



New South Wales Government  
Independent Planning Commission

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# Alterations and additions to the Engine House and interpretive heritage works at Carrington

## DA22/6312

### Statement of Reasons for Decision

Annelise Tuor

23 December 2022

# 1. Introduction

1. On 8 December 2022, the NSW Department of Planning and Environment (**Department**) referred a Development Application (DA22/6312) (**Application**) made by The Trustee for Eckford Johnson Partners Unit Trust, trading as EJE Architecture (**Applicant**) on behalf of Port of Newcastle Operations Pty Ltd to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks approval for the construction of an access ramp and internal alterations and additions and remediation works at the Carrington Hydraulic Engine House building (**Engine House**) and heritage interpretation works at the forecourt of the Engine House and at the bases of nearby former port crane structures. The site is located at Carrington, in the Newcastle Local Government Area.
3. *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)* applies as the site is within the Port of Newcastle lease area (**PON**). The Minister for Planning (**Minister**) is the consent authority for this Application under section 5(a)(i) of the T&I SEPP. As the Port of Newcastle Operations Pty Ltd disclosed a reportable political donation under section 10.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the Commission has been requested to exercise the Minister's functions as the consent authority under the Minister's delegation of 14 September 2011.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Commissioner Annelise Tuor to constitute the Commission in determining the Application.

## 2. The Application

### 2.1 Site and Locality

5. The Department's Assessment Report (**AR**) dated December 2022, states that the site is located at Lot 30 DP1190075 and Lot 219 DP 1195310, both locations known as 106 Bourke Street, Carrington (**Site**). The Site is in the PON which is located approximately 1.5 kilometres north-west of the Newcastle CBD.
6. The lot containing the Engine House has an area of 7,918m<sup>2</sup>, and the building sits in a grassy landscaped setting, facing an interpretive forecourt, as shown in **Figure 1**, over.
7. The bases of the former cranes are located at the edge of the water of the Port, within a larger lot of 12.36ha, that contains wharves and other port infrastructure (from AR para 1.2.4, and as seen in Figure 2 of the AR).
8. The regional and local context of the Site is shown in the AR (in Figures 1 and 2) and the Site is shown in **Figure 2**, over.



Figure 1: The Engine House and forecourt (Source: Figure 3 in AR)



Figure 2: The Site showing location of the Engine House and crane bases (Source: Figure 11 in AR)

### 3. The Development

9. The Application is for construction of an access ramp and internal alterations and additions and remediation works to aid in the future adaptive reuse of the State heritage listed Engine House building and for heritage interpretation works for former cranes associated with the Engine House.
10. **Table 1** below, summarised from para 2.1.1 and Table 1 in the Department's AR outlines the component works. The cost of work as stated in the Application is \$1.5 million.

*Table 1 – Summary of works proposed in the Application*

<b>Access ramp</b>	<p><b>Construction of an access ramp from the forecourt to the Engine Room, with:</b></p> <ul style="list-style-type: none"> <li>• a maximum gradient of 1:14 and width of 1.25m</li> <li>• minor demolition works to accommodate the ramp.</li> </ul>
<b>Summary of works to Engine Room House</b>	<ul style="list-style-type: none"> <li>• Removal of the existing floor grates and the demolition of non-original fabric. The grates will be placed within the subfloor for storage</li> <li>• Reinforcement of existing steel columns within Engine Room sub floor</li> <li>• Subfloor and all stored material will be sprayed with PVA to seal the remnant asbestos</li> <li>• A new suspended concrete slab constructed over the existing floor with glass panels and sub floor lighting to allow for viewing of the subfloor. The slab will have a stain finish to pattern the location of the engine buttresses below</li> <li>• Conduits and electrical outlets will be inserted to allow for future services to be provided</li> <li>• Mechanical ventilation units will be inserted into the sub floor, connected to existing vents on the southern façade</li> <li>• 2kw photovoltaic cells to be installed on the northern roof to power the lighting and ventilation.</li> </ul>
<b>Works to forecourt</b>	<ul style="list-style-type: none"> <li>• Connecting stone plinths of 1.5m x 450mm x 450mm placed horizontally to the west of the existing interpretation works</li> <li>• A stainless-steel etching depicting a historic photograph of the Port of Newcastle.</li> </ul>
<b>Works to crane bases 7,8,9 &amp;10</b>	<ul style="list-style-type: none"> <li>• Heritage interpretation works being a bronze plaque on a stone plinth of approx.600mm cubed for each crane base, erected adjacent to their location</li> <li>• The stone will be repurposed from the restoration works previously undertaken at the Engine House.</li> </ul>

## 4. The Commission's Consideration

### 4.1 Material Considered by the Commission

11. In making its determination, the Commission has considered the following information (**Material**):

- the public submission made in response to the notification and advertising of the Application
- all Government Agency advice to the Department
- the Department's AR, dated December 2022
- the Department's recommended Development Consent, sent with the referral, and updated version referred to the Commission on 21 December 2022
- all comments and presentation material at meetings with the Department, and Newcastle City Council (**Council**)
- the Department's [response to the Commission's request for information](#), dated 21 December 2022
- Applicant's Statement of Environmental Effects (**SEE**) prepared by ADW Johnson P/L, dated April 2022 and all supporting documentation
- 'Statement of Heritage Impact Carrington Hydraulic Engine House Stage 3 – Engine Room Remediation & Accessible Entry Ramp', Revision A, prepared by EJE Heritage (AKA EJE Architecture), dated April 2022 (**HIS**)
- 'Conservation Management Plan Carrington Hydraulic Engine House & Crane Bases nos. 7,8,9,& 10', Revision A, prepared by EJE Heritage, dated December 2021 (**CMP**)
- 'Applicant's Response to Request for Information -DA22/3312' (Response to Submissions (**RTS**)), prepared by ADW Johnson P/L and additional supporting documents, letter dated 20 September 2022

### 4.2 Statutory Context

#### 4.2.1 Consent authority

12. As the Site is in the PON Lease Area, *Chapter 5 Three ports - Port Botany, Port Kembla and Port of Newcastle* of the T&I SEPP applies.

From Section 4 of the Department's AR:

- the Minister is the consent authority for the Application under section 5.6(a)(i) of the T&I SEPP
- the Application does not meet the criteria under section 5.27 of the T&I SEPP to be State significant development (**SSD**), hence Part 4 Division 4.3 of the EP&A Act (and not SSD under Division 4.7) applies.

#### 4.2.2 Integrated Development

13. The proposal is Integrated Development under Part 4 Division 4.8 of the EP&A Act as the Site is a State Heritage Item and approval under section 58 of the *Heritage Act 1977* is required for the works.

14. The Application was referred to the Subsidence Advisory NSW, and the Department was advised on 6 June 2022 that the proposal did not trigger an approval under section 22 of the *Coal Mine Subsidence Compensation Act 2017*, so is not Integrated Development in this respect.

### 4.2.3 Permissibility

15. The Site is zoned SP1 Special Activities under the T&I SEPP. The Department in para 4.3.1 of the AR describes the proposal as being “alterations and additions to an electricity generating works building (being the buildings most recent land use)”. The Commission is of the view that as the proposal meets the overall definition of *port facilities*, it is permissible according to the Land Use Table under section 5.12 of the T&I SEPP. In the meeting with the Department, the Commission did seek clarification as to the characterisation of the proposal, as it is described in the AR, given that the engine room use ceased several decades ago.
16. By email on 21 December 2021 the Commission was advised “The Department notes the IPCs comments and considers that the land use for the Engine House could be considered ‘port facilities’ noting the Engine House is a building used for port operations under item f of the port facilities definition”.
17. The Commission notes that as well as listing on the State Heritage Register, the ‘Hydraulic Power Station’ and the ‘Bullock Island Crane Bases’ are Heritage Items listed under section 5.31 Heritage conservation of the T&I SEPP.

## 4.3 Mandatory Considerations

18. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The mandatory considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 2 – Mandatory Considerations

Mandatory Considerations	Commission’s Comments
<p><b>Relevant EPIs</b></p>	<p>Appendix C of the Department’s AR identifies relevant EPIs for consideration.</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021 (<b>T&amp;I SEPP</b>)</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> </ul> <p>The Commission generally agrees with the Department’s assessment concerning the EPIs that are of relevance to the Application noting that Newcastle Local Environmental Plan 2012 (<b>NLEP</b>) does not apply as the Site is in the PON Lease Area.</p> <p>The Commission has considered the provisions of section 5.20(3) of the T&amp;I SEPP insofar as the proposal involves minor earthworks for the access ramp. A Geotechnical Report was submitted with the Application.</p> <p>The Commission has also considered section 5.31 of the T&amp;I SEPP and section 5.31(4) in terms of the effect of the proposed development to on the heritage significance of the heritage items. The proposal will assist in providing for on-going conservation of the Engine House building. The Commission notes that a HIS and CMP have been provided with the Application..</p>

<b>Relevant DCPs</b>	The NDCP 2012 does not apply to the Site because the Site is in the PON Lease area. However, the Department and the Commission has used it as a guide where appropriate.
<b>Likely Impacts of the Development</b>	The likely impacts of the Application have been considered in section 6 of this Statement of Reasons.
<b>Suitability of the Site for Development</b>	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal is permissible in the SP1 Special Activities zone with consent under section 5.10 of the T&amp;I SEPP and is generally consistent with the objectives of the zone. The proposal will support the on-going conservation and eventual use of the heritage building</li> <li>• The site characteristic of being flood prone has been assessed and appropriate conditions are to be imposed to ensure consideration of the flood planning level</li> <li>• The proposed remediation of the sub-floor area, being the encapsulation of asbestos, will ensure that the building will be suitable for a future use.</li> </ul>
<b>Objects of the EP&amp;A Act</b>	In this determination, the Commission has carefully considered the Objects of the EP&A Act and is satisfied that the Application is consistent with the Objects of the EP&A Act.
<b>Ecologically Sustainable Development</b>	<p>The EP&amp;A Act adopts the definition of ESD found in the <i>Protection of the Environment Administration Act 1991</i>, as follows:</p> <p><i>“ecological sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:</i></p> <ul style="list-style-type: none"> <li>○ <i>the precautionary principle;</i></li> <li>○ <i>inter-generational equity;</i></li> <li>○ <i>conservation of biological diversity and ecological integrity; and</i></li> <li>○ <i>improved valuation, pricing and incentive mechanisms.”</i></li> </ul> <p>The Commission has considered the principles of ESD in its determination as set out below.</p> <p><b>a) The precautionary principle</b></p> <p>The Commission finds that the precautionary principle has been addressed, where applicable in the development.</p> <p><b>b) Inter-generational equity</b></p> <p>The Commission has considered inter-generational equity in its assessment of the potential environmental, social and economic impacts of the Application.</p> <p><b>c) Conservation of biological diversity and ecological integrity</b></p> <p>The Project’s potential impacts in this regard, as applicable have consideration during the assessment of the Application.</p> <p><b>d) Improved valuation, pricing and incentive mechanisms</b></p> <p>The Commission finds that, when considering the current policy framework, scope of the Application and assessment of costs and benefits, the Application is acceptable.</p>

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<b>The Public Interest</b>	The Commission has considered whether the development is in the public interest in making its determination. The Commission agrees with the views of the Department in Appendix B of the AR, including that the proposal is in the public interest as it will contribute to the conservation of a Heritage Item of State Significance. The proposed interpretive works are a positive initiative. The minor environmental impacts will be managed by measures required in the Conditions of Consent.
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## 4.4 The Commission's Meetings

19. As part of the determination process, the Commission met with the persons as set out in Table 3. All meeting notes were made available on the Commission's website. The Applicant was invited to meet with the Commission, but declined. Given the minor extent of the work, and the internal areas of the Engine House building subject to the works are not accessible due to asbestos contamination, a site inspection by the Commission was not undertaken.

*Table 3 – Commission's Meetings*

Meeting	Date	Transcript Available on
Department	16 December 2022	19 December 2022
Council	16 December 2022	19 December 2022

## 4.5 The Department's Assessment Report

20. The Department's AR was prepared to set out the Planning Secretary's whole-of-government assessment of the Application. As part of this assessment, the Planning Secretary through the Department, considered amendments to the Application with regard to the relevant statutory obligations, supplementary information provided by the Applicant, public submissions and advice from Government agencies.
21. The Department's AR includes an assessment of the key issues for the Application, being heritage, contamination and other issues including flooding and the application of development contributions. The Department's AR concludes the impact of the development can be mitigated or managed, subject to recommended conditions, and that the Application can be approved.

# 5. Community Participation & Public Submissions

## 5.1 Public Submissions

22. The Department publicly exhibited the Application between 31 May and 11 July 2022 as nominated Integrated Development. One late submission (12 August 2002), from a local community group was received, expressing views on the desired future use of the Engine House. The Commission reviewed the submission, and notes that the issues raised are not directly relevant to this Application.
23. The Department received comments from Council, the General Terms of Approval (GTAs) from Heritage NSW, and comments from the Subsidence Advisory NSW (AR para. 5.2.1). Council responded to both the initial referral and the Applicant's RTS.
24. The Commission determined that a Public Meeting was not required due to the limited public interest in the Application.



25. As part of the Commission's consideration of the Project, all persons were offered the opportunity to make written submissions to the Commission from 9 December 2022 until 21 December 2022. The Commission received no written submissions on the Application.

## 6. Key Issues

### 6.1 Heritage

26. The Commission has reviewed the Application drawings, the SEE, HIS and CMP and the discussion in section 6.2 of the Department's AR. The Commission agrees with the Department's assessment in para 6.2.28 of the AR:

*Overall, the Department has considered the effect of the development pursuant to Clause 5.31(4) of the Transport and Infrastructure SEPP and is satisfied that the proposed development is sympathetic to the heritage significant building, the works will not compromise the ongoing heritage significance of the building and will assist in its potential future re-use of the building.*

27. The works to the Engine House to contain hazardous asbestos and renew the fabric of the building, including the installation of a new sub-floor and removal and replacement of vents are considered by the Commission to be reasonable heritage management measures. As stated in para 6.2.12 of the AR, various options were considered to remedy the existing asbestos contamination of the floor grates and in the sub-floor, balancing heritage and structural considerations with the budgetary considerations of the Applicant. The Commission agrees with the conclusions in the Department's AR, including in paras 6.2.15 and 6.2.17 regarding the suitability of these works, subject to conditions of consent.
28. The proposed access ramp will have minimal impact on the heritage fabric (paras 6.25 and 6.29 of the AR) and will allow suitable access to the Engine Room, the main chamber of the Engine House. The Commission agrees with the conditions requested by Council that the ramp be an independent structure, as discussed in para 6.2.10 of the AR (and included in the draft Conditions of Consent by the Department).
29. The solar panels proposed for the eastern end of the northern roof of the Engine House are considered by the Department to be a suitable solution to enable provision of power to the building until such time as mains power is connected. The panels are acceptable on heritage and visual grounds, as discussed in para 6.2.22 of the AR, with which the Commission concurs.
30. There are no issues raised with the proposed interpretative works in the forecourt to the Engine House or the placement of interpretative plaques on the crane bases, as outlined in AR paras 6.2.23 - 6.2.28, and as endorsed as being suitable and a public benefit in para 6.2.27 of the AR.
31. The Heritage Office raised no concerns with the works and provided GTAs which will be included in the draft Consent. This includes requirements that a heritage consultant and specialised tradespersons oversee the work.
32. Council did not object to the proposal on heritage grounds and also proposed a condition for photographic archival recording of the Engine House (which was also a GTA from the Heritage Office) and that heritage fabric that is removed be re-used for interpretation.

## 6.2 Contamination

33. Containment of contamination in the Engine Room, including asbestos associated with the past industrial use, is required. This contamination occurs in the floor grating and the sub-floor cavity. The Commission notes that the Department required the Applicant obtain a detailed site investigation (Appendix A of the Applicant's RTS). The Department concludes that the proposal is satisfactory with regards to this issue, as stated in para 6.3.5 of the AR:

*The Department has reviewed the proposal and considers that the proposed works would suitably address the identified contamination hazards and allow for the building to be habitable given the contaminated substances would be suitably treated and encapsulated within the subfloor to prevent exposure or interaction. The Department has recommended conditions that a Long-Term Environmental Management Plan, as recommended in the DSI, be prepared and an unexpected finds protocol be implemented during construction works. The Department also recommends that a clearance certificate be required post-construction to ensure that the engine room has been suitably cleared of the known hazards.*

34. The conditions referred to above, including the requirement for a Long Term Environmental Management Plan (LTEMP) have been imposed by the Commission. The Commission has required that the LTEMP be approved by the Planning Secretary and has strengthened the wording of the relevant condition to clarify that the contamination that will remain in the sub-floor area be identified in the LTEMP.

35. Given that the Site is flood prone (see Section 6.3 below), the Commission requested that the Department confirm that the method of encapsulating the asbestos will remain effective during and after any flood inundation. The Department referred this issue to the Applicant, and as advised by email on 21 December 2022, EJE Architecture responded that the proposed treatment was to safeguard workers during construction (dust reduction) and "it's presence following the air-tight dealing of the sub-floor cavity via the proposed slab and air filter is only a back-up measure", and that:

*We would note that the proposed works describe a significant scope of work to clean away loose hazardous material, and bind and encapsulate an existing contamination hazard on the site within a dry, ventilated, sealed subfloor area. Logically, you would not expect these procedures to cause any further potential for leaching of contaminants from within the building, and will more likely improve the situation.*

36. The Commission finds that the proposed works are satisfactory in the context of the scope of the proposal, which is to allow the Engine House building to be accessible. The Commission also supports the application of the proposed condition of consent that a contamination clearance certificate be obtained prior to the issue of an occupation certificate, and has amended this condition to be more specific as to the requirements to be met.

## 6.3 Other issues

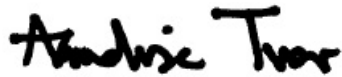
37. The Commission agrees with the Department's assessment of the 'Other issues' in Section 6.4 of the AR.
38. Notably, the issue of ensuring the proposed works embody a suitable response to flooding impacts is suitably dealt with by the Conditions of Consent, as outlined in Table 2 of the AR.
39. The Commission notes that initially Council requested the application of development contributions under s 7.12 of the EP&A Act, in line with Council's 'Section 7.12 Development Contributions Plan', adopted on 26 October 2021 (**Section 7.12 Plan**).

40. The Department's assessment in Table 2 of the AR is that the Ministerial Direction issued under the former section 94E of the EP&A Act does not require that contributions be levied for works within the PON lease area, and that this only applies where the Council is the consent authority. The Commission understands that the Minister has levied contributions in the past in the PON area. The Commission may, but is not bound to impose conditions authorised or allowed by Council's Section 7.12 Plan, and subject to compliance with section 7.13(2) of the EP&A Act, the Commission has the discretion to determine the quantum of levies applicable.
41. As identified in Table 2 of the AR, under section 208 of the Environmental Planning and Assessment Regulation 2021, in section 208(4)(j) 'the costs of enabling access by people with disability to the development' and section 208(4)(m) 'the costs of development that is adaptive reuse of a heritage item' are not to be included in the estimated cost that is used to determine the contribution. The Department concludes that, as shown in the revised Applicant's QS report, the works that are not related to heritage and access do not trigger a contribution.
42. Council, in its meeting with the Commission on 18 December 2022, indicated that they concurred with the view that a contribution was not warranted, and commented that the exemption for heritage works refers to adaptive re-use, but that the proposal does not actually have a specific use (Transcript page 4). The Commission is of the view that the proposal is part of a continuation of previous works undertaken for conservation, with the aim of adaptive re-use, and raised the same issue with the Department in the meeting held on 18 December 2022. In the updated draft Consent received on 21 December 2022, the Department revised the approved development to appropriately add that the proposal is "...to aid in the future adaptive reuse of the State heritage listed Engine House...".
43. The Commission has therefore not imposed a condition requiring payment of a development contribution.

## 7. The Commission's Findings and Determination

44. The views of the community were expressed through public submissions and comments received (as part of exhibition). The Commission carefully considered these views as part of making its decision.
45. The Commission has carefully considered the Material before it as set out in section 4.1 of this report. Based on its consideration of the Material, the Commission finds that the Application should be approved for the following reasons:
- the proposal will contribute to the on-going conservation and future adaptive re-use of the Engine House
  - the works will not affect the significance of the heritage items and will enable greater public access to the Engine House through containment of contamination
  - the interpretive works are positive initiatives to acknowledge the history and heritage of the Engine House and port.
46. For the reasons set out in the paragraph above, the Commission has determined that development consent should be granted subject to conditions. The Commission has made minor amendments to streamline the revised draft Conditions referred to the Commission on 21 December 2022; and to strengthen the requirements of the conditions relating to the LTEMP and the clearance certificate, as discussed in paragraphs 34 and 36 above.

47. The conditions are designed to:
- prevent and minimise and adverse environmental impacts
  - set standards and performance measures for acceptable environmental performance
  - require regular monitoring and reporting during construction
  - provide for the on-going environmental management of the development, in terms of the works to contain contamination.
48. The reasons for the Decision are given in this Statement of Reasons for Decision dated 23 December 2022.



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Member of the Commission



**New South Wales Government**  
Independent Planning Commission

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