect safety for pedestrians, vehicles or aircraft? detract from the amenity of any residence or | The signage will not be illuminated. | N/A |
|--|--------------------------------------|-----|

other form of accommodation.

Can the intensity of the illumination be adjusted?

Is the illumination subject to a curfew?

8 Safety

Would the development reduce safety for:

- pedestrians, particularly children, by obscuring sightlines from public areas?
- for any public road?
- pedestrians or bicyclists?

The Department considers that the signage:

- will not reduce the safety for any public road or pedestrians or cyclists.
 - will not obscure any sightlines, and therefore is not considered to reduce the safety of pedestrians.
-

Newcastle Development Control Plan 2012

The Newcastle DCP 2012 applies to land covered by the Newcastle Local Environmental Plan 2012 and to land outside of the Port of Newcastle Lease Area. Given that the Newcastle Local Environmental Plan 2012 (NLEP) does not apply to the site, and the site is located within the Port of Newcastle Lease Area, the Newcastle Development Control Plan 2012 (NDCP) is not a matter for consideration. However, the Department has reviewed the proposal's consistency with the aims of key controls within the NDCP 2012 as a guideline in this assessment.

Section 3.10 of the NDCP 2012 outlines the controls for commercial uses including height, FSR, setbacks, street activation and design considerations. There are no notable numerical controls for height, FSR, streetscape and front setbacks, and for the majority of design controls, and instead are generally performance-based controls. The Department has reviewed the proposal against the aims of this section and considers it achieves these by:

- providing a commercial space to support port related businesses, enhancing the economic viability of the commercial centre
- contributing positively to the surrounding development by contributing a transitional building between the industrial, commercial and residential uses in the immediate surrounding area
- providing a development suitable for its context within the area by considering the bulk, scale, siting and orientation of the building during design to provide reasonable separation, privacy and amenity to the surrounding residential development
- creating a people friendly place with a café, communal seating and street frontages that integrate with the surrounding open spaces including Coe Park

Section 7.00 of the NDCP 2012 provides guidance on development provisions including landscaping, traffic and advertising.

The proposal is consistent with the aims of Section 7.03 in relation to traffic, parking and access as it:

- will provide adequate on site parking and therefore not contribute to the existing parking demand within the surrounding area

- implement a Green Travel Plan to encourage measures to reduce motor vehicle dependent and increase the use of public transport, walking and cycling
- includes parking, access and service areas in accordance with best practice standards
- provides adequate and safe vehicle access to the site

The proposal includes a Landscaping Plan in accordance with Section 7.02 of the NDCP 2012. The Department is satisfied that the proposal has considered the relevant controls regarding parking, tree protection and tree species as:

- landscape elements have been incorporated within the car park design which achieves approximately 58% of the total car parking area being comprised of measures that will reduce heat and glare generation
- tree species for the Denison Street frontage have been selected in consultation with the City of Newcastle Council
- tree protection measures will be implemented for the duration of construction

Section 7.09 of the NDCP 2012 provides guidance on all advertisements and signage except that which is exempt development under an EPI. The proposal includes business identification signage visible from a public space and therefore meets the definition of signage to which SEPP 64 applies. The Department has considered the non-illuminated signage in accordance with SEPP 64 and considers the development to be compatible with the desired amenity and visual character of the area, provide effective communication and is of high-quality design and is therefore consistent with the objectives of SEPP 64. Further, the Department recommends a condition of consent requiring the proposed sign to comply with SEPP 64 and for detailed plans and elevations to be submitted to the satisfaction of the Planning Secretary prior to the issue of a construction certificate.

Appendix D – Recommended Instrument of Consent