

# Modification 1 of Commercial Building – 46 Fitzroy Street, Carrington

Modification Assessment Report (DA 10689 MOD 1)

August 2026





# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Modification 1 of Commercial Building – 46 Fitzroy Street, Carrington (DA-10689-MOD-1) Assessment Report

Published: August 2026

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# Preface

This assessment report provides a record of the Department of Planning, Housing and Infrastructure's (the Department) assessment and evaluation of modification 1 of the development application (DA) for a proposed commercial building at 46 Fitzroy Street, Carrington. The report includes:

- an assessment of the modification against Government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the modification during the assessment process
- an assessment of the likely environmental, social and economic impacts of the modification
- an evaluation which weighs up the likely impacts and benefits of the modification, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are, on balance, acceptable
- an opinion on whether the modification is approvable or not, to assist the Independent Planning Commission in making an informed decision about whether the consent for the project can be modified and any conditions that should be imposed.

# Executive Summary

This report provides the Department of Planning, Housing and Infrastructure's (the Department) assessment of a proposal to modify the development application (DA) granted for a commercial building at 46 Fitzroy Street, Carrington (DA 10689 MOD 1), in the Newcastle local government area (LGA).

On 2 February 2022, the Independent Planning Commission (IPC) approved a DA for a commercial building at 46 Fitzroy Street, Carrington (DA 10689). The approval allows for the construction of a four-storey commercial building for port-related office uses, including a café, 172 car parking spaces and landscaping. The application has not been previously modified.

The Port of Newcastle (the Applicant) seeks to modify the application to increase the building height to accommodate changes to the design of the level 4 plant room, introduce a backup generator and substation within the car parking area, reduce the carparking spaces to 170, amend the design of the building façade and other associated amendments to conditions.

The proposed modification is within the scope of section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and does not constitute a new development application.

The Minister for Planning is the consent authority for the application pursuant to section 5.6 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP), as the site is located within the Port of Newcastle Lease Area. The Applicant has made a Reportable Political Donations Declaration. Therefore, the Independent Planning Commission as the Minister's delegate may determine the modification application.

The Department publicly exhibited the proposal from 2 April 2026 until 15 April 2026 on the NSW Planning Portal. During the exhibition period, the Department received advice from Newcastle City Council (Council) providing comments and two public submissions. Key issues raised in submissions primarily relate to traffic and parking and noise impacts.

The Department has assessed the modification in accordance with the requirements of the EP&A Act and carefully considered the issues raised in submissions and the Applicant's response. The Department considers the modification is acceptable as the proposed amendments are minor in scale, the development, as modified, is considered substantially the same as that originally approved, and the proposed modifications would not result in any unacceptable visual, environmental or amenity impacts.

As such, the Department considers the modified project to be in the public interest and concludes that the consent may be modified subject to conditions.

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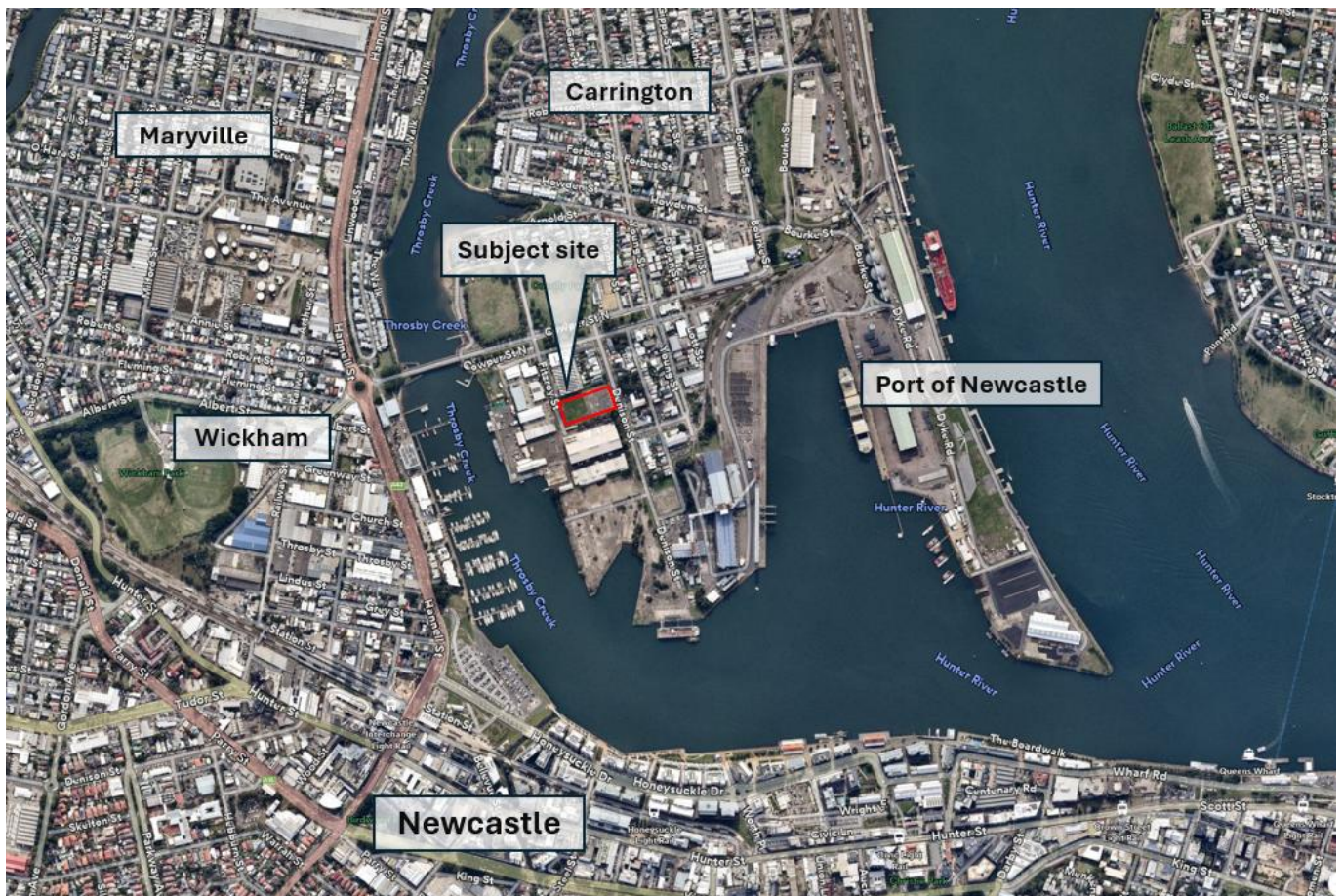
# 1 Introduction

## 1.1 The site

1. The subject site is located within the Port of Newcastle in the Newcastle LGA, approximately 1.5 km north-west of the Newcastle town centre (Figure 1 and Figure 2).
2. The site is legally described as Lot 33 in DP 1078910, is approximately 8,684 m<sup>2</sup> in size and forms part of the Port of Newcastle lease area under Section 5.3 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport & Infrastructure SEPP).

## 1.2 Approval history

3. On 2 February 2022, a development application for a commercial building was approved by the Independent Planning Commission (IPC) (DA 10689).
4. The consent has not been previously modified.
5. At the time of writing, the approved development has not commenced.



**Figure 1** | Regional context map (the site outlined in red) (Source: Nearmap 2026)



**Figure 2** | Aerial view of the site location and context (the site outlined in red) (Source: Nearthmap 2026)

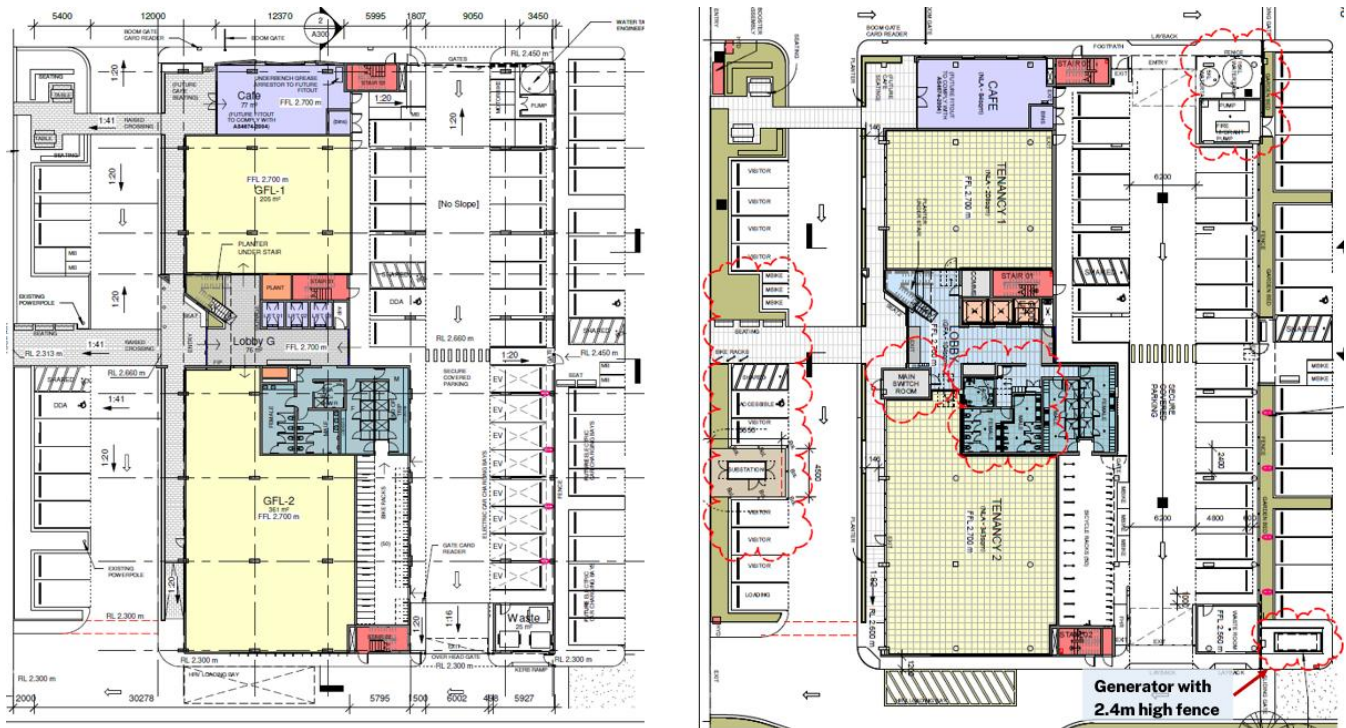
## 2 Proposed modification

### 2.1 Modification overview

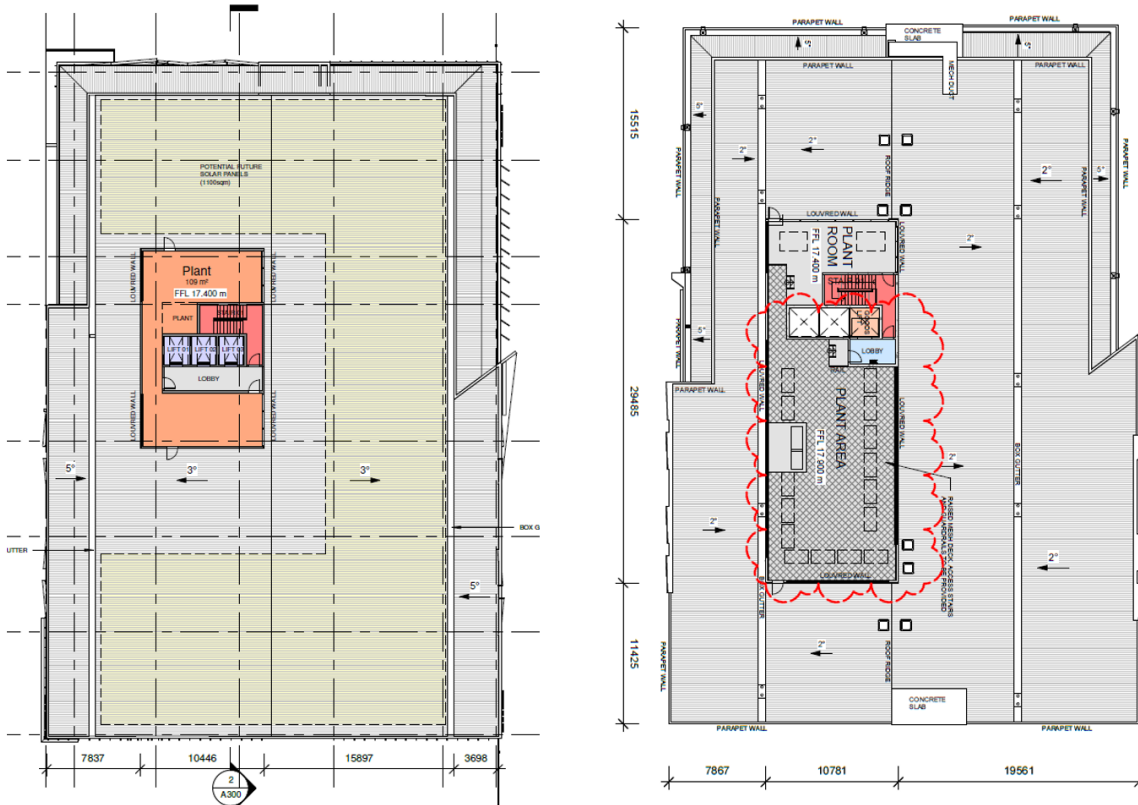
6. The modification seeks approval to increase the building height to accommodate changes to the design of the level 4 plant room, introduce a backup generator and substation within the car parking area, reduce the carparking spaces from 172 to 170, amend the design of the building façade and other associated amendments to conditions.
7. The modification also seeks approval for revised gross floor area (GFA) calculations to ensure consistency with the standard definition of GFA under the *Newcastle Local Environmental Plan 2012* (NLEP) and to update the associated GFA conditions accordingly. With the exception of the roof top plant room, no increase is proposed to the building footprint, floor plates or development yield.
8. The Applicant advises that the modification is required to facilitate design improvements and ensure the building meets required building standards during the detailed design stage. The key components of the modification are outlined in **Table 1** and illustrated in **Figure 3** to **Figure 8**.

**Table 1** | Key components of the modification application

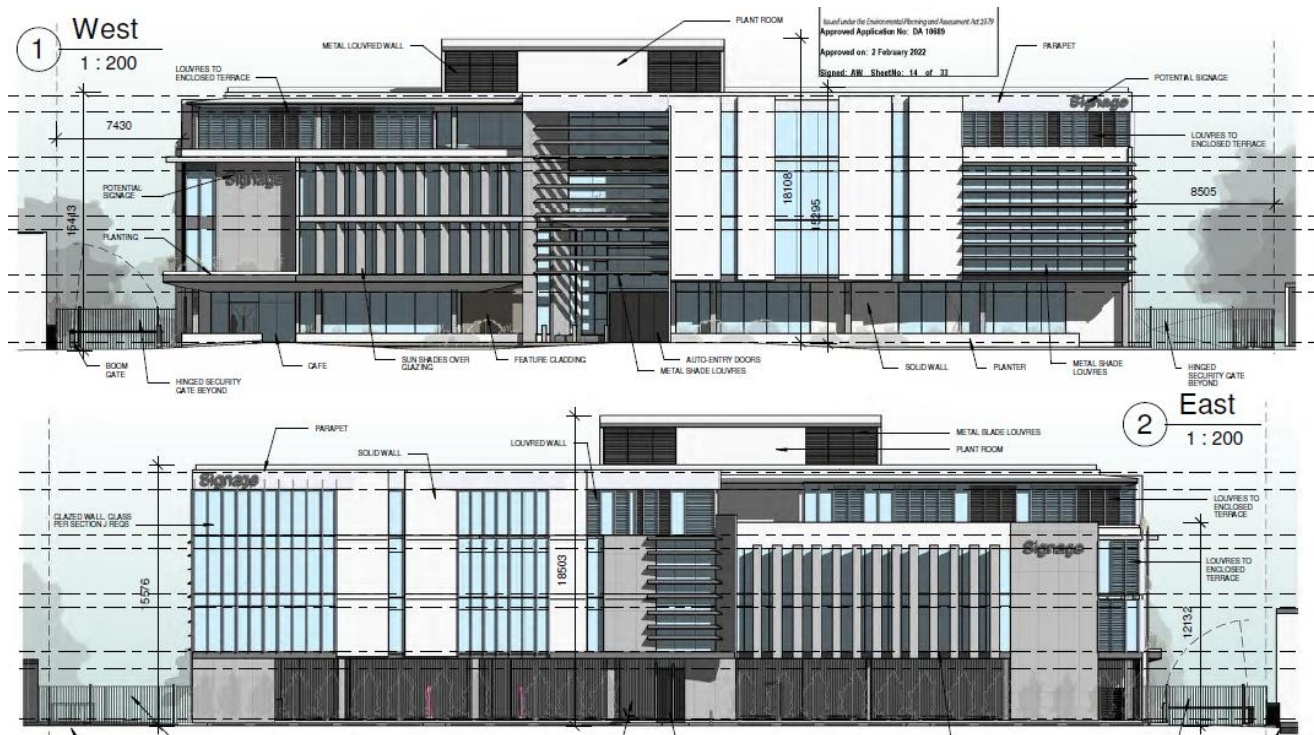
| Component                     | Approved             | Proposed Modification                                               |
|-------------------------------|----------------------|---------------------------------------------------------------------|
| <b>Building height</b>        | 20.8 m RL            | 22.1 m RL / +1.3 m                                                  |
| <b>Gross floor area (GFA)</b> | 6,432 m <sup>2</sup> | 6,574 m <sup>2</sup> (recalculation only, no additional floorspace) |
| <b>Car parking spaces</b>     | 172                  | 170 / - 2 spaces                                                    |
| <b>Backup generator</b>       | N/A                  | Provision of 1 backup generator within the car park                 |
| <b>Substation</b>             | N/A                  | Provision of substation within the car park                         |



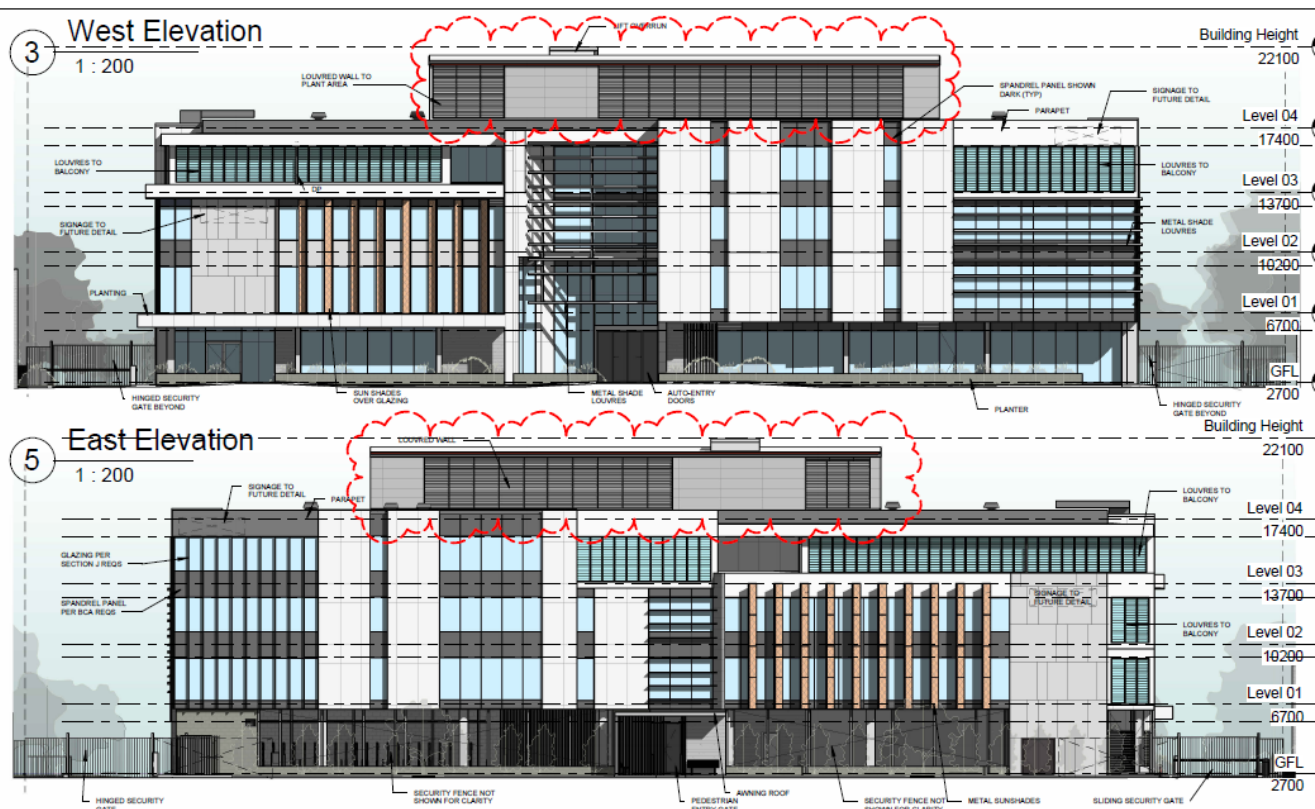
**Figure 3** | Approved ground floor plan (left) and proposed ground floor plan (right) illustrating the changes to the internal layout, the car parking spaces, the backup generator and substation. The changes are circled in red (Source: DA 10689 plans and DA 10689 MOD 1 plans)



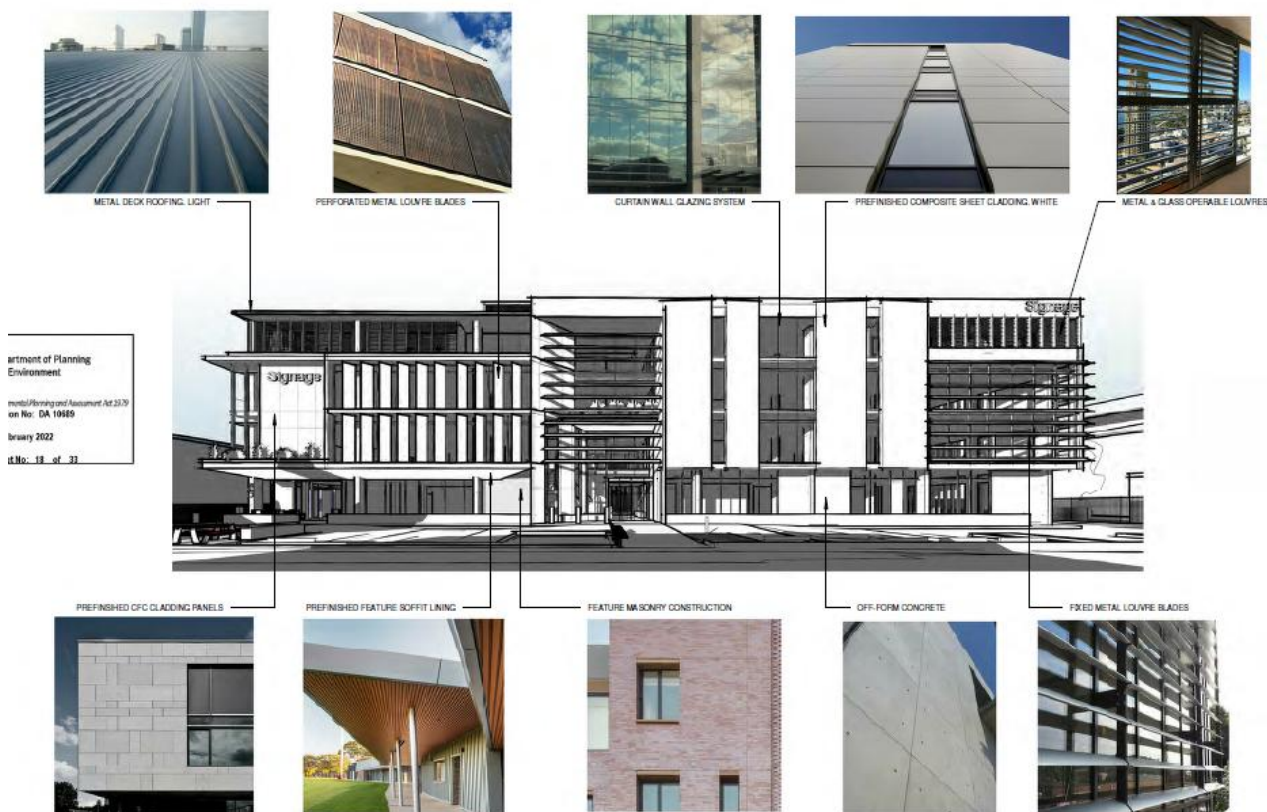
**Figure 4** | Excerpt of the approved level 4 plan (left) the proposed level 4 plan (right) illustrating the changes to the plant room, circled in red (Source: DA 10689 plans and DA 10689 MOD 1 plans)



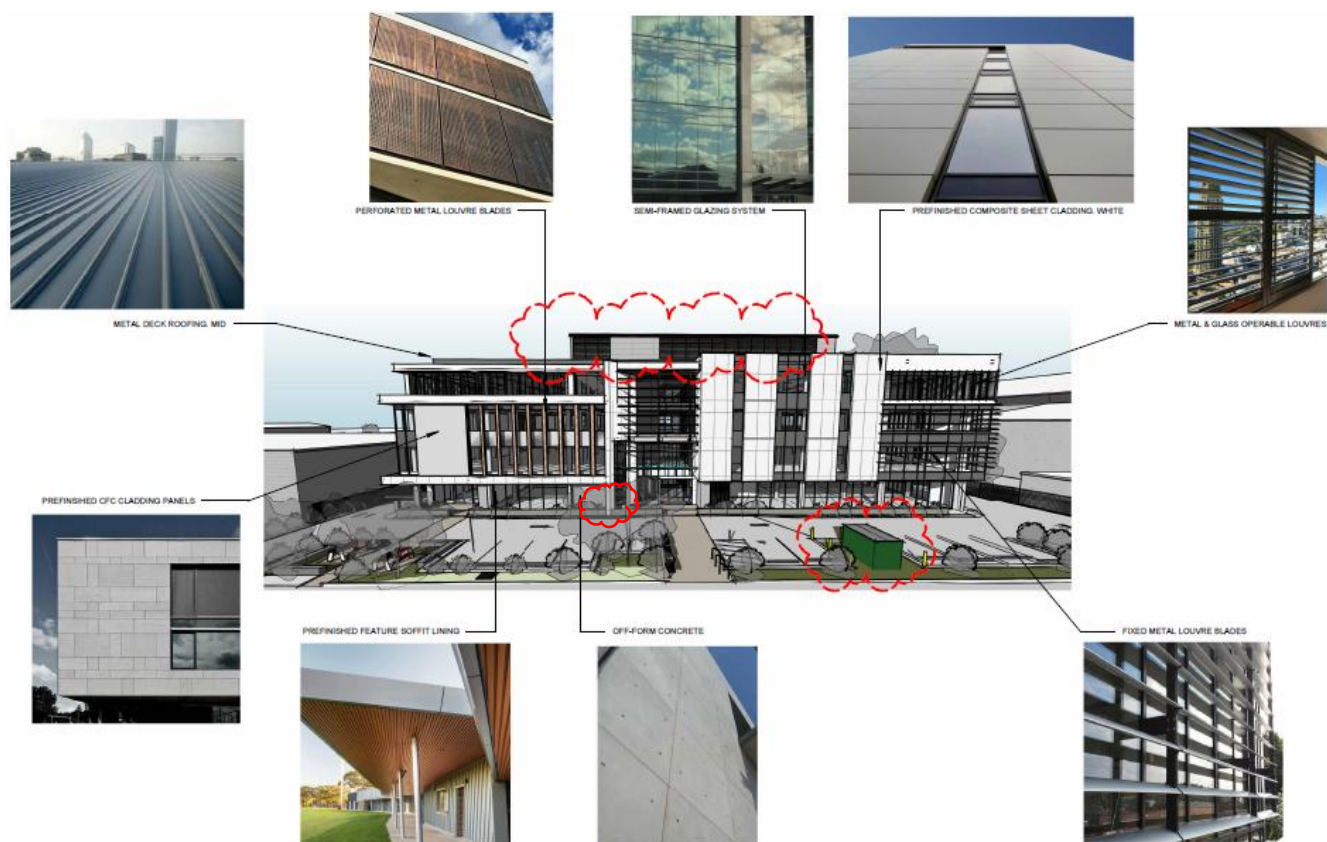
**Figure 5** | Approved West and East elevations (Source: DA 10689 plans)



**Figure 6** | Proposed West and East elevations illustrating the changes to the roof plant. The changes are circled in red (Source: DA 10689 MOD 1 plans)



**Figure 7** | The approved materials schedule (Source: DA 10689 plans)



**Figure 8** | Proposed materials schedule illustrating the changes to the approved feature masonry construction (Source: DA 10689 MOD 1 plans)

## 3 Statutory context

### 3.1 Scope of modification and assessment pathway

9. Details of the legal pathway under which the modification is sought are provided in Table 2.

**Table 2 |** Permissibility and assessment pathway

| Consideration                                                                                  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Public authority for the purposes of Chapter 5 of the Transport and Infrastructure SEPP</b> | <ul style="list-style-type: none"><li>• Port of Newcastle Operations Pty Limited (the Applicant) is a 'public authority' for the purposes of Chapter 5 of <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (the Transport and Infrastructure SEPP), as it is the Port Operator of the Port of Newcastle.</li><li>• Section 5.2(1) of the Transport and Infrastructure SEPP states that a reference to a 'public authority' in Chapter 5 of the Transport and Infrastructure SEPP includes the Port Operator.</li><li>• Additionally, section 5.2(1) of the Transport and Infrastructure SEPP states that in relation to the Port of Newcastle, 'Port Operator' effectively has the same meaning as in the <i>Ports and Maritime Administration Act 1995</i>.</li><li>• On 15 May 2014, Port of Newcastle Operations Pty Limited was declared the Port Operator of the private port of Newcastle under section 3(1) of the <i>Ports and Maritime Administration Act 1995</i>.</li><li>• Therefore, the Port of Newcastle Operations Pty Limited is a public authority for the purpose of development activities within the Port of Newcastle Lease Area under Chapter 5 of the Transport and Infrastructure SEPP.</li></ul> |
| <b>Assessment Pathway</b>                                                                      | <ul style="list-style-type: none"><li>• The Department has reviewed the scope of the application and considers that it can be characterised as a section 4.55(2) modification, as it is substantially the same development as originally approved and does not constitute a new development application.</li><li>• Accordingly, the Department considers that the application should be assessed and determined under section 4.55(2) of the EP&amp;A Act rather than requiring a new development application to be lodged.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Decision maker</b>                                                                          | <p>Minister for Planning and Public Spaces</p> <ul style="list-style-type: none"><li>• The Minister for Planning and Public Spaces is the consent authority under section 5.6 of the Transport and Infrastructure SEPP.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Reportable Political Donations</b>                                                          | <ul style="list-style-type: none"><li>• The Applicant has made a declaration under section 10.4 of the EP&amp;A Act that it has made reportable political donations in the two years prior to the</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Consideration   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | lodgement of the application.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Delegate</b> | <p><b>Independent Planning Commission</b></p> <ul style="list-style-type: none"> <li>• In accordance with Schedule 1 and 2 of the Minister's Instrument of Delegation dated 14 September 2011 (the 2011 Delegation), the Minister's determination functions under the EP&amp;A Act can be delegated to the Independent Planning Commission (the IPC) to determine the request to modify the Minister's approval.</li> <li>• However, the 2011 Delegation does not apply to applications (including reportable political donation applications) made by a public authority (Schedule 2).</li> <li>• While the Proponent is considered a 'public authority' for the purposes of Chapter 5 of the Transport and Infrastructure SEPP, they are not considered a 'public authority' for the purposes of the 2011 Delegation to the IPC.</li> <li>• The 2011 Delegation applies the definition of a 'public authority' in the EP&amp;A Act, and the Applicant is not considered a public authority under the EP&amp;A Act definition in relation to the modification request.</li> </ul> |

## 3.2 Other approvals and authorisations

10. The proposal is 'integrated development' pursuant to Division 4.8 of the EP&A Act, as the site is within a mine subsidence district and requires approval from Subsidence Advisory NSW under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*.
11. The application was accompanied by a letter from Subsidence Advisory NSW confirming that no further consultation was necessary on the modification as the works were considered substantially the same as what was approved.

## 3.3 Mandatory matters for consideration

### 3.3.1 Matters of consideration required by the EP&A Act

12. In determining the modification, the consent authority must take into consideration the matters referred to in section 4.15(1) of the EP&A Act which are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
13. The Department's consideration of these matters is shown in Table 3.

**Table 3** | Matters for consideration

| Matter for consideration                                                                                           | Department's assessment                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Environmental planning instruments, proposed instruments, development control plans and planning agreements</b> | <p>The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment.</p> <p>The Department considers the current modification remains consistent with the EPIs, as outlined in <b>Appendix B</b>.</p> |
| <b>EP&amp;A Regulation</b>                                                                                         | <p>The modification satisfactorily meets the relevant requirements of the EP&amp;A Regulation, including the procedures relating to applications and public participation, as outlined in <b>Appendix B</b>.</p>                                                                           |
| <b>Likely impacts</b>                                                                                              | <p>Section 5 – Assessment.</p>                                                                                                                                                                                                                                                             |
| <b>Suitability of the site</b>                                                                                     | <p>Section 5 – Assessment.</p>                                                                                                                                                                                                                                                             |
| <b>Public submissions</b>                                                                                          | <p>Section 4 – Engagement and Section 5 – Assessment.</p>                                                                                                                                                                                                                                  |
| <b>Public interest</b>                                                                                             | <p>Section 5 - Assessment and Section 6 – Evaluation.</p>                                                                                                                                                                                                                                  |

### 3.3.2 Objects of the EP&A Act

14. In determining whether or not to modify the consent, the consent authority should consider whether the modified project is consistent with the relevant objects of the EP&A Act (section 1.3), including the principles of ecologically sustainable development. Consideration of these factors is described in **Appendix B**.
15. The Department is satisfied that the development is consistent with the objectives of the EP&A Act and the principles of ecologically sustainable development (ESD).

## 4 Engagement

### 4.1 Public exhibition

16. After accepting the modification application, the Department publicly exhibited the proposal from 2 April 2026 until 15 April 2026 on the NSW Planning Portal, notified occupiers and landowners in the vicinity of the site about the public exhibition and invited comment from Council.
17. During the exhibition period, the Department received a submission from Council providing comments and two public submissions. A summary of the matters raised is provided at **Section 4.1** and **Section 4.2** and a link to the advice is provided at **Appendix A**.
18. The Department has considered the comments raised by Council and public submissions during the assessment of the proposal (**Section 5**).

### 4.2 Summary of public submissions

19. The public submissions raised concerns with the proposed landscaping, urban heat, traffic impacts, parking, site access and potential noise impacts from the proposed generator.

### 4.3 Summary of Council submission

20. Council provided comments on the application, requesting that the Applicant provide further justification for the proposed lift overrun, especially in relation to the scale of the approved building, as the lift plant occupies a significant portion of the rooftop area.

### 4.4 Response to submissions and additional information

21. Following the exhibition of the modification, the Department placed copies of all submissions and advice received on its website and requested the Applicant to respond to the issues raised in the public submissions and Council's submission.
22. The Applicant submitted a RtS report to the Department on 1 May 2026 (**Appendix A**), which provided a response to submissions. The Department published the RtS and additional information on the NSW Planning Portal.
23. The RtS includes a response to the concerns raised by Council and the public submissions relating to the lift overrun, landscaping and the urban heat island effect, traffic impacts, parking, site access and potential noise impacts from the proposed generator.

## 5 Assessment

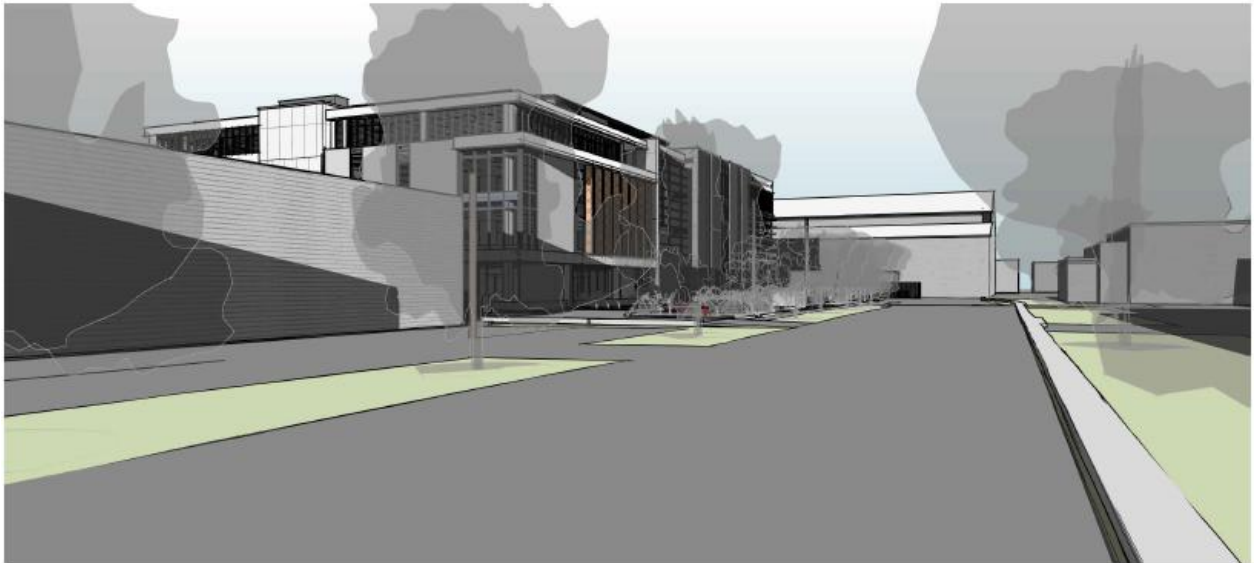
24. The Department has assessed the proposal, considering all documentation submitted by the Applicant, the issues raised in submissions and advice provided by Council.
25. The Department considers the key assessment issues associated with the proposal are:
  - Built form and design
  - Operational noise
26. Each of these issues are discussed in the following sections of this report. The Department's consideration of other issues and amendments to conditions is provided in Sections 5.3.

### 5.1 Built form and design

#### 5.1.1 Lift overrun

27. The modification proposes increasing the building height from RL 20.8 m to RL 22.1 m to accommodate an increase in the level 4 lift plant size. The modification has been requested to accommodate design changes identified during the detailed design stage, following approval.
28. Council requested that the Applicant provide further justification for the proposed lift overrun, especially in relation to the scale of the approved building, as the lift plant occupies a significant portion of the rooftop area.
29. In response to Council's advice, the Applicant stated that the proposed development was designed to comply with the relevant Australian Standards, where at least one lift is required to service all levels of the building. This resulted in the need for a height increase to allow the lift to service the plant room level, in addition to the commercial levels. Further, the Applicant advised that the height of the proposed lift shaft was determined by the lift manufacturer, which specified a minimum internal clearance of approximately 4.39 metres to accommodate the lift system. This requirement informed the design of the lift overrun height.
30. The Department has considered the proposed height increase and expansion of rooftop plant infrastructure and is satisfied that the proposal would result in only minimal changes to the building's visual appearance, built form, and the overall bulk and scale. The height increase is relatively minor at 1.3 m (a 6.25% increase above approved height), is limited to the lift overrun and associated plant room and does not alter the height of the main building. The lift overrun is centrally located on the rooftop and setback a minimum of approximately 6.7 m from the building edges, reducing its visibility from surrounding streets and publicly accessible areas as shown in Figure 4, Figure 5 and Figure 6 in Section 2.1 and Figure 9 below.

31. Therefore, the Department considers the proposed modification is acceptable and would not result in any significant impacts beyond those already assessed and approved. Condition B10 and Condition E7 are to be modified to note the updated building height.



FITZROY NORTH STREET STREETSCAPE - APPROVED



FITZROY STREET NORTH STREETSCAPE - PROPOSED

**Figure 9 |** Perspective comparison showing change to rooftop plant (Source: DA 10689 MOD 1 plans)

### 5.1.2 Façade changes

32. The modification seeks to amend the materials schedule to remove the feature masonry construction from the building, as shown in Figure 7. The change effects a minor portion of the ground floor façade of Tenancy 1, to the north of the entry doors. Noting that the ground floor is recessed under the upper floors and the building is setback from the public domain and partially screened by landscaping and parking, its visibility from surrounding streets and

publicly accessible locations is limited. The masonry feature wall is proposed to be changed to off-form concrete, which is an approved material used elsewhere on the building façade, ensuring consistency with the established architectural palette.

33. The Department is satisfied that the proposed amendment to the materials schedule is minor in scale and does not result in unacceptable visual impacts to the overall aesthetic or built form, and that the building remains well articulated with a range of appropriate materials. Therefore, the Department considers the proposed modification acceptable.

5.2 Operational noise

34. The modification seeks approval for the use of a backup generator, which is to be built within the car parking area at the rear of the main building and away from Fitzroy Street and Denison Street, with a 2.4m high screen/fence, as shown in Figure 3. The Applicant notes that the generator will also be screened by trees and plantings and any visual impacts to the street will be minor.
35. The Applicant provided an updated Noise and Vibration Impact Assessment (NVIA) to assess the noise impacts produced from the proposed generator. The closest sensitive receiver is the residential property at 59 Denison Street, which is located at the northeastern corner of the site as shown in Figure 2. The NVIA concluded that the noise anticipated to be generated would not exceed the relevant noise trigger levels for sensitive receivers in accordance with the relevant policies and standards. Additionally, the Applicant clarified that the generator would only be operational during test procedures or power outages.
36. The Department is satisfied that the proposed backup generator will have a negligible impact on operational noise in the surrounding area and considers the proposed modification acceptable subject to compliance with the criteria provided in the NVIA and the conditions of consent.

5.3 Other issues

37. The Department’s consideration of other issues is summarised in Table 4.

Table 4 | Assessment of other issues

| Issue               | Findings and conclusions                                                                                                                                                                                                                                                                                                                                    | Recommendation                                               |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| Traffic and parking | The modification proposes a reduction in parking spaces from 172 to 170. The parking spaces to be removed are located at the Fitzroy Street frontage to accommodate the proposed substation and at the rear of the building to accommodate the proposed generator. The modification will result in 38 spaces above the parking demand requirement under the | Conditions B11, B15, and E7 are modified to note the updated |

| Issue                         | Findings and conclusions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Recommendation                                              |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
|                               | <p>NLEP. The Applicant has stated that this number will maintain flexibility for the Port of Newcastle, without impacting on surrounding on-street parking availability.</p> <p>The Department is satisfied that the modification will not have an impact on parking availability for the surrounding roads. Conditions B11, B15, and E7 are to be modified to note the updated parking space numbers.</p> <p>A submission raised concerns regarding traffic impacts and inconsistencies in the parking numbers shown in the application and plans. The Applicant confirmed that the modification would not increase traffic generation beyond the approved development and clarified the location of all car, motorcycle and bicycle parking spaces.</p> <p>The Department is satisfied that the modification will not result in additional traffic impacts beyond those already assessed and approved and notes the Applicant's clarification of parking provisions.</p> | parking space numbers.                                      |
| <b>Gross floor area (GFA)</b> | <p>The modification includes a revision to the approved gross floor area (GFA) from 6,432m<sup>2</sup> to 6,574m<sup>2</sup>. The Applicant has advised that no increase to the building footprint, building envelope or floor plates is proposed. Rather, the revised GFA reflects an updated calculation methodology that is consistent with the standard definition of GFA under the NLEP.</p> <p>The change represents a correction to the reported GFA rather than an increase in the physical extent or development yield of the approved development.</p> <p>The Department is satisfied that the revised GFA more accurately reflects the approved development, is consistent with the standard definition of GFA under the NLEP and does not result in any material change to the scale or intensity of the proposal. Conditions B11 and E7 have been updated to reflect the revised GFA accordingly.</p>                                                         | Conditions B11 and E7 are modified to note the updated GFA. |
| <b>Site access</b>            | <p>A submission raised concern that there was a lack of space available in the parking lot to accommodate truck movements into and through the site. The submission also raised concern that the Denison Street entry / exit point would not meaningfully reduce congestion.</p> <p>In response, the Applicant confirmed that there is no change to the parking lot from what is already approved in relation to egress, access or on-site navigation. The Applicant also confirmed that there is sufficient space for trucks to enter via Denison Street and exit via Fitzroy Street, as noted in the assessment of DA 10689.</p>                                                                                                                                                                                                                                                                                                                                         | No conditions recommended                                   |

| Issue                 | Findings and conclusions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Recommendation            |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
|                       | <p>The Department is satisfied that the modification will not impact on truck movements within the site and no amendments to the conditions are considered necessary.</p>                                                                                                                                                                                                                                                                                                                                                                                                                       |                           |
| <b>Landscaping</b>    | <p>A submission raised concern that there was a lack of landscaping proposed in the development area to mitigate the urban heat island effect.</p> <p>In response, the Applicant confirmed that tree planting has been proposed throughout the site, including the car park and the front and rear setbacks, and these plantings should provide adequate shade cover within the site.</p> <p>The Department is satisfied that adequate landscaping has been provided within the site to mitigate the urban heat island effect and no amendments to the conditions are considered necessary.</p> | No conditions recommended |
| <b>Substation</b>     | <p>The modification includes an indicative location of the proposed substation.</p> <p>The Department is satisfied that the proposed location of the substation is acceptable as:</p> <ul style="list-style-type: none"> <li>• it has been informed by consultation with Ausgrid in accordance the relevant requirements</li> <li>• the location of the substation ensures that it will not generate any significant noise or vibration impacts on sensitive receivers or impact on pedestrian safety.</li> </ul>                                                                               | No conditions recommended |
| <b>Consent period</b> | <p>A submission raised concern that the modification was submitted to extend the 5-year consent period. However, the Department notes the proposal does not seek any modification to the consent period.</p>                                                                                                                                                                                                                                                                                                                                                                                    | No conditions recommended |

## 5.4 Other amendments to conditions

38. In addition to the amended conditions discussed above, Council suggested additional conditions during consultation, requiring the Applicant to design and operate the proposed water-cooling air handling systems in accordance with the relevant standards and the backup generator be situated at or above the flood planning level of 2.7m AHD. The Department raises no concerns with the inclusion of the proposed conditions and notes that the Applicant has accepted the conditions.

## 6 Evaluation

39. The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ecologically sustainable development, advice from Council and public feedback, and strategic government policies and plans.
40. The Department's assessment concludes that the proposed modification is acceptable, as the proposed amendments are minor in scale and would not result in any unacceptable visual, environmental or amenity impacts.
41. Consequently, the Department considers the modification is in the public interest and should be approved, subject to the recommended conditions of consent (**Appendix C**).
42. This modification report is hereby presented to the Commission to determine the application.

# Glossary

| Abbreviation                     | Definition                                                          |
|----------------------------------|---------------------------------------------------------------------|
| <b>Applicant</b>                 | Port of Newcastle                                                   |
| <b>CC</b>                        | Construction Certificate                                            |
| <b>Council</b>                   | Newcastle City Council                                              |
| <b>Department</b>                | Department of Planning, Housing and Infrastructure                  |
| <b>EP&amp;A Act</b>              | <i>Environmental Planning and Assessment Act 1979</i>               |
| <b>EP&amp;A Regulation</b>       | Environmental Planning and Assessment Regulation 2021               |
| <b>EPI</b>                       | Environmental planning instrument                                   |
| <b>ESD</b>                       | Ecologically sustainable development                                |
| <b>IPC</b>                       | Independent Planning Commission                                     |
| <b>LEP</b>                       | Local environmental plan                                            |
| <b>Planning Systems<br/>SEPP</b> | State Environmental Planning Policy (Planning Systems) 2021         |
| <b>RtS</b>                       | Response to Submissions dated 1 May 2026                            |
| <b>Secretary</b>                 | Secretary of the Department of Planning, Housing and Infrastructure |
| <b>SEPP</b>                      | State environmental planning policy                                 |

# Appendices

## Appendix A – List of referenced documents

The following key documents were relied on by the Department in its assessment and can be found at the application webpage <https://www.planningportal.nsw.gov.au/daex/under-consideration/46-fitzroy-street-carrington-modification-1-da-10689-mod-1>:

- Section 4.55(2) Modification Application Request
- Response to submission report
- Council's submission and public submissions.

## Appendix B – Statutory considerations

### Section 4.15(1) of the EP&A Act

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development.

**Table 5** | Consideration of the matters listed under section 4.15(1) of the EP&A Act

| Section 4.15(1) Matters for consideration                                                                                                                                                                                                                                                                                    | Department's assessment                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) the provision of:<br>(i) any environmental planning instrument                                                                                                                                                                                                                                                           | The modification would not alter the consistency of the proposal with the relevant EPIs.                                                                                             |
| (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) | Not applicable.                                                                                                                                                                      |
| (iii) any development control plan                                                                                                                                                                                                                                                                                           | The Newcastle Development Control Plan 2012 does not apply to the site, as it is located within the Port of Newcastle lease area.                                                    |
| (iiia) 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                                                                                                                                                     | Not applicable.                                                                                                                                                                      |
| (iv) the regulations (to the extent that they prescribe matters for the purpose of this paragraph)                                                                                                                                                                                                                           | The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to application, the requirements for notification and fees. |

| Section 4.15(1) Matters for consideration                                                                                                                                     | Department's assessment                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>(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</b> | The Department considers the likely impacts of the proposed modification acceptable and have been appropriately addressed (Section 5).                                            |
| <b>(c) the suitability of the site for the development</b>                                                                                                                    | The suitability of the site was considered in the Department's original assessment and the modification does not alter the site suitability.                                      |
| <b>(d) any submissions made in accordance with this Act or the regulations</b>                                                                                                | The application was publicly exhibited (Section 4) and consideration has been given to the submissions received during the exhibition of the proposal as summarised at Section 5. |
| <b>(e) the public interest</b>                                                                                                                                                | The modification would be in the public interest.                                                                                                                                 |

## Objects of the EP&A Act

A summary of the Department's consideration of the relevant objects (found at section 1.3 of the EP&A Act) are provided in Table 6.

**Table 6** | Objects of the EP&A Act and how they have been considered

| Object                                                                                                                                                                                             | Consideration                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>(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,</b> | The modification will not result in adverse impacts to social and economic welfare of the community and does not have any adverse impacts on the State's natural or other resources. |
| <b>(b) to promote the supply, delivery and maintenance of housing, including affordable housing,</b>                                                                                               | Not applicable.                                                                                                                                                                      |
| <b>(c) to promote productivity through the development and management of the State and its resources,</b>                                                                                          | The modification will not impact on the productivity and management of the State and its resources.                                                                                  |
| <b>(d) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</b>                         | The modification will not adversely affect the protection of the environment.                                                                                                        |
| <b>(e) to promote resilience to climate change and natural disasters through adaptation, mitigation, preparedness and prevention,</b>                                                              | The modification will not impact on the requirement for the proposed development to address climate change resilience.                                                               |
| <b>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</b>                                                                          | The site does not include any European cultural heritage values or any registered Aboriginal cultural heritage sites.                                                                |

| Object                                                                                                                                                                                                  | Consideration                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>(g) to promote good design, amenity and the proper construction and maintenance of built environments, including the protection of the health and safety of the occupants of buildings,</b>          | The Department is satisfied that the modification will not detrimentally impact the design, amenity and the proper construction and maintenance of built environment. |
| <b>(h) to provide opportunities for participation in environmental planning and assessment,</b>                                                                                                         | The Department exhibited the modification and invited the public and Council to provide comments and advice, in accordance with the relevant requirements.            |
| <b>(i) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</b> | The modification does not seek to amend the approved ESD measures.                                                                                                    |
| <b>(j) to promote a proportionate and risk-based approach to environmental planning and assessment,</b>                                                                                                 | The Department is satisfied that the modification has been assessed with a proportionate and risk-based approach.                                                     |
| <b>(k) to promote the orderly and economic use and development of land,</b>                                                                                                                             | The Department is satisfied that the modification does not impact on the overall use and development of the land.                                                     |

### Environmental Planning Instruments (EPIs)

The Department undertook a comprehensive assessment of the application against the relevant EPIs in the original assessment. The Department is satisfied that the modification does not result in any inconsistency with the EPIs.

## Appendix C – Recommended instrument of modification

The recommended instrument of modification is available at:

<https://www.planningportal.nsw.gov.au/daex/under-consideration/46-fitzroy-street-carrington-modification-1-da-10689-mod-1>