

# Development Consent

## *Section 4.38 of the Environmental Planning and Assessment Act 1979*

The Independent Planning Commission (the Commission), as delegate of the Minister for Planning and Public Spaces under delegation executed on 14 September 2011 and pursuant to clause 8(a) of *the State Environmental Planning Policy (Three Ports) 2013*, approves the development application referred to in Schedule 1, subject to the conditions in Schedule 2.

These conditions are required to:

- prevent, minimise, or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

[Name of Commissioner]  
**Member of the Commission**

[Name of Commissioner]  
**Member of the Commission**

[Name of Commissioner]  
**Member of the Commission**

Sydney

2021

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### SCHEDULE 1

**Application Number:** DA 10689  
**Applicant:** Port of Newcastle Operations Pty Ltd  
**Consent Authority:** Minister for Planning and Public Spaces  
**Site:** Lot 33 DP 1078910, 46 Fitzroy Street, Carrington  
**Development:** Construction of a commercial building with a café, landscaping, 172 car parking spaces, bike spaces, motorbike spaces, seating and communal spaces, a waste disposal area, water tanks and signage.

## DEFINITIONS

<b>Advisory Notes</b>	Advisory information relating to the consent but do not form a part of this consent
<b>Applicant</b>	Port of Newcastle Operations Pty Ltd or any other person carrying out any development to which this consent applies
<b>BCA</b>	Building Code of Australia
<b>CEMP</b>	Construction Environmental Management Plan
<b>Certifier</b>	A council or an accredited certifier (including principal certifiers) who is authorised under section 6.5 of the EP&A Act to issue Part 6 certificates
<b>Compliance Reporting Post Approval Requirements</b>	Compliance Reporting Post Approval Requirements as available on the Department's website
<b>Conditions of this consent</b>	The conditions contained in Schedule 2 of this document
<b>Construction</b>	The carrying out of works for the purpose of the development, and erection of buildings and other infrastructure permitted by this consent
<b>Council</b>	Newcastle City Council
<b>Day</b>	The period from 7am to 6pm on Monday to Saturday, and 8am to 6pm on Sundays and Public Holidays
<b>Department</b>	NSW Department of Planning, Industry and Environment
<b>Development</b>	The development described in Schedule 1, the SEE, Response to Submissions and additional information, for the construction and operation of a commercial facility, as modified by the conditions of this consent
<b>Earthworks</b>	Bulk earthworks, site levelling, import and compaction of fill material, excavation for installation of drainage and services
<b>EES Group</b>	Environment, Energy and Science Group of the Department of Planning, Industry and Environment
<b>ENM</b>	Excavated Natural Material
<b>Environment</b>	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings
<b>EPA</b>	NSW Environment Protection Authority
<b>EP&amp;A Act</b>	Environmental Planning and Assessment Act 1979
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>EPL</b>	Environment Protection Licence under the POEO Act
<b>Evening</b>	The period from 6pm to 10pm
<b>Feasible</b>	Means what is possible and practical in the circumstances
<b>GFA</b>	Gross Floor Area
<b>Heritage</b>	Encompasses both Aboriginal and historic heritage including sites that predate European settlement, and a shared history since European settlement
<b>Heritage NSW</b>	Heritage, Community Engagement of the Department of Premier and Cabinet
<b>Heritage Item</b>	An item as defined under the Heritage Act 1977, and assessed as being of local, State and/ or National heritage significance, and/or an Aboriginal Object or Aboriginal Place as defined under the National Parks and Wildlife Act 1974', the World Heritage List, or the National Heritage List or Commonwealth Heritage List under the Environment Protection and Biodiversity Conservation Act 1999 (Cth), or anything identified as a heritage item under the conditions of this consent

<b>Incident</b>	An occurrence or set of circumstances that causes, or threatens to cause, material harm and which may or may not be, or cause, a non-compliance <i>Note: "material harm" is defined in this consent</i>
<b>Independent Audit Post Approval Requirements</b>	Independent Audit Post Approval Requirements as available on the Department's website
<b>Land</b>	Has the same meaning as the definition of the term in section 1.4 of the EP&A Act
<b>EMP</b>	Environmental Management Plan
<b>Material harm</b>	Is harm that: <ul style="list-style-type: none"> <li>a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial; or</li> <li>b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)</li> </ul>
<b>Minister</b>	NSW Minister for Planning and Public Spaces (or delegate)
<b>Mitigation</b>	Activities associated with reducing the impacts of the development prior to or during those impacts occurring
<b>Monitoring</b>	Any monitoring required under this consent must be undertaken in accordance with section 9.39 of the EP&A Act
<b>Night</b>	The period from 10pm to 7am on Monday to Saturday, and 10pm to 8am on Sundays and Public Holidays
<b>Non-compliance</b>	An occurrence, set of circumstances or development that is a breach of this consent
<b>OEMP</b>	Operational Environmental Management Plan
<b>Operation</b>	The carrying out of the approved purpose of the development upon completion of construction
<b>PA</b>	Means a planning agreement within the meaning of the term in section 7.4 of the EP&A Act
<b>Planning Secretary</b>	Planning Secretary under the EP&A Act, or nominee
<b>POEO Act</b>	Protection of the Environment Operations Act 1997
<b>Reasonable</b>	Means applying judgement in arriving at a decision, taking into account: mitigation, benefits, costs of mitigation versus benefits provided, community views, and the nature and extent of potential improvements
<b>Rehabilitation</b>	The restoration of land disturbed by the development to a good condition, to ensure it is safe, stable and non-polluting
<b>Response to submissions</b>	The Applicant's response to issues raised in submissions received in relation to the application for consent for the development titled ' <i>46 Fitzroy Street, Carrington (DA 10689) Response to Submissions</i> ' prepared by Ramboll dated 24 September 2021 and Addendum titled ' <i>46 Fitzroy Street, Carrington (DA 10689) Response to Submissions Addendum</i> ' prepared by Ramboll dated 1 November 2021.
<b>SA NSW</b>	Subsidence Advisory NSW (formerly the Mine Subsidence Board)
<b>SEE</b>	The Statement of Environmental Effects titled ' <i>Commercial Facility, Carrington Statement of Environmental Effects</i> ', prepared by Ramboll dated 24 September 2021, submitted with the application for consent for the development, including any additional information or reports provided by the Applicant in support of the application.
<b>Sensitive receivers</b>	A location where people are likely to work, occupy or reside, including a dwelling, school, hospital, office or public recreational area

<b>Site</b>	The land defined in Schedule 1
<b>Site Auditor</b>	As defined in section 4 of the Contaminated Land Management Act 1997
<b>Site Audit Report</b>	As defined in section 4 of the Contaminated Land Management Act 1997
<b>TfNSW</b>	Transport for New South Wales
<b>VENM</b>	Virgin Excavated Natural Material
<b>Waste</b>	Has the same meaning as the definition of the term in the Dictionary to the POEO Act
<b>Year</b>	A period of 12 consecutive months

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**SCHEDULE 2**  
**PART A ADMINISTRATIVE CONDITIONS**

**Obligation to Minimise Harm to the Environment**

- A1. In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and, if prevention is not reasonable and feasible, minimise any material harm to the environment that may result from the construction and operation of the development.

**Terms of Consent**

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
  - (b) in accordance with all written directions of the Planning Secretary;
  - (c) generally in accordance with the SEE, Response to Submissions and additional information;
  - (d) in accordance with the approved plans in the table below:

<b>Architectural Plans prepared by Rainsford Architecture + Design</b>			
<b>Dwg No.</b>	<b>Rev</b>	<b>Name of Plan</b>	<b>Date</b>
A000	O	Cover Sheet	3/9/21
A001	O	Notes & Schedules	3/9/21
A004	O	Existing Conditions	3/9/21
A006	O	Site Analysis	3/9/21
A007	O	Concept Design	3/9/21
A100	O	Site Plan	3/9/21
A101	O	Site Ground Plan	3/9/21
A110	O	Ground Floor Plan	3/9/21
A111	O	First Floor Plan	3/9/21
A112	O	Second Floor Plan	3/9/21
A113	O	Third Floor Plan	3/9/21
A114	O	Roof Plan	3/9/21
A200	O	Street Elevations	3/9/21
A201	O	Elevations	3/9/21
A202	O	Elevations	3/9/21
A300	O	Sections	3/9/21
A301	O	Sections	3/9/21
A600	O	Materials Schedule	3/9/21
A800	O	Shadow Diagrams – 21 <sup>st</sup> June 0900	3/9/21
A801	O	Shadow Diagrams – 21 <sup>st</sup> June 1200	3/9/21
A802	O	Shadow Diagrams – 21 <sup>st</sup> June 1500	3/9/21
<b>Survey Plan prepared by ADW Johnson</b>			
<b>Dwg No.</b>	<b>Rev</b>	<b>Name of Plan</b>	<b>Date</b>
239553-DET-001-A	A	Plan of Detail Survey of Lot 33 DP 1078910	22/10/20
<b>Landscape Plan prepared by Green Space Planning Co</b>			
<b>Dwg No.</b>	<b>Rev</b>	<b>Name of Plan</b>	<b>Date</b>
L001	C	Site Analysis	10/08/2021

L002	C	Landscape Master Plan	10/08/2021
L003	C	Plant Schedule	10/08/2021
L004	C	First Floor	10/08/2021
L005	C	Second Floor	10/08/2021
L006	C	Third Floor	10/08/2021
<b>Stormwater Management Plans prepared by Northrop</b>			
<b>Dwg No.</b>	<b>Rev</b>	<b>Name of Plan</b>	<b>Date</b>
DA-C01.01	2	Cover Sheet, Drawing List and Locality Plan	9/4/21
DA-C02.01	2	Erosion and Sediment Control Plan	9/4/21
DA-C02.02	2	Erosion and Sediment Control Details	9/4/21
DA-C04.01	2	Civil Works Plan	9/4/21
DA-C09.01	2	Civil Details	9/4/21

- (e) generally in accordance with the following documents:
- (i) Carrington Commercial Facility Statement of Environmental Effects prepared by Ramboll dated 24 September 2021
  - (ii) Detailed Site Contamination Investigation prepared by GHD dated March 2021
  - (iii) Landscape Design Report prepared by Green Space Planning Co dated 10 August 2021
  - (iv) Arboricultural Impact Assessment prepared by Accurate Tree Assessment dated February 2021
  - (v) Concept Stormwater Management Plan prepared by Northrop dated 9 April 2021
  - (vi) Services Assessment prepared by GHD dated March 2021
  - (vii) Noise and Vibration Assessment Revision 3 prepared by RAPT Consulting dated March 2021
  - (viii) Traffic Impact Assessment prepared by SECA Solution dated 1 April 2021
  - (ix) Geotechnical and Mine Subsidence Report prepared by GHD dated April 2021
  - (x) 46 Fitzroy Street, Carrington (DA 10689) Response to Submissions prepared by Ramboll dated 24 September 2021
  - (xi) Phase 2 Analysis prepared by GHD dated 15 September 2021
  - (xii) Green Travel Plan prepared by SECA Solution dated 24 September 2021
  - (xiii) Preliminary Waste Management Plan prepared by Ramboll dated 24 September 2021
  - (xiv) Parking Strategy prepared by SECA Solution dated 7 September 2021
  - (xv) Preliminary Construction Environmental Management Plan prepared by Ramboll dated 22 September 2021
  - (xvi) Preliminary Operational Plan of Management prepared by Ramboll dated 23 September 2021
  - (xvii) Traffic Addendum Technical Design Note prepared by SECA Solution dated 13 September 2021
  - (xviii) 46 Fitzroy Street, Carrington (DA 10689) Response to Submissions Addendum prepared by Ramboll dated 1 November 2021
  - (xix) Design Specification NCC 2019 – Volume 1 prepared by Trevor R Howse dated 19 March 2021
  - (xx) Design Specification Accessibility prepared by Trevor R Howse dated 19 March 2021

A3. Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to:

- (a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent,

including those that are required to be, and have been, approved by the Planning Secretary;

- (b) any reports, reviews or audits commissioned by the Planning Secretary regarding compliance with this approval; and
- (c) the implementation of any actions or measures contained in any such document referred to in (a) above.

A4. The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition A2. In the event of an inconsistency, ambiguity or conflict between any of the documents listed in this consent, the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

#### **Limits of Consent**

A5. This consent will lapse five years from the date of consent unless the works associated with the development have physically commenced.

A6. This consent does not approve:

- (a) the fit out works for the café
- (b) the fit out works for the office spaces
- (c) demolition works

Separate development application(s) must be lodged, and consent obtained, for the above works and uses (except where consent is not required under an Environmental Planning Instrument or exempt and complying development applies).

#### **Prescribed Conditions**

A7. The Applicant must comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the EP&A Regulation.

#### **Long Service Levy**

A8. For work costing \$25,000 or more, a Long Service Levy must be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.

#### **Planning Secretary as Moderator**

A9. In the event of a dispute between the Applicant and a public authority, in relation to an applicable requirement in this approval or relevant matter relating to the Development, either party may refer the matter to the Planning Secretary for resolution. The Planning Secretary's resolution of the matter must be binding on the parties.

#### **Evidence of Consultation**

A10. Where conditions of this consent require consultation with an identified party, the Applicant must:

- (a) consult with the relevant party prior to submitting the subject document for information or approval; and
- (b) The evidence must include:
  - (i) documentation of the engagement with the party identified in the condition of approval that has occurred before submitting the document for approval;
  - (ii) a log of the dates of engagement or attempted engagement with the identified party and a summary of the issues raised by them;
  - (iii) documentation of the follow-up with the identified party where engagement has not occurred to confirm that they do not wish to engage or have not attempted to engage after repeated invitations;
  - (iv) outline of the issues raised by the identified party and how they have been addressed; and
  - (v) a description of the outstanding issues raised by the identified party and the reasons why they have not been addressed.

## **Staging**

- A11. The project may be constructed and operated in stages. Where compliance with conditions is required to be staged due to staged construction or operation, a Staging Report (for either or both construction and operation as the case may be) must be prepared and submitted to the satisfaction of the Planning Secretary. The Staging Report must be submitted to the Planning Secretary no later than one month before the commencement of construction of the first of the proposed stages of construction (or if only staged operation is proposed, one month before the commencement of operation of the first of the proposed stages of operation).
- A12. A Staging Report prepared in accordance with condition A11 must:
- (a) if staged construction is proposed, set out how the construction of the whole of the project will be staged, including details of work and other activities to be carried out in each stage and the general timing of when construction of each stage will commence and finish;
  - (b) if staged operation is proposed, set out how the operation of the whole of the project will be staged, including details of work and other activities to be carried out in each stage and the general timing of when operation of each stage will commence and finish (if relevant);
  - (c) specify how compliance with conditions will be achieved across and between each of the stages of the project; and
  - (d) set out mechanisms for managing any cumulative impacts arising from the proposed staging.
- A13. Where a Staging Report is required, the project must be staged in accordance with the Staging Report, as approved by the Planning Secretary.
- A14. Where construction or operation is being staged in accordance with a Staging Report, the terms of this consent that apply or are relevant to the works or activities to be carried out in a specific stage must be complied with at the relevant time for that stage as identified in the Staging Report.

## **Staging, Combining and Updating Strategies, Plans or Programs**

- A15. The Applicant may:
- (a) prepare and submit any strategy, plan (including management plan, architectural or design plan) or program required by this consent on a staged basis (if a clear description is provided as to the specific stage and scope of the development to which the strategy, plan (including management plan, architectural or design plan) or program applies, the relationship of the stage to any future stages and the trigger for updating the strategy, plan (including management plan, architectural or design plan) or program);
  - (b) combine any strategy, plan (including management plan, architectural or design plan), or program required by this consent (if a clear relationship is demonstrated between the strategies, plans (including management plan, architectural or design plan) or programs that are proposed to be combined); and
  - (c) update any strategy, plan (including management plan, architectural or design plan), or program required by this consent (to ensure the strategies, plans (including management plan, architectural or design plan), or programs required under this consent are updated on a regular basis and incorporate additional measures or amendments to improve the environmental performance of the development).
- A16. Any strategy, plan or program prepared in accordance with condition A15, where previously approved by the Planning Secretary under this consent, must be submitted to the satisfaction of the Planning Secretary.
- A17. If the Planning Secretary agrees or directs, a strategy, plan (including management plan, architectural or design plan), or program may be staged or updated without consultation being undertaken with all parties required to be consulted in the relevant condition in this consent.



- A18. Updated strategies, plans (including management plan, architectural or design plan), or programs supersede the previous versions of them and must be implemented in accordance with the condition that requires the strategy, plan, program or drawing.

### **Structural Adequacy**

- A19. All new buildings and structures, and any alterations or additions to existing buildings and structures, that are part of the development, must be constructed in accordance with
- the relevant requirements of the BCA;
  - any additional requirements of the Subsidence Advisory NSW where the building or structure is located on land within a declared Mine Subsidence District.

*Notes:*

- Under Part 6 of the EP&A Act, the Applicant is required to obtain construction and occupation certificates for the proposed building works.*
- Part 8 of the EP&A Regulation sets out the requirements for the certification of the development.*
- Under section 21 of the Coal Mine Subsidence Compensation Act 2017, the Applicant is required to obtain the Chief Executive of Subsidence Advisory NSW's approval before carrying out certain development in a Mine Subsidence District.*

### **External Walls and Cladding**

- A20. The external walls of all buildings including additions to existing buildings must comply with the relevant requirements of the BCA.

### **External Materials**

- A21. The external colours, materials and finishes of the buildings must be consistent with the approved plans referenced in Condition A2. Any minor changes to the colour and finish of approved external materials may be approved by the Certifier provided:
- the alternative colour/material is of a similar tone/shade and finish to the approved external colours/building materials;
  - the quality and durability of any alternative material is the same standard as the approved external building materials; and
  - a copy of any approved changes to the external colours and/or building materials is provided to the Planning Secretary for information.
- A22. The building materials used on the facades of the buildings shall have a maximum normal specular reflectivity of visible light of 20 per cent and shall be designed so as not to result in glare that causes any discomfort or threatens the safety of pedestrians or drivers. A report/statement demonstrating compliance with these requirements is to be submitted to the satisfaction of the Certifying Authority prior to the issue of any relevant Construction Certificate for above ground façade works.
- A23. Prior to the issue of any relevant Construction Certificate, a report/statement demonstrating compliance with the external façade treatments outlined in the *Noise and Vibration Assessment Rev 3* prepared by RAPT Consulting dated March 2021 is to be submitted to the satisfaction of the Certifying Authority for above ground façade works.

### **Applicability of Guidelines**

- A24. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.
- A25. However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

### **Monitoring and Environmental Audits**

- A26. Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act.

This includes conditions in respect of incident notification, reporting and response, non-compliance notification, Site audit report and independent auditing.

*Note: For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an "environmental audit" is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.*

### **Compliance**

- A27. The Applicant must ensure that all of its employees, contractors (and their sub-contractors) are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.

### **Incident Notification, Reporting and Response**

- A28. The Planning Secretary must be notified via the Major Projects Portal, or in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au), immediately after the Applicant becomes aware of any incident. The notification must identify the development (including the development application number and the name of the development if it has one) and set out the location and nature of the incident.

- A29. Subsequent notification must be given and reports submitted in accordance with the requirements set out in **Appendix 2**.

### **Non-Compliance Notification**

- A30. The Planning Secretary must be notified through the Major Projects Portal, or in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au), within seven days after the Applicant becomes aware of any non-compliance. The Certifier must also notify the Planning Secretary through the Major Projects Portal, or in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au), within seven days after they identify any non-compliance.

- A31. The notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

- A32. A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

### **Revision of Strategies, Plans and Programs**

- A33. Within three months of:
- the submission of an incident report under conditions A28 and A29;
  - the submission of an Independent Audit under Condition D36;
  - the approval of any modification of the conditions of this consent; or
  - the issue of a direction of the Planning Secretary under condition A2 which requires a review,

the strategies, plans and programs required under this consent must be reviewed, and the Planning Secretary and the Certifier must be notified in writing that a review is being carried out.

- A34. If necessary, to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans, programs or drawings required under this consent must be revised, to the satisfaction of the Planning Secretary or Certifier (but only where previously approved by the Certifier and if the condition allows). Where revisions are required, the revised document must be submitted to the Planning Secretary and / or Certifier for approval and / or information (where relevant) within six weeks of the review.

*Note: This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.*

### **Compliance Reporting**

- A35. A Pre-Construction Compliance Report must be prepared for the development and submitted to the Certifier for approval before the commencement of construction. A copy of the endorsed compliance report must be provided to the Planning Secretary at [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) before the commencement of construction.

- A36. The Pre-Construction Compliance Report must include:
- (a) details of how the terms of this consent that must be addressed before the commencement of construction have been complied with; and
  - (b) the expected commencement date for construction.
- A37. Construction Compliance Reports must be submitted to the Planning Secretary at [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) for information every six months from the date of the commencement of construction, for the duration of construction. The Construction Compliance Reports must provide details on the compliance performance of the development for the preceding six months and must be submitted within one month following the end of each six-month period for the duration of construction of the development, or such other timeframe as required by the Planning Secretary.
- A38. The Construction Compliance Reports must include:
- (a) a results summary and analysis of environmental monitoring;
  - (b) the number of any complaints received, including a summary of main areas of complaint, action taken, response given and proposed strategies for reducing the recurrence of such complaints;
  - (c) details of any review of the CEMP and the Environmental Management Plan and associated sub-plans as a result of construction carried out during the reporting period;
  - (d) a register of any modifications undertaken and their status;
  - (e) results of any independent environmental audits and details of any actions taken in response to the recommendations of an audit;
  - (f) a summary of all incidents notified in accordance with this consent; and
  - (g) any other matter relating to compliance with the terms of this consent or requested by the Planning Secretary.

## PART B PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### No Works Prior To Construction Certificate

- B1. Work must not commence until a Construction Certificate in respect of the work has been issued.

### All Conditions Under This Section to be Met

- B2. All relevant conditions under this section must be met prior to the issue of any relevant Construction Certificate.

### Appointment of Certifier

- B3. Prior to the issue of any relevant Construction Certificate, the Applicant must:
- (a) appoint a Principal Certifier in accordance with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
  - (b) The Principal Certifier must submit to the Planning Secretary and Council an "Appointment of Principal Certifier".

### Long Service Levy

- B4. Prior to the issue of any relevant Construction Certificate, the Applicant must provide evidence to the Certifier that any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.

### Development Contributions

- B5. Prior to the issue of the first Construction Certificate, a payment of a levy of 1% of the proposed cost of carrying out the development must be paid to Council under section 7.12 of the EP&A Act.

Certifiers are required to obtain a document from Council confirming the payment of infrastructure contributions prior to the issuing of an occupation certificate. An Occupation Certificate shall not be issued unless Council has confirmed in writing all contributions have been paid.

Deferred contributions prior to the issue of the first occupation certificate applies from publication in the Gazette (8 July 2020) until the COVID-19 prescribed period ends.

The payment deferral arrangements cease to apply if a construction certificate has not been issued for the development by 25 September 2022, in which case the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.

#### Note:

- (a) *This condition is imposed in accordance with the provisions of the City of Newcastle's Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019.*
- (b) *City of Newcastle's Section 7.12 Newcastle Local Contributions Plan 2019 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement.*
- (c) *Certifiers are required to obtain documentation from City of Newcastle confirming the payment of infrastructure contributions prior to the issuing of an occupation certificate.*
- (d) *The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.*

*CPI quarterly figures are released by the ABS on a date after the indexation quarter and, as a guide, these approximate dates are as follows:*

<b>Indexation quarters</b>	<b>Approx. release date</b>
September	Late October
December	Late January
March	Late April
June	Late July

*Any party intending to act on this consent should contact City of Newcastle's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.*

### **External Walls and Cladding**

- B6. The external walls of all buildings including additions to existing buildings must comply with the relevant requirements of the BCA.
- B7. Prior to the commencement of construction, the Applicant must provide the Certifier with documented evidence that the products and systems proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the requirements of the BCA.
- B8. The Applicant must provide a copy of the documentation given to the Certifier to the Planning Secretary within seven days after the Certifier accepts it.

### **Building Code of Australia (BCA) Compliance**

- B9. The proposed works must comply with the applicable Performance Requirements of the BCA to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the ongoing benefit of the community. Compliance with the Performance Requirements can only be achieved by:
  - (c) compliance with the Deemed to Satisfy Provisions of the BCA; or
  - (d) Performance Solution which demonstrates:
    - (i) compliance with all relevant Performance Requirements of the BCA or
    - (ii) the solution is at least equivalent to the Deemed to Satisfy Provisions; or
  - (e) a combination of B9 (a) and (b) above.

Prior to the issue of the first Construction Certificate, a report detailing compliance with the Building Code of Australia is to be submitted to the satisfaction of the Certifier.

### **Maximum Height**

- B10. The maximum height of the approved building/s must not exceed RL 20.8 m AHD, including plant and lift overruns, communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like. Details confirming compliance must be submitted to the Certifier prior to the issue of any Construction Certificate.

### **Gross Floor Area (GFA) Certification**

- B11. The GFA of the building must not exceed 6,432 m<sup>2</sup> (excluding the additional 43 car parking spaces in the calculation). Details confirming compliance prepared by a registered surveyor must be submitted to the Certifier prior to the issue of a relevant Construction Certificate.

### **Operational Noise – Design of Mechanical Plant and Equipment**

- B12. Prior to the issue of any relevant Construction Certificate, the Applicant must prepare and submit a detailed noise assessment of mechanical plant and equipment to the satisfaction of the Planning Secretary and provide a copy to the Certifier.
- B13. Prior to installation of mechanical plant and equipment:
  - (a) a detailed assessment of mechanical plant and equipment with compliance with the relevant project noise trigger levels as recommended in the approved noise assessment required by Condition B12 must be undertaken by a suitably qualified person; and
  - (b) evidence must be submitted to the Certifier that any noise mitigation recommendations identified in the assessment carried out under (a) have been incorporated into the design to ensure the development will not exceed the recommended project noise trigger levels identified in the noise assessment required by Condition B12.

### **Operational Waste Storage and Processing**

- B14. Prior to the issue of any Construction Certificate for the operational waste storage and processing areas, the waste collection pick-up services proposed to be undertaken by Newcastle City Council and/or any private contractor for the development are to be approved by Council's Waste Management Services prior to the issue of the Construction Certificate. Full details are to be included in documentation for a Construction Certificate application and evidence of the design and Council endorsement must be provided to the Certifier.

### **Car Parking and Service Vehicle Layout**

- B15. Prior to the issue of any relevant construction certificate for car parking and service vehicle parking / loading / unloading areas, evidence must be submitted to the Certifier that the operational access and parking arrangements comply with the following requirements:
- (a) all vehicles can enter and leave the Site in a forward direction;
  - (b) 172 on-site car parking spaces and 8 motorbike spaces are included for use during operation of the development and designed in accordance with the latest versions of AS 2890.1 and AS 2890.6; and
  - (c) the swept path of the longest vehicle entering and exiting the Site in association with the new work, as well as manoeuvrability through the Site, are in accordance with the latest version of AS 2890.2.
  - (d) the safety of vehicles and pedestrians accessing adjoining properties, where shared vehicle and pedestrian access occurs, has been addressed.
  - (e) a 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all-weather vehicle access.

### **Bicycle Parking and End-of-Trip Facilities**

- B16. Prior to the issue of any relevant construction certificate, the following design details in relation to the secure bicycle parking and end-of-trip facilities must be submitted to the Certifier for approval:
- (a) the provision of a minimum 50 bicycle parking spaces outlined in plans listed in condition A2;
  - (b) compliance of the layout, design and security of bicycle facilities with the minimum requirements of the latest version of AS 2890.3:2015 Parking facilities – Bicycle parking, and;
  - (c) the provision of end-of-trip facilities for staff.

### **Public Domain Works**

- B17. Prior to the commencement of works for any footpath or public domain works, the Applicant must consult with Council and demonstrate to the Certifier that the streetscape design and treatment meets the requirements of Council, including addressing pedestrian management. The Applicant must submit documentation of approval for each stage from Council to the Certifier.
- B18. Prior to the commencement of works, a separate application must be lodged and consent obtained from Newcastle City Council for any works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW). The consent must be obtained, or other satisfactory arrangements confirmed in writing from City of Newcastle
- B19. The Applicant is to design the following works in connection with the proposed development within the Denison Street public road reserve adjacent to the site, at no cost to City of Newcastle and in accordance with the Newcastle City Centre Public Domain Manual guidelines and City of Newcastle's design specifications:
- a) Kerb & gutter, road shoulder pavement, drainage & footway formation (turf) in Fitzroy Street across the frontage of the site
  - b) New driveway crossings in both Fitzroy and Denison Streets generally in accordance with the approved plans

- c) Provision of a continuous concrete pedestrian pathway including kerb ramps across the Denison Street frontage of the site and linking to the existing bus stop located on the southern side of in Cowper Street (north) east of the Denison Street intersection
- d) Provision of street trees at 10m spacings across the Denison Street frontage of the site

Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to City of Newcastle for approval pursuant to Section 138 of the Roads Act 1993 (NSW). The consent must be obtained, or other satisfactory arrangements confirmed in writing from City of Newcastle before the issue of a Construction Certificate.

### **Mechanical Plant Noise Mitigation**

- B20. Details of noise mitigation measures for all mechanical plant are to be detailed on the relevant Construction Certificate drawings. Certification from an appropriately qualified acoustic engineer that the proposed measures will achieve compliance with the requirements of the NSW Industrial Noise Policy is required to be submitted to the Certifier prior to the issue of the relevant Construction Certificate.

### **Mechanical Ventilation**

- B21. All mechanical ventilation systems shall be designed and installed in accordance with the BCA and shall comply with Australian Standards AS1668.2 and AS3666 – Microbial Control of Air Handling and Water Systems of Building, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details of all mechanical ventilation systems shall be submitted to the Certifier prior to the issue of the relevant Construction Certificate.

### **Roadworks and Access**

- B22. Prior to the issue of any relevant Construction Certificate or Subdivision Works Certificate for roadworks and access (if any), the Applicant must submit design plans to the satisfaction of the relevant roads authority for approval.

### **Outdoor Lighting**

- B23. All outdoor lighting within the site shall comply with, where relevant, *AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting* and *AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting*. Additionally, the Proponent must provide mitigation measures to manage any residual night lighting impacts to protect properties adjoining or adjacent to the development in consultation with affected landowners.

Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of the relevant Construction Certificate.

### **Signage**

- B24. Prior to the issue of any relevant Construction Certificate, the Applicant must submit for approval detailed plans, elevations and specifications of all business identification signage, and demonstrate compliance with State Environmental Planning Policy No. 64 – Advertising Signage, to the satisfaction of the Planning Secretary. The signage must not be illuminated.
- B25. Prior to the issue of any relevant Construction Certificate, the Applicant must provide evidence that Planning Secretary approval was issued for the detailed plans, elevations and specifications of all business identification signage under Condition B24, and demonstrate compliance with State Environmental Planning Policy No. 64 – Advertising Signage, to the satisfaction of the Certifier.

### **Flood Level Plans**

- B26. Prior to the issue of the first Construction Certificate, detailed plans are to be submitted to the satisfaction of the Certifier that identify the minimum floor level is in accordance with Council's Flood Certificate for the site.

### **Roof Water**

- B27. Roof water from the development is to be directed to the proposed water tank with a minimum capacity of 16,000 litres and being reticulated to any new toilet cisterns and cold- water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity.

Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing are to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3).

Full details are to be included in documentation for a Construction Certificate application.

#### **Overhead Mains**

- B28. Prior to the issue of any relevant Construction Certificate the Applicant must provide detailed plans outlining the undergrounding of the overhead mains adjacent to the development site in accordance with the *Services Assessment* prepared by GHD dated March 2021 to the satisfaction of the Certifier.

Alternatively, if the Applicant does not proceed with the undergrounding of the identified mains, the existing mains must be assessed by a competent "Approved Service Provide Level 3 – Overhead Line Designer" to confirm compliance with Ausgird Standard NS220 and AS/NZ:7000. Evidence of the assessment must be provided to the satisfaction of the Certifier.



## PART C PRIOR TO COMMENCEMENT OF CONSTRUCTION OR WORKS

### All Conditions Under this Section to be Met

- C1. All relevant conditions under this section must be met prior to the commencement of any relevant construction or works.

### Notification of Commencement

- C2. The Applicant must notify the Planning Secretary in writing of the dates of the intended commencement of construction and operation at least 48 hours before those dates.
- C3. If the construction or operation of the development is to be staged, the Planning Secretary must be notified in writing at least 48 hours before the commencement of each stage, of the date of commencement and the development to be carried out in that stage.

### Certified Drawings

- C4. Prior to the commencement of construction, the Applicant must submit to the satisfaction of the Certifier structural drawings prepared and signed by a suitably qualified practising Structural Engineer that demonstrates compliance with this development consent.

### Certified Plans

- C5. Plans certified in accordance with section 6.16 of the EP&A Act are to be submitted to the Certifier and the Planning Secretary prior to commencement of each stage of the works and shall include details as required by any of the following conditions.

A copy of the Construction Certificate shall be submitted to the Planning Secretary and Council.

### Access to Information

- C6. At least 48 hours before the commencement of construction until the completion of all works under this consent, or such other time as agreed by the Planning Secretary, the Applicant must:
- (a) make the following information and documents (as they are obtained or approved) publicly available on its website:
- (i) the documents referred to in condition A2 of this consent;
  - (ii) all current statutory approvals for the development;
  - (iii) all approved strategies, plans and programs required under the conditions of this consent;
  - (iv) regular reporting on the environmental performance of the development in accordance with the reporting arrangements in any plans or programs approved under the conditions of this consent;
  - (v) a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
  - (vi) a summary of the current stage and progress of the development;
  - (vii) contact details to enquire about the development or to make a complaint;
  - (viii) a complaints register, updated monthly;
  - (ix) audit reports prepared as part of any independent audit of the development and the Applicant's response to the recommendations in any audit report;
  - (x) any other matter required by the Planning Secretary; and
- (b) keep such information up to date, to the satisfaction of the Planning Secretary and publicly available for 24 months after the commencement of operations.

### Protection of Public Infrastructure

- C7. Prior to the commencement of construction, the Applicant must:
- (a) consult with the relevant owner and provider of services that are likely to be affected by the development to make suitable arrangements for access to, diversion, protection and support of the affected infrastructure;
- (b) prepare a dilapidation report identifying the condition of all public infrastructure in the vicinity of the site (including roads, gutters and footpaths); and

- (c) submit a copy of the dilapidation report to the Planning Secretary, Certifier and Council.

### **Pre-Construction Dilapidation Report**

- C8. Prior to the commencement of construction, the Applicant must submit a pre-commencement dilapidation report to Council and the Certifier. The report must provide an accurate record of the existing condition of adjoining private properties and Council assets that are likely to be impacted by the proposed works.

### **Community Communication Strategy**

- C9. A community Communication Strategy must be prepared to provide mechanisms to facilitate communication between the Applicant, the relevant Council and the community (including adjoining affected landowners and businesses, and others directly impacted by the development), during the design and construction of the development and for a minimum of 12 months following the completion of construction.
- C10. No later than two weeks before the commencement of construction, a Community Communication Strategy must be submitted to the Planning Secretary for approval and approved by the Planning Secretary prior to the commencement of construction or within another timeframe agreed with the Planning Secretary. The Community Communication Strategy must provide mechanisms to facilitate communication between the Applicant, the relevant Council and the community (including adjoining affected landowners and businesses, and others directly impacted by the development), during the design and construction of the development and for a minimum of 12 months following the completion of construction.

The Community Communication Strategy must:

- (a) identify people to be consulted during the design and construction phases;
- (b) set out procedures and mechanisms for the regular distribution of accessible information about or relevant to the development;
- (c) provide for the formation of community-based forums, if required, that focus on key environmental management issues for the development;
- (d) set out procedures and mechanisms:
  - (i) through which the community can discuss or provide feedback to the Applicant;
  - (ii) through which the Applicant will respond to enquiries or feedback from the community; and
  - (iii) to resolve any issues and mediate any disputes that may arise in relation to construction and operation of the development, including disputes regarding rectification or compensation.
- (e) include any specific requirements around traffic, noise and vibration, visual impacts, amenity, flora and fauna, soil and water, contamination, heritage.

The Community Communications Strategy must be submitted to the Planning Secretary no later than one month before the commencement of any work and must be implemented for a minimum of 12 months following the completion of construction.

- C11. A Community Liaison Officer is to be appointed prior to development works commencing to act as a point of contact for adjacent occupiers throughout the construction phase of the development. The Community Liaison Officer is to be engaged until construction works are completed. Contact details of the Community Liaison Officer are to be provided to City of Newcastle and adjoining occupiers via a letterbox drop/community newsletter and signage at the site.
- C12. A Complaints Management System must be prepared and implemented before the commencement of any work and maintained for the duration of construction and for a minimum for 12 months following completion of construction.
- C13. The following information must be available to facilitate community enquiries and manage complaints one (1) month before the commencement of work and for 12 months following the completion of construction:

- (a) a 24- hour telephone number for the registration of complaints and enquiries about the development;
- (b) a postal address to which written complaints and enquires may be sent;
- (c) an email address to which electronic complaints and enquiries may be transmitted; and
- (d) a mediation system for complaints unable to be resolved.

This information must be accessible to all in the community regardless of age, ethnicity, disability or literacy level.

C14. A Complaints Register must be maintained recording information on all complaints received about the development during the carrying out of any work and for a minimum of 12 months following the completion of construction. The Complaints Register must record the:

- (a) number of complaints received;
- (b) the date and time of the complaint;
- (c) the method by which the complaint was made;
- (d) any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect
- (e) nature of the complaint;
- (f) means by which the complaint was addressed and whether resolution was reached, with or without mediation; and
- (g) if no action was taken, the reason(s) why no action was taken.

C15. The Complaints Register must be provided to the Planning Secretary upon request, within the timeframe stated in the request.

*Note: Complainants must be advised that the Complaints Register may be forwarded to Government agencies to allow them to undertake their regulatory duties.*

### **Ecologically Sustainable Development**

C16. Prior to the commencement of construction, unless otherwise agreed by the Planning Secretary, the Applicant must demonstrate that ESD is being achieved by either:

- (a) registering for a minimum 4 star Green Star rating with the Green Building Council Australia and submit evidence of registration to the Certifier; or
- (b) seeking approval from the Planning Secretary for an alternative certification process.

### **Environmental Management Plan Requirements**

C17. Management plans required under this consent must be prepared having regard to the relevant guidelines, including but not limited to the *Environmental Management Plan Guideline: Guideline for Infrastructure Projects* (DPIE April 2020).

*Note:*

- *The Environmental Management Plan Guideline is available on the Planning Portal at: <https://www.planningportal.nsw.gov.au/major-projects/assessment/post-approval>*
- *The Planning Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.*

### **Construction Environmental Management Plan**

C18. Prior to the commencement of construction, the Applicant must submit a Construction Environmental Management Plan (CEMP) to the Certifier and provide a copy to the Planning Secretary for information. The CEMP must include, but not be limited to, the following:

- (a) Details of:
  - (i) hours of work;
  - (ii) 24-hour contact details of site manager;
  - (iii) management of dust and odour to protect the amenity of the neighbourhood;
  - (iv) stormwater control and discharge;

- (v) measures to ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site;
  - (vi) external lighting in compliance with AS 4282-2019 Control of the obtrusive effects of outdoor lighting;
  - (vii) community consultation and complaints handling as set out in the Community Communication Strategy required by condition C9;
  - (viii) detail the quantities of each waste type generated during construction and the proposed reuse, recycling and disposal locations;
- (b) an unexpected finds protocol for contamination and associated communications procedure to ensure that potentially contaminated material is appropriately managed;
  - (c) an unexpected finds protocol for Aboriginal and non-Aboriginal heritage and associated communications procedure;
  - (d) waste classification (for materials to be removed) and validation (for materials to remain) be undertaken to confirm the contamination status in these areas of the site;
  - (e) Construction Traffic and Pedestrian Management Sub-Plan (see condition C19);
  - (f) Construction Noise and Vibration Management Sub-Plan (see condition C20);
  - (g) Construction Waste Management Sub-Plan (see condition C21);
  - (h) Construction Soil and Water Management Sub-Plan (see Condition C21);
  - (i) Flood Emergency Response Sub Plan (see condition C23), unless otherwise agreed by the Planning Secretary;

The Applicant must not commence construction of the development until the CEMP is approved by the Certifier and a copy submitted to the Planning Secretary.

C19. The Construction Traffic and Pedestrian Management Sub-Plan (CTPMSP) must be submitted to Council for approval and be prepared to achieve the objective of ensuring safety and efficiency of the road network and address, but not be limited to, the following:

- (a) be prepared by a suitably qualified and experienced person(s);
- (b) be prepared in consultation with Council;
- (c) detail the measures that are to be implemented to ensure road safety and network efficiency during construction in consideration of potential impacts on general traffic, cyclists and pedestrians and bus services; and
- (d) detail heavy vehicle routes, access and parking arrangements.

C20. The Construction Noise and Vibration Management Sub-Plan must address, but not be limited to, the following:

- (a) be prepared by a suitably qualified and experienced noise expert;
- (b) describe procedures for achieving the noise management levels in EPA's *Interim Construction Noise Guideline* (DECC, 2009);
- (c) describe the measures to be implemented to manage high noise generating works such as piling, in close proximity to sensitive receivers;
- (d) include strategies that have been developed with the community for managing high noise generating works;
- (e) describe the community consultation undertaken to develop the strategies in condition C21(d);
- (f) include a complaints management system that would be implemented for the duration of the construction; and
- (g) include a program to monitor and report on the impacts and environmental performance of the development and the effectiveness of the implemented management measures in accordance with the requirements of condition C17.

C21. The Construction Waste Management Sub-Plan (CWMSWP) must address, but not be limited to, the procedures for the management of waste comprising:

- (a) the recording of quantities, classification (for materials to be removed) and validation (for materials to remain) of each type of waste generated during construction and proposed use;
  - (b) information regarding the recycling and disposal locations; and
  - (c) confirmation of the contamination status of the development areas of the site based on the validation results.
- C22. The Applicant must prepare a Construction Soil and Water Management Plan (CSWMSP) and the plan must address, but not be limited to the following:
- (a) be prepared by a suitably qualified expert, in consultation with Council;
  - (b) describe all erosion and sediment controls to be implemented during construction, as a minimum, in accordance with the publication *Managing Urban Stormwater: Soils & Construction* (4th edition, Landcom 2004) commonly referred to as the 'Blue Book';
  - (c) include an Acid Sulfate Soils Management Plan, if required, including measures for the management, handling, treatment and disposal of acid sulfate soils, including monitoring of water quality at acid sulfate soils treatment areas.
  - (d) provide a plan of how all construction works will be managed in a wet-weather events (i.e. storage of equipment, stabilisation of the Site);
  - (e) detail all off-Site flows from the Site; and
  - (f) describe the measures that must be implemented to manage stormwater and flood flows for small and large sized events, including, but not limited to, 1 in 5-year ARI and 1 in 100-year ARI.
- C23. The Flood Emergency Response Sub-Plan (FERSP) must address, but not be limited to, the following:
- (a) be prepared by a suitably qualified and experienced person(s);
  - (b) address the provisions of the *Floodplain Risk Management Guidelines* (EESG);
  - (c) include details of:
    - (i) the flood emergency responses for both construction phases of the development;
    - (ii) predicted flood levels;
    - (iii) flood warning time and flood notification;
    - (iv) assembly points and evacuation routes;
    - (v) evacuation and refuge protocols; and
    - (vi) awareness training for employees and contractors, and users/visitors.
- C24. A Driver Code of Conduct must be prepared and communicated by the Applicant to heavy vehicle drivers and must address the following:
- (a) minimise the impacts of earthworks and construction on the local and regional road network;
  - (b) minimise conflicts with other road users;
  - (c) minimise road traffic noise; and
  - (d) ensure truck drivers use specified routes.

### **Construction Parking**

- C25. Prior to the commencement of construction, the Applicant must provide sufficient parking facilities on-site, including for heavy vehicles and for site personnel, to ensure that construction traffic associated with the development does not utilise public and residential streets or public parking facilities.
- C26. Prior to commencement of construction, the Applicant must submit a Construction Worker Transportation Strategy to the Certifier. The Strategy must detail the provision of sufficient parking facilities or other travel arrangements for construction workers in order to minimise demand for parking in nearby public streets or public parking facilities. A copy of the strategy must be provided to the Planning Secretary for information.

## **Soil and Water**

- C27. Prior to the commencement of construction, the Applicant must:
- (a) install erosion and sediment controls on the site to manage wet weather events;
  - (b) divert existing clean surface water around operational areas of the site; and
- C28. Prior to the commencement of construction, erosion and sediment controls must be installed and maintained, as a minimum, in accordance with the publication *Managing Urban Stormwater: Soils & Construction* (4<sup>th</sup> edition, Landcom 2004) commonly referred to as the 'Blue Book'.
- C29. Prior to the commencement of construction, the Applicant describe the measures that must be implemented to manage stormwater and flood flows for small and large sized events, including, but not limited to 1 in 1-year ARI, 1 in 5-year ARI and 1 in 100-year ARI.

## **Stormwater Management and Water Quality**

- C30. All onsite stormwater retention and water quality treatment systems are to be individually identified and sign posted in accordance with City of Newcastle's Stormwater and Water Efficiency for Development Technical Manual (Updated 2017). Full details are to be included in documentation for a Construction Certificate application.
- C31. All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 'Stormwater' of Newcastle Development Control Plan 2012 and the associated Stormwater Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by Northrop (Job No. NL202453, dated 09/04/2021) and including:
- (a) Provision of kerbing, dwarf walls, or other barriers along the edge of all rain garden areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon while also allowing the collection of runoff to rain gardens.

Full details are to be included in documentation for any Construction Certificate application.

## **Outdoor Lighting**

- C32. Prior to the installation of outdoor lighting, evidence must be submitted to the Certifier that all outdoor lighting within the site has been designed to comply with AS 1158.3.1:2005 Lighting for roads and public spaces – Pedestrian area (Category P) lighting – Performance and design requirements and AS 4282-2019 Control of the obtrusive effects of outdoor lighting.

## **Stormwater Management System**

- C33. Prior to the commencement of the relevant construction stage / commencement of construction, the Applicant must design an operational stormwater management system for the development and submit it to the Certifier for approval. The system must:
- (a) be designed by a suitably qualified and experienced person(s);
  - (b) be generally in accordance with the conceptual design in the SEE;
  - (c) be in accordance with applicable Australian Standards; and
  - (d) ensure that the system capacity has been designed in accordance with Australian Rainfall and Runoff (Engineers Australia, 2016) and *Managing Urban Stormwater: Council Handbook* (EPA, 1997) guidelines.

## **Contamination**

- C34. Prior to the commencement of works, an Unexpected Contamination Finds Protocol (UFP) prepared by a suitably qualified and experienced expert shall be prepared. The protocol should include detailed procedures for identifying and dealing with unexpected contamination, asbestos and other unexpected finds. The Applicant should ensure that the procedure includes details of who will be responsible for implementing the unexpected finds procedure and the roles and responsibilities of all parties involved. The UFP must be submitted to the satisfaction of Certifier. The UFP must be implemented for the duration of construction works.
- C35. Prior to the commencement of works, other than site clearing works, the Applicant must engage an EPA-accredited auditor to prepare a Section B Site Audit Statement or Interim Site Audit

Advice that confirms that the remediation action plan is appropriate for the site and that the site can be made suitable for the proposed use.

Details demonstrating compliance with the above requirements must be submitted to the Certifier. A copy of all the documentation outlined in the above requirements must be submitted to the Planning Secretary.

### **Car Parking and Access**

- C36. The car park is to be designed to comply with AS/NZS 2890.1:2004: Parking facilities – Off-street car parking and AS/NZS 2890.6:2009: Parking facilities – Off-street parking for people with disabilities and is to be set out generally in accordance with the minimum parking layout standards indicated in Section 7.03 'Traffic, Parking and Access' of the Newcastle Development Control Plan 2012 and the plans submitted with the development application. Full details are to be included in documentation for a Construction Certificate application.
- C37. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.
- C38. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.
- C39. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.

### **Installation of Dual Flush or Vacuum Toilets**

- C40. All toilets installed within the development must be of water efficient dual flush capacity or vacuum design with at least a 4-star rating under the Water Efficiency and Labelling Scheme (WELS). The details must be submitted for the approval of the Certifying Authority, prior to the issue of the relevant Construction Certificate.

### **Installation of Water Efficient Taps**

- C41. All taps and shower heads installed must be water efficient with at least a 4-star rating under the Water Efficiency and Labelling Scheme (WELS), where available. The details are to be submitted for the approval of the Certifying Authority, prior to the issue of the relevant Construction Certificate.

### **Tree Planting**

- C42. Four street trees being *Syzygium jambos*, or *Glochidion ferninandi* or *Buckinghamia celsissima* are required to be planted on the Denison Street frontage. A fee, to be determined by contacting City of Newcastle's City Greening Services, is to be paid to City of Newcastle for the required planting and evidence of the payment of the required fee is to be included in the documentation for a Construction Certificate application.

*Note: The tree selection and location of the required trees will be determined by Council's City Greening Coordinator in accordance with 'The City of Newcastle's Street Tree Master Plan'.*

### **Floor Levels**

- C43. The floor level of occupiable rooms in all proposed buildings or building additions is to be verified on plans for a Construction Certificate application to be no lower than 2.70m Australian Height Datum.

### **Vehicular Crossings**

- C44. A commercial vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

- a) Constructed in accordance with City of Newcastle A3100 – Driveway Crossings Standard Design Details.
- b) The driveway crossing widths within the road reserve are to generally be in accordance with the approved plans.
- c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
- d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
- e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the Roads Act 1993 (NSW) has been granted by City of Newcastle Council. An application under Section 138 must be applied for and approved before the commencement of works.

- C45. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.



## **PART D DURING CONSTRUCTION OR WORKS**

### **All Conditions Under this Section to be Met**

D1. All relevant conditions under this section must be met during works.

### **Site Notice**

D2. A site notice(s) must be prominently displayed at the boundaries of the site during construction for the purpose of informing the public of project details and must satisfy the following requirements:

- (a) minimum dimensions of the site notice(s) must measure 841 mm x 594 mm (A1) with any text on the site notice(s) to be a minimum of 30-point type size;
- (b) the site notice(s) must be durable and weatherproof and must be displayed throughout the works period;
- (c) the approved hours of work, the name of the builder, Certifier, structural engineer, site/project manager, the responsible managing company (if any), its address and 24-hour contact phone number for any inquiries, including construction/ noise complaint must be displayed on the site notice(s); and
- (d) the site notice(s) must be mounted at eye level on the perimeter hoardings/fencing and must state that unauthorised entry to the site is not permitted.

### **Approved Plans to be On-Site**

D3. A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Site at all times and shall be readily available for perusal by any officer of the Department, Council or the Certifying Authority.

### **Operation of Plant and Equipment**

D4. All construction plant and equipment used on site must be maintained in a proper and efficient condition and operated in a proper and efficient manner.

### **Construction Hours**

D5. Construction, including the delivery of materials to and from the site, may only be carried out between the following hours:

- (a) between 7am and 6pm, Mondays to Fridays inclusive; and
- (b) between 8am and 1pm, Saturdays.

No work may be carried out on Sundays or public holidays.

D6. Construction activities may be undertaken outside of the hours in condition D5 if required:

- (a) by the Police or a public authority for the delivery of vehicles, plant or materials; or
- (b) in an emergency to avoid the loss of life, damage to property or to prevent environmental harm; or
- (c) where the works are inaudible at the nearest sensitive receivers; or
- (d) where a variation is approved in advance in writing by the Planning Secretary or his nominee if appropriate justification is provided for the works.

D7. Notification of such construction activities as referenced in condition D6 must be given to affected residents before undertaking the activities or as soon as is practical afterwards.

D8. Rock breaking, rock hammering, sheet piling, pile driving and similar activities may only be carried out between the following hours:

- (a) 9am to 12pm, Monday to Friday;
- (b) 2pm to 5pm Monday to Friday; and
- (c) 9am to 12pm, Saturday.

### **Implementation of Management Plans**

D9. The Applicant must carry out the construction of the development in accordance with the most recent version of the CEMP (including Sub-Plans).

### **Construction Traffic**

D10. All construction vehicles are to be contained wholly within the site, except if located in an approved on-street work zone, and vehicles must enter the site or an approved on-street work zone before stopping.

### **Hoarding Requirements**

D11. The following hoarding requirements must be complied with:

- (a) no third-party advertising is permitted to be displayed on the subject hoarding/ fencing; and
- (b) the construction site manager must be responsible for the removal of all graffiti from any construction hoardings or the like within the construction area within 48 hours of its application.

### **No Obstruction of Public Way**

D12. The public way (outside of any approved construction works zone) must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.

### **Construction Noise Limits**

D13. The development must be constructed to achieve the construction noise management levels detailed in the *Interim Construction Noise Guideline* (DECC, 2009). All feasible and reasonable noise mitigation measures must be implemented and any activities that could exceed the construction noise management levels must be identified and managed in accordance with the management and mitigation measures identified in the approved Construction Noise and Vibration Management Plan.

D14. The Applicant must ensure construction vehicles (including concrete agitator trucks) do not arrive at the site or surrounding residential precincts outside of the construction hours of work outlined under condition D5.

D15. The Applicant must implement, where practicable and without compromising the safety of construction staff or members of the public, the use of 'quackers' to ensure noise impacts on surrounding noise sensitive receivers are minimised.

### **Vibration Criteria**

D16. Vibration caused by construction at any residence or structure outside the site must be limited to:

- (a) for structural damage, the latest version of *DIN 4150-3 (1992-02) Structural vibration - Effects of vibration on structures* (German Institute for Standardisation, 1999); and
- (b) for human exposure, the acceptable vibration values set out in the *Environmental Noise Management Assessing Vibration: a technical guideline* (DEC, 2006) (as may be updated or replaced from time to time).

D17. Vibratory compactors must not be used closer than 30 metres from residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified in condition D16.

D18. The limits in conditions D16 and D17 apply unless otherwise outlined in a Construction Noise and Vibration Management Plan, approved as part of the CEMP required by condition C20 of this consent.

### **Tree Protection**

D19. For the duration of the construction works:

- (a) street trees must not be trimmed or removed unless it forms a part of this development consent or prior written approval from Council is obtained or is required in an emergency to avoid the loss of life or damage to property;
- (b) all street trees immediately adjacent to the property boundaries must be protected at all times during construction in accordance with Council's tree protection requirements. Any street tree, which is damaged or removed during construction due to an emergency, must be replaced, to the satisfaction of Council;

- (c) all trees on the site that are not approved for removal must be suitably protected during construction as per the recommendations of the Arboricultural Impact Assessment prepared by Accurate Tree Assessment dated February 2021; and
- (d) if access to the area within any protective barrier is required during the works, it must be carried out under the supervision of a qualified arborist. Alternative tree protection measures must be installed, as required. The removal of tree protection measures, following completion of the works, must be carried out under the supervision of a qualified arborist and must avoid both direct mechanical injury to the structure of the tree and soil compaction within the canopy or the limit of the former protective fencing, whichever is the greater.

D20. The six existing street trees (ISs 20757,20758,20759,20760, 20761 and 20762) on the Fitzroy Street frontage of the site are to be retained and protected during construction phase with minimum width footpath and non-destructive excavation within the Tree Protection Zone (TPZ) /SRZ. Tree Protection fencing is to be installed prior to the commencement of construction works.

Note: Contact Council's City Greening Services prior to working within the TPZ.

### **Air Quality**

D21. The Applicant must take all reasonable steps to minimise dust generated during all works authorised by this consent.

D22. During construction, the Applicant must ensure that:

- (a) activities are carried out in a manner that minimises dust including emission of windblown or traffic generated dust;
- (b) all trucks entering or leaving the site with loads have their loads covered;
- (c) trucks associated with the development do not track dirt onto the public road network;
- (d) public roads used by these trucks are kept clean; and
- (e) land stabilisation works are carried out progressively on site to minimise exposed surfaces.

### **Imported Soil**

D23. The Applicant must:

- (a) ensure that only VENM, ENM, or other material that meets the requirements of a relevant order and exemption issued by the EPA, is brought onto the site;
- (b) keep accurate records of the volume and type of fill to be used; and
- (c) make these records available to the Certifier upon request.

### **Disposal of Seepage and Stormwater**

D24. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Certifier. The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

### **Emergency Management**

D25. The Applicant must prepare and implement awareness training for employees and contractors, including locations of the assembly points and evacuation routes, for the duration of construction.

### **Unexpected Finds Protocol – Aboriginal Heritage**

D26. In the event that surface disturbance identifies a new Aboriginal object:

- (a) all works must halt in the immediate area to prevent any further impacts to the object(s);
- (b) a suitably qualified archaeologist and the registered Aboriginal representatives must be contacted to determine the significance of the objects;

- (c) the site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) which is managed by Heritage NSW under Department of Premier and Cabinet and the management outcome for the site included in the information provided to AHIMS;
- (d) the Applicant must consult with the Aboriginal community representatives, the archaeologists and Heritage NSW to develop and implement management strategies for all objects/sites; and
- (e) works shall only recommence with the written approval of the Planning Secretary.

#### **Unexpected Finds Protocol – Historic Heritage**

D27. If any unexpected archaeological relics are uncovered during the work, then:

- (a) all works must cease immediately in that area and notice is to be given to Heritage NSW and the Planning Secretary within 2 business days;
- (b) depending on the possible significance of the relics, an archaeological assessment and management strategy may be required before further works can continue in that area as determined in consultation with Heritage NSW; and
- (c) works may only recommence with the written approval of the Planning Secretary.

#### **Waste Storage and Processing**

- D28. All waste generated during construction must be secured and maintained within designated waste storage areas at all times and must not leave the site onto neighbouring public or private properties.
- D29. All waste generated during construction must be assess, classified and managed in accordance with the Waste Classification Guidelines Part 1: Classifying Waste (EPA, 2014).
- D30. The Applicant must ensure that concrete waste and rinse water are not disposed of on the site and are prevented from entering any natural or artificial watercourse.
- D31. The Applicant must record the quantities of each waste type generated during construction and the proposed reuse, recycling and disposal locations for the duration of construction.
- D32. The Applicant must ensure that the removal of hazardous materials, particularly the method of containment and control of emission of fibres to the air, and disposal at an approved waste disposal facility is in accordance with the requirements of the relevant legislation, codes, standards and guidelines.

#### **Outdoor Lighting**

- D33. The Applicant must ensure that all external lighting is constructed and maintained in in accordance with AS 4282-2019 Control of the obtrusive effects of outdoor lighting.

#### **Contamination**

- D34. The Applicant must ensure the proposed development does not result in a change of risk in relation to any pre-existing contamination on the site that would result in significant contamination.
- D35. Any new information which comes to light during construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to the relevant authority.

#### **Independent Environmental Audit**

- D36. Proposed independent auditors must be agreed to in writing by the Planning Secretary prior to the commencement of an Independent Audit.
- D37. Independent Audits of the development must be conducted and carried out in accordance with the Independent Audit Post Approval Requirements.
- D38. The Planning Secretary may require the initial and subsequent Independent Audits to be undertaken at different times to those agreed to above, upon giving at least 4 weeks' notice to the Applicant of the date or timing upon which the audit must be commenced.

- D39. In accordance with the specific requirements in the Independent Audit Post Approval Requirements, the Applicant must:
- (a) review and respond to each Independent Audit Report prepared under condition D36D36 of this consent, or condition D38 where notice is given;
  - (b) submit the response to the Planning Secretary; and
  - (c) make each Independent Audit Report and response to it publicly available within 60 days after submission to the Planning Secretary.
- D40. Independent Audit Reports and the applicant/proponent's response to audit findings must be submitted to the Planning Secretary within two months of undertaking the independent audit site inspection as outlined in the Independent Audit Post Approval Requirements unless otherwise agreed by the Planning Secretary.
- D41. Notwithstanding the requirements of the Independent Audit Post Approval Requirements, the Planning Secretary may approve a request for ongoing independent operational audits to be ceased, where it has been demonstrated to the Planning Secretary's satisfaction that an audit has demonstrated operational compliance.

#### **Mine Subsidence**

- D42. Prior to and during works the development is to comply with the approval and all conditions issued under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*, by Subsidence Advisory NSW on 27 September 2021.

Any conditions issued as part of the approval/certification by Subsidence Advisory NSW also form part of the consent conditions that the Applicant is required to comply with.

#### **Fill**

- D43. Any excavated material to be removed from the site is to be assessed, classified, transported, and disposed of in accordance with the Department of Environment and Climate Changes' (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'
- D44. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the Protection of the Environment Operations Act 1997 (NSW) and the Protection of the Environment (Waste) Regulation 2005 (NSW).
- D45. Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Department officers or the Principal Certifying Authority on request.

## **PART E PRIOR TO OCCUPATION CERTIFICATE / COMMENCEMENT OF OPERATION**

### **All Conditions Under this Section to be Met**

- E1. All relevant conditions under this section must be met prior to the issue of any relevant Occupation Certificate.

### **Notification of Occupation**

- E2. At least one month before commencement of operation, the date of commencement of the operation of the development must be notified to the Planning Secretary in writing. If the operation of the development is to be staged, the Planning Secretary must be notified in writing at least one month before the commencement of each stage, of the date of commencement and the development to be carried out in that stage.

### **Occupation Certificate**

- E3. An Occupation Certificate must be obtained from the PCA prior to commencement of occupation or use of the whole or any part of the approved building. A copy of the Occupation Certificate shall be submitted to the Planning Secretary.

### **External Walls and Cladding**

- E4. Prior to commencement of operation, the Applicant must provide the Certifier with documented evidence that the products and systems used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the requirements of the BCA.
- E5. The Applicant must provide a copy of the documentation given to the Certifier to the Planning Secretary within seven days after the Certifier accepts it.

### **Developer Contributions**

- E6. Prior to issue of the first Occupation Certificate the Certifier must confirm that there are no outstanding infrastructure contributions or levies.

Certifiers are required to obtain a document from Council confirming the payment of infrastructure contributions prior to the issuing of an occupation certificate. An Occupation Certificate shall not be issued unless Council has confirmed in writing all contributions have been paid.

### **GFA and Height Certification**

- E7. A Registered Surveyor is to certify that the GFA of the building does not exceed 6,432 m<sup>2</sup> (excluding the GFA of the additional 43 car parking spaces required to be included in the GFA calculation under the NDCP 2012) and the height of the building does not exceed RL 20.8 m AHD. Details shall be provided to the Certifier demonstrating compliance with this condition prior to the issue of any Occupation Certificate.

### **Stormwater Drainage Design Plan(s)**

- E8. A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and the City of Newcastle prior to the issue of any Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

### **Post-construction Dilapidation Report**

- E9. Prior to commencement of operation, the Applicant must engage a suitably qualified person to prepare a post-construction dilapidation report at the completion of construction. This report is:
- (a) to ascertain whether the construction created any structural damage to adjoining buildings or infrastructure;
  - (b) to be submitted to the Certifier. In ascertaining whether adverse structural damage has occurred to adjoining buildings or infrastructure, the Certifier must:
    - (i) compare the post-construction dilapidation report with the pre-construction dilapidation report required by these conditions; and

- (ii) have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads.
- (c) to be forwarded to Council for information.

### **Protection of Public Infrastructure**

- E10. Unless the Applicant and the applicable authority agree otherwise, the Applicant must:
- (a) repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by carrying out the development; and
  - (b) relocate, or pay the full costs associated with relocating any infrastructure that needs to be relocated as a result of the development.

*Note: This condition does not apply to any damage to roads caused as a result of general road usage or otherwise addressed by contributions required by Condition B5 of this consent.*

### **Road Reserve Works**

- E11. All public footways, foot paving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to the satisfaction of City of Newcastle prior to the completion of the demolition works or prior to the issue of any Occupation Certificate in respect of the development involving building work.
- E12. Prior to the issue of any Occupation Certificate, the construction works in the road reserve are to be implemented and completed to satisfaction of Newcastle City Council.
- E13. Any redundant existing vehicular crossing (or section of) is to be removed at no cost to City of Newcastle and the public footway and kerb being restored to match the existing infrastructure and be completed prior to the issuing of an Occupation Certificate for the proposed development.

### **Protection of Property**

- E14. Unless the Applicant and the applicable owner agree otherwise, the Applicant must repair, or pay the full costs associated with repairing any property that is damaged by carrying out the development.

### **Utilities and Services**

- E15. Prior to the issue of any Occupation Certificate, a compliance certificate under the section 307 of the *Water Management Act 2000* must be obtained from Council and submitted to the Certifier.
- E16. Prior to issue of the occupation certificate, written advice shall be obtained from the relevant wastewater disposal authority, electricity supply authority, an approved telecommunications carrier and an approved gas carrier (where relevant) stating that satisfactory arrangements have been made to ensure provision of adequate services.

### **Roadworks and Access**

- E17. Prior to the issue of any Occupation Certificate, the Applicant must complete the construction of all proposed driveways, car parking and service vehicle parking / loading / unloading areas to the satisfaction of Council.

### **Works as Executed Plans**

- E18. Prior to the commencement of operation, works-as-executed drawings signed by a registered surveyor demonstrating that the stormwater drainage and finished ground levels have been constructed as approved, must be submitted to the Certifier.

### **Fire Safety Certification**

- E19. Prior to commencement of occupation, a Fire Safety Certificate must be obtained for all the Essential Fire or Other Safety Measures forming part of this consent. A copy of the Fire Safety Certificate must be submitted to the relevant authority and Council. The Fire Safety Certificate must be prominently displayed in the building.

### **Green Travel Plan**

- E20. Prior to the commencement of operation, the Green Travel Plan (GTP), must be updated and submitted to the satisfaction of the Planning Secretary, to include:
- (a) objectives and modes share targets (i.e. Site and land use specific, measurable and achievable and timeframes for implementation) to define the direction and purpose of the GTP;
  - (b) specific tools and actions to help achieve the objectives and mode share targets;
  - (c) measures to promote and support the implementation of the plan, including financial and human resource requirements, roles and responsibilities for relevant employees involved in the implementation of the GTP; and
  - (d) details regarding the methodology and monitoring/review program to measure the effectiveness of the objectives and mode share targets of the GTP, including the frequency of monitoring and the requirement for travel surveys to identify travel behaviours of users of the development.
  - (e) public transport routes and bicycle network

The GTP is to be made available to the tenants and the public transport routes and bicycle network are to be installed in common areas prior to the issue of the Final Occupation Certificate. A copy should be provided to the certifier and Council.

- E21. The Green Travel Plan is to be approved and implemented prior to the issue of an Occupation Certificate.

#### **Mechanical Ventilation**

- E22. Prior to the issue of any relevant occupation certificate, the Applicant must provide evidence to the satisfaction of the Certifier that the installation and performance of the mechanical ventilation systems complies with:
- (a) *AS 1668.2-2012 The use of air-conditioning in buildings – Mechanical ventilation in buildings* and other relevant codes; and
  - (b) any dispensation granted by Fire and Rescue NSW.

#### **Operational Noise – Design of Mechanical Plant and Equipment**

- E23. Prior to the commencement of operation, the Applicant must submit evidence to the Certifier that the noise mitigation recommendations in the assessment undertaken under condition B13 have been incorporated into the design of mechanical plant and equipment to ensure the development will not exceed the recommended project noise trigger levels identified in the noise assessment required by Condition B12.

#### **Car Parking, Service Vehicles and Bi-cycle Parking Arrangements**

- E24. Prior to the issue of any relevant occupation certificate, or other timeframe agreed in writing by the Planning Secretary, evidence must be submitted to the satisfaction of the Certifier that demonstrates that:
- (a) the car-parking, service vehicle areas, bi-cycle parking facilities comply with conditions B15 and B16;
  - (b) appropriate pedestrian and cyclist advisory signs are to be provided;
  - (c) all works/regulatory signposting associated with the proposed developments have been undertaken at no cost to the relevant roads authority;
  - (d) The bi-cycle parking spaces are located in easy to access, well-lit areas that incorporate passive surveillance; and
  - (e) end-of-trip facilities for staff are provided.

#### **Road Damage**

- E25. Prior to the commencement of operation, the cost of repairing any damage caused to Council or other Public Authority's assets in the vicinity of the Subject Site as a result of construction works associated with the approved development must be met in full by the Applicant.



### **Structural Inspection Certificate**

- E26. Prior to the commencement of occupation of the relevant parts of any new or refurbished buildings, a Structural Inspection Certificate or a Compliance Certificate must be submitted to the Certifier. A copy of the Certificate with an electronic set of final drawings (contact approval authority for specific electronic format) must be submitted to the approval authority and the Council after:
- (a) the site has been periodically inspected and the Certifier is satisfied that the structural works is deemed to comply with the final design drawings; and
  - (b) the drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

### **Stormwater Quality Management Plan**

- E27. Prior to the issue of any relevant occupation certificate, an Operation and Maintenance Plan (OMP) is to be submitted to the satisfaction of the Certifier along with evidence of compliance with the OMP. The OMP must ensure the proposed stormwater quality measures remain effective and contain the following:
- (a) maintenance schedule of all stormwater quality treatment devices;
  - (b) record and reporting details;
  - (c) relevant contact information; and
  - (d) Work Health and Safety requirements.

### **Operational Traffic Management Plan**

- E28. Prior to the issue of an Occupation Certificate, the Applicant must prepare an Operational Traffic Management Plan for the development to the satisfaction of the Planning Secretary. The plan must form part of the OEMP required by Condition E45 and must:
- (a) be prepared by a suitably qualified and experienced person(s);
  - (b) detail the on-site traffic control measures to prevent vehicular collision and control the manoeuvring of vehicles in designated areas;
  - (c) detail the measures that are to be implemented to ensure road safety and network efficiency during operation;
  - (d) detail heavy vehicle routes, access, parking arrangements and pedestrian management;
  - (e) include a Driver Code of Conduct to:
    - (i) minimise the impacts on the local and regional road network;
    - (ii) minimise conflicts with other road users;
    - (iii) minimise road traffic noise; and
    - (iv) ensure truck drivers use specified routes;
  - (f) include a program to monitor the effectiveness of these measures.
- E29. The Applicant must:
- (a) not commence operation until the Operational Traffic Management Plan required by Condition E28 is approved by the Planning Secretary; and
  - (b) implement the most recent version of the Operational Traffic Management Plan approved by the Planning Secretary for the duration of operation.

### **Warm Water Systems and Cooling Systems**

- E30. The installation of warm water systems and water cooling systems (as defined under the *Public Health Act 2010*) must comply with the *Public Health Act 2010*, Public Health Regulation 2012 and Part 1 (or Part 3 if a Performance-based water cooling system) of *AS/NZS 3666.2:2011 Air handling and water systems of buildings – Microbial control – Operation and maintenance* and the NSW Health Code of Practice for the Control of Legionnaires' Disease.

### **Outdoor Lighting**

- E31. Prior to the issue of any occupation certificate, the Applicant must submit evidence from a suitably qualified practitioner to the Certifier that demonstrates that installed lighting associated with the development achieves the objective of minimising light spillage to any adjoining or adjacent sensitive receivers and:
- (a) complies with the latest version of AS 4282-2019 - *Control of the obtrusive effects of outdoor lighting* (Standards Australia, 1997); and
  - (b) has been mounted, screened and directed in such a manner that it does not create a nuisance to surrounding properties or the public road network.

### **Signage**

- E32. Prior to the issue of any relevant Occupation Certificate, the Applicant must provide evidence demonstrating that the signage under Condition B24 has been constructed as approved to the Certifier.
- E33. Prior to the commencement of operation, way-finding signage and signage identifying the location of staff car parking and local shops must be installed.
- E34. Prior to the commencement of operation, bicycle way-finding signage must be installed within the site to direct cyclists from footpaths to designated bicycle parking areas.

### **Operational Waste Management Plan**

- E35. Prior to the commencement of operation, the Applicant must prepare a Waste Management Plan for the development and submit it to the Certifier. The Waste Management Plan must:
- (a) detail the type and quantity of waste to be generated during operation of the development;
  - (b) describe the handling, storage and disposal of all waste streams generated on site, consistent with the *Protection of the Environment Operations Act 1997*, *Protection of the Environment Operations (Waste) Regulation 2014* and the *Waste Classification Guideline* (Department of Environment, Climate Change and Water, 2009);
  - (c) detail the materials to be reused or recycled, either on or off site; and
  - (d) include the Management and Mitigation Measures included in the *Preliminary Waste Management Plan* prepared by Ramboll dated 24 September 2019.

### **Landscaping**

- E36. Prior to the commencement of operation, landscaping of the site must be completed in accordance with landscape plan(s) listed in Condition A2.
- E37. Prior to the commencement of operation, the Applicant must Provide the Certifier with written certification from a qualified landscape designer certifying that landscaping has been implemented in accordance with the approved landscape plan as amended by any conditions of this consent.
- E38. Prior to the commencement of operation, the Applicant must prepare an Operational Landscape Management Plan to manage the landscaping on site, to the satisfaction of the Planning Secretary. The plan must describe the ongoing monitoring and maintenance measures to manage landscaping.

### **Stormwater Operation and Maintenance Plan**

- E39. Prior to the commencement of operation, a Stormwater Operation and Maintenance Plan (SOMP) is to be submitted to the Certifier. The SOMP must ensure the proposed stormwater quality measures remain effective and contain the following:
- (a) maintenance schedule of all stormwater quality treatment devices;
  - (b) record and reporting details;
  - (c) relevant contact information; and
  - (d) Work Health and Safety requirements.

### **Operational Flood Emergency Management Plan**

- E40. Prior the commencement of the operation, unless otherwise agreed by the Planning Secretary, a Flood Emergency Management Plan must be submitted to the Certifier that:
- (a) is prepared by a suitably qualified and experienced person(s);
  - (b) addresses the provisions of the *Floodplain Risk Management Guidelines* (EESG);
  - (c) includes details of:
    - (i) the flood emergency responses for operational phase of the development;
    - (ii) predicted flood levels;
    - (iii) flood warning time and flood notification;
    - (iv) assembly points and evacuation routes;
    - (v) evacuation and refuge protocols; and
  - (d) awareness training for employees and contractors, and visitors.

### **Parking and Signage**

- E41. All parking and loading bays are to be permanently marked out on the pavement surface, with loading bays and visitor parking facilities being clearly indicated by signs prior to occupation of the building.
- E42. The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings. The traffic and parking signs, line markings and required traffic and safety devices as indicated in the approved architectural plans and traffic report is to be completed prior to occupation of the site.
- E43. The developer is responsible for the provision of additional regulatory signage in Fitzroy and Denison Streets adjacent to the site frontage and all adjustments to and/or relocation of existing regulatory signage necessary as part of this development, at no cost to City of Newcastle and in accordance with Council's requirements, such works being implemented prior to the issue of any occupation certificate.

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

### **Screening**

- E44. All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.

### **Operational Environmental Management Plan**

- E45. The Applicant must prepare an Operational Environmental Management Plan (OEMP) for the development to the satisfaction of the Planning Secretary. A copy must be provided to Council and the Certifier. The OEMP must:
- (a) be submitted to the Planning Secretary for approval;
  - (b) be prepared by a suitably qualified and experienced expert;
  - (c) provide the strategic framework for environmental management of the development;
  - (d) identify the statutory approvals that apply to the development;
  - (e) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
  - (f) describe the procedures that would be implemented to:
    - i) keep the local community and relevant agencies informed about the operation and environmental performance of the development;
    - ii) receive, handle, respond to, and record complaints;
    - iii) resolve any disputes that may arise;
    - iv) respond to any non-compliance;
    - v) respond to emergencies; and

- (g) include the following environmental management plans addressing:
  - i) Waste (Condition E35)
  - ii) Operational Traffic (Condition E28)
- (h) incorporate the following:
  - i) procedures, roles and responsibilities of key personnel involved in the environmental management of the Development;
  - ii) community consultation requirements for the Development; and
  - iii) updates to the environmental management sub-plans listed under Condition E45 (g)

E46. The OEMP 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.

E47. The Applicant must not commence operation of the Project until the updated OEMP as required by Condition E45 is approved by the Planning Secretary.

E48. The Applicant must implement the most recent version of the OEMP approved by the Planning Secretary for the duration of the Development's operation.

### **Lighting**

E49. Street lighting is to be upgraded across the Fitzroy and Denison Street frontage of the site at no cost to Council (other than annual maintenance) to Standard P3 in accordance with AS 1158.1.1 – Road Lighting. The lighting upgrade works being completed prior to the issue of any Occupation Certificate.

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

### **Water Management**

E50. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

### **Public Domain Works**

E51. Prior to the issue of any relevant Occupation Certificate, evidence must be provided to the satisfaction of the Certifier that the public domain works have been completed in accordance with approved plans under Condition B19.

### **Roof Water**

E52. Prior to the issue of any relevant Occupation Certificate, evidence must be provided to the satisfaction of the Certifier that the roof water management system has been completed in accordance with approved plans under Condition B27.

### **Building Code of Australia (BCA) Compliance**

E53. Prior to the issue of any relevant Occupation Certificate, evidence must be provided to the satisfaction of the Certifier that the proposed works have been completed in accordance with the Building Code of Australia (BCA) and Condition B9.

## PART F POST OCCUPATION / ONGOING CONDITIONS

### Operation of Plant and Equipment

- F1. All plant and equipment used on site must be maintained in a proper and efficient condition operated in a proper and efficient manner.

### Warm Water Systems and Cooling Systems

- F2. The operation and maintenance of warm water systems and water cooling systems (as defined under the Public Health Act 2010) must comply with the Public Health Act 2010, Public Health Regulation 2012 and Part 2 (or Part 3 if a Performance-based water cooling system) of AS/NZS 3666.2:2011 Air handling and water systems of buildings – Microbial control – Operation and maintenance and the NSW Health Code of Practice for the Control of Legionnaires' Disease.

### Community Communication Strategy

- F3. The Community Communication Strategy, as approved by the Planning Secretary, must be implemented for a minimum of 12 months following the completion of construction.

### Operational Noise Limits

- F4. The Applicant must ensure that noise generated by operation of the development does not exceed the noise limits in the Noise and Vibration Assessment prepared by RAPT Consulting dated March 2021 (Revision 3) and any recommendations of the noise assessment required by Condition B12.
- F5. The Applicant must undertake short term noise monitoring in accordance with the *Noise Policy for Industry* where valid data is collected following the commencement of use of each stage of the development. The monitoring program must be carried out by an appropriately qualified person and a monitoring report must be submitted to the Planning Secretary within two months of commencement use of each stage of the development or other timeframe agreed to by the Planning Secretary to verify that operational noise levels do not exceed the recommended noise levels for mechanical plant identified in the Noise and Vibration Assessment prepared by RAPT Consulting dated March 2021 (Revision 3). Should the noise monitoring program identify any exceedance of the recommended noise levels referred to above, the Applicant is required to implement appropriate noise attenuation measures so that operational noise levels do not exceed the recommended noise levels or provide attenuation measures at the affected noise sensitive receivers.
- F6. The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997 (NSW).

Should Council or the Planning Secretary consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

### Unobstructed Driveways and Parking Areas

- F7. All driveways, footways and parking areas must be unobstructed at all times. Driveways, footways and car spaces must not be used for the manufacture, storage or display of goods, materials, refuse, skips or any other equipment and must be used solely for vehicular and/or pedestrian access and for the parking of vehicles associated with the use of the premises.

### Green Travel Plan

- F8. The Green Travel Plan required by condition E20 of this consent must be updated annually following commencement of construction and implemented unless otherwise agreed by the Planning Secretary.

### Ecologically Sustainable Development

F9. Unless otherwise agreed by the Planning Secretary, within twelve months of commencement of operation, Green Star certification must be obtained demonstrating the development achieves a minimum 4 star Green Star Design & As Built rating. If required to be obtained, evidence of the certification must be provided to the Certifier and the Planning Secretary. If an alternative certification process has been agreed to by the Planning Secretary under condition C16, evidence of compliance of implementation must be provided to the Planning Secretary and Certifier.

### **Outdoor Lighting**

F10. Notwithstanding condition D33, should outdoor lighting result in any residual impacts on the amenity of surrounding sensitive receivers, the Applicant must provide mitigation measures in consultation with affected landowners to reduce the impacts to an acceptable level.

### **Landscaping**

F11. The Applicant must maintain the landscaping and vegetation on the site in accordance with the approved Operational Landscape Management Plan required by condition E38 for the duration of occupation of the development.

### **Air Quality**

F12. The use and occupation of the premises is not to give rise to the emission of any 'air impurity' as defined under the Protection of the Environment Operations Act 1997 (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.

Should Newcastle City Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Newcastle City Council confirming that air impurity emissions from the premises do not interfere unreasonably with air quality.

### **Hours of Operation**

F13. The hours of operation shall be within the hours as specified in the table below.

<b>Land Use / Activities</b>	<b>Hours of Operation</b>
Office	6:00 am to 6:00 pm Monday to Friday
Cafe	7:00 am to 4:00 pm Monday to Friday

### **Operational Environmental Management Plan**

F14. The Applicant must implement the most recent version of the Operational Environmental Management Plan approved by the Planning Secretary under Condition E45 for the duration of the Development's operation.

## APPENDIX 1 ADVISORY NOTES

### General

AN1. All licences, permits, approvals and consents as required by law must be obtained and maintained as required for the development. No condition of this consent removes any obligation to obtain, renew or comply with such licences, permits, approvals and consents.

### Long Service Levy

AN2. For work costing \$25,000 or more, a Long Service Levy must be paid. For further information please contact the Long Service Payments Corporation Helpline on 131 441.

### Legal Notices

AN3. Any advice or notice to the consent authority must be served on the Planning Secretary.

### Access for People with Disabilities

AN4. The works that are the subject of this application must be designed and constructed to provide access and facilities for people with a disability in accordance with the BCA. Prior to the commencement of construction, the Certifier must ensure that evidence of compliance with this condition from an appropriately qualified person is provided and that the requirements are referenced on any certified plans.

### Utilities and Services

AN5. Prior to the construction of any utility works associated with the development, the Applicant must obtain relevant approvals from service providers.

AN6. Prior to the commencement of above ground works written advice must be obtained from the electricity supply authority, an approved telecommunications carrier and an approved gas carrier (where relevant) stating that satisfactory arrangements have been made to ensure provisions of adequate services.

### Road Design and Traffic Facilities

AN7. All roads and traffic facilities must be designed to meet the requirements of Council or TfNSW (whichever is applicable). The necessary permits and approvals from the relevant road authority must be obtained prior to the commencement of road or pavement construction works.

### Road Occupancy Licence

AN8. A Road Occupancy Licence must be obtained from the relevant road authority for any works that impact on traffic flows during construction activities.

### SafeWork Requirements

AN9. To protect the safety of work personnel and the public, the work site must be adequately secured to prevent access by unauthorised personnel, and work must be conducted at all times in accordance with relevant SafeWork requirements.

### Hoarding Requirements

AN10. The Applicant must submit a hoarding application to Council for the installation of any hoardings over Council footways or road reserve.

### Handling of Asbestos

AN11. The Applicant must consult with SafeWork NSW concerning the handling of any asbestos waste that may be encountered during construction. The requirements of the Protection of the Environment Operations (Waste) Regulation 2014 with particular reference to Part 7 – 'Transportation and management of asbestos waste' must also be complied with.

### Fire Safety Certificate

AN12. The owner must submit to Council an Annual Fire Safety Statement, each 12 months after the final Safety Certificate is issued. The certificate must be on, or to the effect of, Council's Fire Safety Statement.

### Street Numbers

AN13. The proposed development will require the provision of additional street numbers for the delivery of services and goods. The allocated house numbers are:

Unit/ Dwelling/ Lot Number on plan	Council Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Primary Site Address	46	Fitzroy	Street	Carrington
Café	1/46	Fitzroy	Street	Carrington
GFL-1	2/46	Fitzroy	Street	Carrington
GFL-2	3/46	Fitzroy	Street	Carrington
Level 01 Office	101/46	Fitzroy	Street	Carrington
Level 02 Office	201/46	Fitzroy	Street	Carrington
Level 03 Office	301/46	Fitzroy	Street	Carrington

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## APPENDIX 2 WRITTEN INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

### Written Incident Notification Requirements

1. A written incident notification addressing the requirements set out below must be emailed to the Planning Secretary through the major projects portal within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under condition A28 or, having given such notification, subsequently forms the view that an incident has not occurred.
2. Written notification of an incident must:
  - (a) identify the development and application number;
  - (b) provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
  - (c) identify how the incident was detected;
  - (d) identify when the applicant became aware of the incident;
  - (e) identify any actual or potential non-compliance with conditions of consent;
  - (f) describe what immediate steps were taken in relation to the incident;
  - (g) identify further action(s) that will be taken in relation to the incident; and
  - (h) identify a project contact for further communication regarding the incident.
3. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
4. The Incident Report must include:
  - (a) a summary of the incident;
  - (b) outcomes of an incident investigation, including identification of the cause of the incident;
  - (c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
  - (d) details of any communication with other stakeholders regarding the incident.