



New South Wales Government
Independent Planning Commission

Raven Street Warehouse and Distribution Centre

DA-110646

Statement of Reasons for Decision

Chris Wilson (Chair)

28 October 2021

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State of New South Wales through the Independent Planning Commission 2021

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EXECUTIVE SUMMARY

Port of Newcastle Operations Pty Ltd (Applicant) has sought development consent to construct and operate a warehouse and distribution centre within the Port of Newcastle Lease Area on Kooragang Island in the Newcastle Local Government Area (LGA).

The Project involves the construction of a single building to operate as a warehouse and distribution centre. It will comprise two adjoining units with associated office facilities, landscaping, car parking and driveways and turning areas capable of supporting B-double trucks. The Project will generate up to 27 jobs during construction, 50 jobs during operation and over \$5 million in capital investment.

The Application has been made under Part 4 of the *Environmental Planning and Assessment Act 1979*. In accordance with clause 8(a) of the *State Environmental Planning Policy (Three Ports) 2013*, the Minister for Planning and Public Spaces (Minister) is the consent authority for development applications on land within the Port of Newcastle Lease Area. However, given the Applicant has made a reportable political donation, the Independent Planning Commission is the consent authority under delegation from the Minister.

The Department of Planning, Industry and Environment (Department) finalised its whole-of-government assessment in September this year which concluded the impacts of the development can be mitigated and/or managed to ensure an acceptable level of environmental performance, subject to the recommended conditions of consent.

Commissioner Chris Wilson was appointed to determine the development application.

As part of the decision-making process, Commissioner Wilson met with representatives of the Applicant, the Department and Newcastle City Council, and conducted a virtual site inspection.

After careful consideration of all the material, the Commission has determined that development consent should be granted for the Application, subject to conditions. These conditions are designed to prevent, minimise and/or offset adverse environmental impacts, and ensure ongoing monitoring and appropriate environmental management of the site.

The Commission's reasons for approval of the Application are set out in this Statement of Reasons for Decision.

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DEFINED TERMS

ABBREVIATION	DEFINITION
Applicant	Port of Newcastle Operations Pty Ltd
Application	DA-110646
AR	Department's Assessment Report dated September 2021
AR para	Assessment Report paragraph number
ASSMP	Acid Sulfate Soils Management Plan
Commission	Independent Planning Commission of NSW
Council	Newcastle City Council
DCP	Development Control Plan
Department	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
LGA	Local Government Area
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in section 5.4 of this report
Minister	Minister for Planning and Public Spaces and Minister for Transport and Roads
Ports SEPP	<i>State Environmental Planning Policy (Three Ports) 2013</i>
Project	The proposed Raven Street Warehouse and Distribution Centre
Regulations	<i>Environmental Planning and Assessment Regulations 2000</i>
ROC	Right of Carriageway
RTS	Response to Submissions dated 13 August 2021
SEE	Statement of Environmental Effects dated May 2021
SEPP	State Environmental Planning Policy
Site	The Site, located at Raven Street, Kooragang, legally described as Lot 152 DP 1202468
SSD	State Significant Development

1 INTRODUCTION

1. On 24 September 2021, the NSW Department of Planning, Industry and Environment (**Department**) referred a development application (DA-110646) (**Application**) from the Port of Newcastle Operations Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination. The Application seeks approval for the Raven Street Warehouse and Distribution Centre (the **Project**) located in the Newcastle Local Government Area (**LGA**).
2. The Minister for Planning and Public Spaces (**Minister**) is the consent authority for the Application under clause 8(a) of *State Environmental Planning Policy (Three Ports) 2013* (**Ports SEPP**) because the Project is located on land within the Port of Newcastle Lease Area. However, the Applicant disclosed a political donation under section 10.4 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**), and therefore the Commission has exercised the Minister's functions as consent authority under the Minister's delegation of 14 September 2011.
3. Professor Mary O'Kane AC, Chair of the Commission, nominated myself, Mr Chris Wilson (Chair), to constitute the Commission Panel determining the Application.

2 SITE AND LOCATION

4. The Department's Assessment Report (**AR**), dated September 2021, states the site is located at Raven Street, Kooragang (the **Site**) and is legally described as Lot 152 DP 1202468 (AR para. 1.1.1).
5. The Site comprises 1.046 hectares of land and is located within the Port of Newcastle Lease Area. The Site is irregular in shape and is generally flat. As described by the Department at AR para.1.3.2, there are no notable features or vegetation present on the Site.
6. The Site is burdened by a 20m wide Right of Carriageway (**ROC**) that runs along the western boundary to provide access to the land immediately north of the Site (AR para. 1.5.1).
7. The regional and local context of the Site is illustrated respectively in **Figures 1** and **2** below.

Figure 1: Regional Context of the Site

(Source: Department's AR)

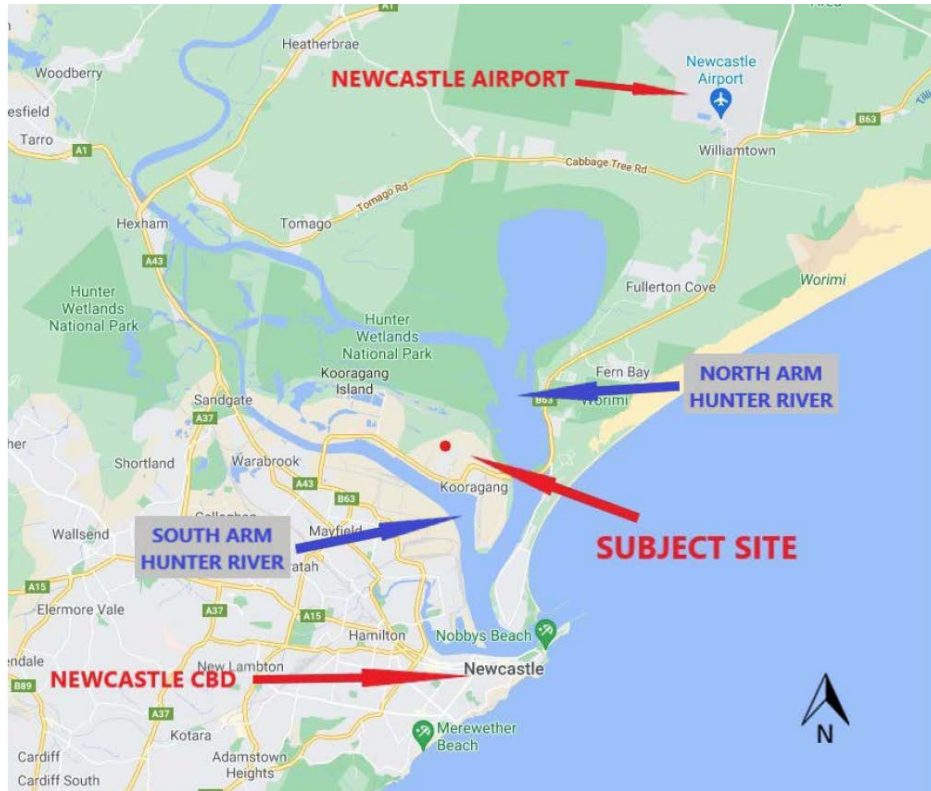


Figure 2: Local Context of the Site

(Source: Department's AR)



3 THE APPLICATION

8. The Department describes the main components of the Project at AR para. 2.1.1, which includes the following key components:
 - Construction of a single building to operate as a warehouse and distribution centre with two adjoining units housing office facilities, as well as landscaping, carparking, driveways and manoeuvring areas capable of supporting B-double semi-trailers;
 - The single building comprising 2,995 m² of floorspace with dimensions 121.4m long, 28.0m wide (warehouse only) and 39.7m wide at the northern end which includes Office 2;
 - 31 car parking spaces (including two disabled spaces);
 - The generation of up to 27 jobs during construction and 50 jobs during operation; and
 - Capital investment value of \$5,097,036.

Prospective tenants have not been identified for either unit.

4 STATUTORY CONTEXT

4.1 Part 4 Development

9. The Site is located on Kooragang Island in the PON lease area as defined under the Ports SEPP. The Project is permissible with development consent under the Ports SEPP on the basis that it would be utilised for Port related uses.
10. Although the Project does not meet the criteria to be classified as State significant development, clause 8(a) of the Ports SEPP makes the Minister for Planning and Public Spaces the consent authority for Part 4 applications on land within the PON lease area.
11. Given the Applicant has made a reportable political donation, the Commission is exercising the Minister's functions as consent authority in accordance with the Minister's delegations made on 14 September 2011.
12. As the Application is neither designated development nor State significant development, it is appropriately accompanied by a Statement of Environmental Effects (**SEE**).

4.2 Permissibility

13. Under the Ports SEPP, the Site is zoned SP1 Special Activities. Warehouse and Distribution Centres are considered an 'innominate' use (i.e., neither listed as permissible or prohibited) and are therefore permissible with consent.
14. Following consideration of information in the SEE, the Department's assessment that concluded the Project is a permissible use (AR para 4.2.1), and further justification provided in my meeting with the Applicant, I am satisfied that the Project would be utilised for Port-related uses and is therefore permissible and consistent with the objectives of the SEPP.
15. However, to ensure the Project continues to meet the Ports SEPP objectives, I have ensured that the development description on the consent states that the proposed warehouse and distribution centre must be used for port-related facilities.

4.3 Mandatory Considerations

16. In determining this application, I am required by section 4.15(1) of the EP&A Act to take into consideration such of the following matters as are relevant to the development the subject of the Application (**Mandatory Considerations**):
- the provisions of:
 - any environmental planning instrument (**EPI**);
 - any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the Commission (unless the Planning Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - any development control plan;
 - any planning agreement that has been entered into under s 7.4 of the EP&A Act, and any draft planning agreement that a developer has offered to enter into under s 7.4;
 - the *Environmental Planning and Assessment Regulations 2000* to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act; that apply to the land to which the Application relates;
 - the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - the suitability of the site for the development;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.
17. I have summarised my consideration of the relevant Mandatory Considerations in **Table 1** below, noting the Mandatory Considerations are not an exhaustive statement of the matters a consent authority is able to consider in determining a development application. To the extent that I have considered matters other than the Mandatory Considerations, I have considered those matters having regard to the subject matter, scope, and purpose of the EP&A Act.

Table 1 Mandatory Considerations

Mandatory Considerations	Comments
Relevant EPIs	Appendix C of the Department's AR identifies relevant EPIs for consideration. The key EPIs include: <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Three Ports) 2013</i> • <i>State Environmental Planning Policy (Infrastructure) 2007</i>; • <i>SEPP No. 33 – Hazardous and Offensive Development</i>; • <i>SEPP No. 2020 – Koala Habitat Protection</i>; • <i>SEPP No. 55 – Remediation of Land</i>; • <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> • <i>State Environmental Planning Policy No. 33 – Hazardous and Offensive Development</i> • <i>draft State Environmental Planning Policy (Remediation of Land) (draft Remediation SEPP)</i> I agree with the Department's assessment with respect to the EPIs that are of relevance to the Application as set out in Appendix C of the AR and find that the development complies with the relevant provisions in the EPIs.
Relevant proposed EPIs	I have considered relevant proposed EPIs, including the draft <i>State Environmental Planning Policy (Remediation of Land)</i> .

Mandatory Considerations	Comments
Relevant DCPs	The <i>Newcastle Development Control Plan 2012</i> does not apply to the Site because the site is located within the PON lease area as identified in the Ports SEPP. Notwithstanding, I have used it as a guide where necessary.
Likely Impacts of the Development	I have considered the likely impacts of the Application in section 6 of this Statement of Reasons.
Suitability of the Site for Development	<p>I consider the Site to be suitable for the Project for the following reasons:</p> <ul style="list-style-type: none"> • The Project is permissible with consent and consistent with the objectives of the SEPP regarding port related activity; • The proposed Warehouse and Distribution Centre is appropriately located on this Site within an existing heavy industrial precinct in proximity to the Port of Newcastle; • ASS, Stormwater Management and Sewage management impacts can be reasonably managed through Site design and the imposed conditions; • Vehicular access to the Site and parking will be designed in accordance with relevant Australian standards; • Traffic generated by the proposal will not adversely impact the local or regional road networks; and • The Project will not result in any unreasonable off-site amenity, environmental or land use safety impacts.
Objects of the EP&A Act	<p>I have carefully considered the Objects of the EP&A Act. I agree with the Department's assessment of the Application against the Objects of the EP&A Act provided at Table 2 of the AR, which finds that the Application is consistent with those Objects.</p> <p>I also find the Application has been assessed in accordance with relevant EPIs and is capable of complying with the required mitigation measures to achieve consistency with the Objects of the EP&A Act.</p>
Ecologically Sustainable Development (ESD)	I agree with the Department's assessment of the Application against the ESD principles. I am satisfied that the Project will not adversely impact the environment and is consistent with the objects of the EP&A Act and the principles of ESD.
The Public Interest	<p>I have carefully weighed the benefits that would result from the Project against any associated adverse impacts. I am satisfied that the Project is in the public interest given the Project will:</p> <ul style="list-style-type: none"> • support the operation of the Port of Newcastle; • generate up to 27 jobs during construction and 50 jobs during operation and \$5 million in capital investment; and • not result in any unacceptable impacts. Any residual impacts can be readably managed through the conditions as imposed.

5 THE COMMISSION'S CONSIDERATION

5.1 The Department's Assessment Report

18. The Department's AR considers the key assessment issues for this Application are vehicle access and driveway design, sewage management, stormwater management and acid sulfate soils. The Department's AR concludes the impact of the development can be mitigated or managed, subject to recommended conditions, and that the Application can be approved. I am satisfied that these matters represent the key assessment issues relevant to the determination of the Application.

5.2 The Commission's Meetings

19. As part of the determination process, I met with relevant representatives of the stakeholders outlined in **Table 2**. All meeting and site inspection notes have been made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available
Department	13 October 2021	19 October 2021
Applicant	13 October 2021	19 October 2021
Council	13 October 2021	19 October 2021
Virtual Site Inspection	13 October 2021	19 October 2021

5.3 Public Comments

20. Following consideration of the available documents, including the Department's AR relevant to this proposal, I determined that there would be little utility in holding a public meeting or seeking public comment on the application given:
- There were no public submissions received during the Department's public exhibition of the Application and supporting documentation;
 - There were only two submissions in total being from Council and Fire and Rescue NSW; and
 - I met with Council in considering this application.

5.4 Material Considered by the Commission

21. In this determination, I have carefully considered the following material (**Material**):
- the Applicant's Statement of Environmental Effects (**SEE**) prepared by ADW Johnson, dated May 2021, and all supporting documentation;
 - the Applicant's Response to Submissions (**RTS**) prepared by EJE Architecture, dated 13 August 2021, and all supporting documentation;
 - all submissions made to the Department in respect of the Application, including from Council and public authorities;
 - the Department's AR, dated September 2021;
 - the Department's draft Development Consent, dated September 2021; and
 - the Department's response to the Commission's draft conditions, dated 26 October 2021.

6 KEY ISSUES

6.1.1 Parking, Vehicle Access and Driveway Design

22. The Site is accessed via Raven Street, which is a private PON road. The Project includes access, parking and loading works that include upgrades to the pavement for the existing ROC access handle from Raven Street, separate parking areas for each warehouse unit comprising 31 parking spaces in total (including two accessible parking spaces) and loading areas.
23. The proposed parking provision is agreed by all parties to be sufficient for the proposed use. I note the Newcastle DCP does not apply, but in terms of undertaking a merit assessment of the parking provision, the proposed parking exceeds the DCP requirements. The parking condition proposed by the Department required “sufficient parking” to be provided (draft condition B4). Council requested the proposed number of parking spaces (31) be stipulated in the condition to ensure the Applicant provides at least that number. I accept Council’s request and have imposed the amended condition accordingly.
24. Also, in relation to the parking conditions, I have included references to the relevant Australian Standards in *Condition B4 Parking* to ensure that all off street parking facilities comply with the relevant standards. The Department included these Australian Standard references under *Condition B3 Roadworks and Access*, but given they relate to parking facilities I determined they are more appropriately located in Condition B4.
25. With regard to access and driveway design, during the Department’s assessment, Council raised concerns about the ability for heavy rigid vehicles to safely exit the site without crossing into the oncoming traffic lane on Raven Street (AR para 6.1.2).
26. RTS amendments included widening the eastern driveway from 5m to 13.8m at the kerb and upgrading the existing pavement to accommodate heavy vehicles. Further to this, in the RTS the Applicant also agreed that the Site width and the existing width of Raven Street limits the turning space for heavy vehicles exiting the Site, and therefore the Applicant proposed to limit trucks entering and leaving the Site to left in/left out only (AR para 6.1.13). This requirement has been imposed as Condition B3(a).
27. The Department is satisfied the new swept path diagrams provided with the RTS demonstrate that the upgraded driveway width and left in / left out only movements for B-double heavy vehicles resolves the driveway and access issues and ensures heavy vehicles would be able to enter and exit the Site without crossing into the incoming traffic on Raven Street or creating a potential traffic conflict within the site (AR para 6.1.4) safely and efficiently.
28. Council advised during our meeting that it was satisfied with the proposal to widen the driveway and reconstruct the existing pavement. Council requested the recommended conditions be strengthened to require the access driveway pavement be constructed to a standard that is suitable for heavy rigid vehicle use. Council also advised that, in relation to road or driveway construction, references in the conditions requiring further approval or satisfaction from Council should be removed because Raven Street is a PON road and therefore PON are the responsible authority for construction and maintenance.
29. I am satisfied that the revised driveway design and road pavement upgrades would be satisfactory, subject to the imposed conditions relating to appropriate construction standards and restricted vehicular entry and exit to left in/left out only. Based on these measures and the imposed conditions, I conclude that appropriate access is provided to and from the Site and in a manner that is unlikely to result in potential traffic conflicts.

6.1.2 Sewage Management

30. Table 3 of the Department's AR states that connection to the sewer main on Kooragang is not possible. Therefore, the Site is not connected to any reticulated sewer network.
31. As such, the Applicant proposes a pump out, onsite sewage management system, which is common in the locality due to difficulties providing irrigation or absorption areas for traditional onsite systems.
32. In its Response to the RTS letter to the Department dated 31 August 2021, Council did not raise objection to the proposed onsite sewage management system, but requested conditions be placed on any consent issued regarding the provision of a waste facility on site. Council also raised these recommended conditions at its meeting with me on 13 October 2021 (paragraph 19).
33. The Department's assessment concludes that appropriate arrangements for sewage management are available, subject to the Applicant obtaining the required s 68 approvals under the *Local Government Act 1993*, as captured in the general Advisory Note AN1 in the Department's recommended conditions.
34. In consideration of the Material, I find the proposed pump out, onsite sewage management system to be appropriate for this Site. I note the Department's comments about the s68 approvals required under the *Local Government Act 1993*, as summarised at paragraph 33. However, I have determined that it is appropriate in this instance to impose conditions relating to the installation and operation of the onsite sewage management system to provide greater oversight. Subject to the imposed conditions, I am satisfied that sewage management arrangements are suitable.

6.1.3 Stormwater Management

35. The proposed stormwater management system includes a combination of rainwater harvesting, hardstand surface water collection to an underground detention tank and a biofiltration basin discharging into the piped stormwater network.
36. The Department's AR describes how both Council, and the Department are satisfied that all development generated surface water flows would be appropriately managed through the harvesting and controlled discharge of stormwater (Table 3 of the Department's AR).
37. The Department is satisfied that the proposed stormwater management system will appropriately retain and manage rainwater and surface water onsite before discharge to the piped stormwater network. The Department concludes that, subject to the recommended conditions, the proposed stormwater management system can be constructed and operated without impacting on adjoining properties (Table 3 of the Department's AR).
38. The Department recommended that the stormwater management system be designed and installed in consultation with Council. The Applicant requested for that this requirement be removed from the conditions because the stormwater infrastructure on Kooragang Island is PON infrastructure, not Council's and therefore further approvals or consultation with Council is not necessary.
39. The Council subsequently advised that it did not object to this requirement being removed from the recommended conditions provided the works were undertaken and managed in accordance with relevant Australian Standards. To this end, the Council recommended a number of stormwater management conditions that should be included in any consent issued.
40. I have considered the material before me, and the recommended conditions including those recommended by Council, and am satisfied that the proposed stormwater management system is suitable for the Project. I am further satisfied that the suite of

conditions recommended by the Department with respect to the stormwater management system are appropriate to ensure acceptable stormwater outcomes. The Department's recommended conditions (as amended) will ensure the stormwater system will be constructed and operated to appropriate standards capable of managing the stormwater generated on site without impacting on adjoining properties.

6.1.4 Acid Sulfate Soils

41. The Applicant identified the presence of acid sulfate soils located approximately 1.5m below ground level. Therefore, the Project has the potential to encounter acid sulfate soils during the construction of building footings and the installation of utility services. An Acid Sulfate Soils Management Plan (**ASSMP**) was provided with the Statement of Environmental Effects.
42. The Department is satisfied that the management measures proposed in the ASSMP represent best practice and that the acid sulfate soils can be successfully managed with the implementation of the ASSMP during construction. The Department has recommended conditions accordingly.
43. In consideration of the Material, I agree with the Department's conclusions that the ASSMP provides appropriate management measures for the construction of the Project, subject to the imposed conditions.

6.1.5 Developer Contributions

44. The Department's AR states Council's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019* applies to this Project and has therefore included a condition requiring the Applicant to pay developer contributions prior to the issue of the Construction Certificate (Recommended Condition A16).
45. At the Stakeholder meetings, both the Applicant and Council suggested amendments to the contributions condition.
46. The Applicant forwarded to the Commission a Ministerial Direction issued under the former s 94E of the EP&A Act (undated) indicating contributions are not required for works within the PON lease area for developments where Council is the consent authority. The Applicant advised it was seeking advice on whether contributions should apply to works within the PON lease area where the Minister, and Commission by delegation, are the consent authority. As such, the Applicant requested the wording "*unless agreed with the Planning Secretary*" to be added to the contributions condition (Condition A16) to provide flexibility to negotiate the terms of the condition in the future, pending the outcome of any advice sought by the Applicant. The Applicant also requested the timing for this condition be postponed from payment prior to the Construction Certificate to payment prior to the Occupation Certificate (Meeting transcript pp 6 to 7).
47. Council also requested changes to the contributions condition (Condition A16) to include further information regarding the amount payable and CPI index rate rises, rather than the condition wording recommended by the Department.
48. I have considered the requests above and reviewed the Material available. I agree that the Ministerial Direction provided by the Applicant only applies to development for which Council is the consent authority. Furthermore, as the Minister's delegate, I am not bound to impose conditions authorised or allowed by Council's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019* when determining this application, and subject to my compliance with section 7.13(2) of the EP&A Act I have the discretion to determine the quantum of levies applicable.
49. Notwithstanding, and having regard to the fundamental principles governing the levying of development contributions, I am satisfied that the application and timing of the 1%

levy in this instance is fair and reasonable given the likely nexus between the construction and operation of the Project, and the demand for increased services within the wider LGA. Consequently, I consider it reasonable to impose the draft condition.

50. In terms of the condition wording, I note Council's request, but find the condition drafted by the Department is generally suitable subject to reference to the Council's Contributions Plan being included in the condition. The condition has been imposed accordingly.
51. I also note the Applicant's request to postpone payment of the contribution to the Occupation Certificate. However, I do not support this request. It is standard practice and reasonable in this case to require payment prior to the issue of the Construction Certificate as this aligns with the likely increased demand on services in the LGA. Consequently, I have imposed the condition accordingly.

7 THE COMMISSION'S FINDINGS AND DETERMINATION

52. I have carefully considered the Material before me as set out in section 5.4 of this report. Based on my consideration of the Material, I find that the Project should be **approved** subject to conditions of consent for the following reasons:
 - the Project is permissible with consent and port-related activities are consistent with the zone objectives of the Ports SEPP;
 - the Application is an orderly and economic use of the Site;
 - the proposed Warehouse and Distribution Centre is appropriately located on this Site within an existing heavy industrial precinct in proximity to the Port of Newcastle;
 - acid sulfate soils, stormwater and sewage can be reasonably managed through conditions;
 - appropriate access is provided to the Site and there are not expected to be any unreasonable, off-site impacts; and
 - impacts on surrounding land uses have been minimised and are capable of being further mitigated through the imposed conditions.
53. For the reasons set out in paragraph 52 I have determined that the consent should be granted subject to conditions. These conditions are designed to:
 - prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
54. The reasons for the Decision are given in the Statement of Reasons for Decision dated **28 October 2021**.



Mr Chris Wilson (Chair)
Member of the Commission