



SECTION 96(1A)

DA 102-5-2004

REMOVAL OF CONDITION OF CONSENT

NEWCASTLE CRUISING YACHT CLUB

91 HANNELL STREET, WICKHAM, NSW

This Report was prepared by:

Monteath & Powys Pty Ltd
Suite 13 Tonella Commercial Centre
125 Bull Street
NEWCASTLE WEST NSW 2302

PO Box 726
NEWCASTLE NSW 2300

Telephone: (02) 4926 1388
Facsimile: (02) 4929 3475
Web: www.monteathpowys.com.au

PROJECT: Section 96(1A) Modification – DA 102-5-2004

CLIENT: Newcastle Cruising Yacht Club

OUR REFERENCE: 2016/0061

VERSION: Draft – 8 March 2016
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AUTHOR: Matilda Munn
Town Planner
Bach. Urb. Reg. Planning

CERTIFICATION: I hereby certify that this planning report has been prepared in accordance with the requirement of the Environmental Planning and Assessment Act 1979 and its associated Regulations. I certify that to the best of my knowledge the information contained within this Report is neither false nor misleading.

SIGNATURE: 

CHECKED BY: Darren Holloway
B.Sci. (Hons), MBEnv
Certified Practising Planner

SIGNATURE: 

EXECUTIVE SUMMARY

This submission has been prepared to support the accompanying Section 96(1A) modification to the development consent (DA 102-5-2004) for the approved club and commercial development at 91 Hannell Street, Wickham NSW (also known as Newcastle Cruising Yacht Club).

This Section 96 (1A) modification seeks to remove Condition (1) (c) of the consent. Condition (1) (c) states:

(1) Construction of a two storey masonry building with a third storey pop-up structure not exceeding an overall GFA of 2,733m² and consisting of the following:

(c) Use of first floor commercial offices for a period not exceeding ten (10) years and thereafter, to be reverted to NCYC facilities;

It is considered that the proposed modification is consistent with the original development consent. The current land uses on the site will remain the same. The removal of the clause will allow the Newcastle Cruising Yacht Club (NCYC) to utilise part of their approved facility for some commercial activities to ensure the long term sustainability of the NCYC. The proposal seeks to ensure that the NCYC can continue to invest in maritime uses consistent with the intent of utilising the site for maritime purposes.

This assessment concludes that there will be no environmental impacts as a result of the removal of the condition of consent but will allow a positive impact social and economic impact from the NCYC investing further in maritime activities on the site.

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1 INTRODUCTION

This report has been prepared by Monteath & Powys Pty Limited (M&P) on behalf of Newcastle Cruising Yacht Club (NCYC). This submission is to accompany a modification under Section 96 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to the existing development consent at 91 Hannell Street, Wickham.

1.1 OWNER AND APPLICANT DETAILS

The Applicant

Monteath and Powys
Po Box 726
NEWCASTLE NSW 2300

Phone: (02) 4926 1388
Email: d.holloway@monteath.powys.com.au

The Owner

Waterways Authority (now part of Roads and Maritime Services NSW)

Site Address

The subject site is located at 91 Hannell Street Wickham, and is identified in the current consent as Lot 102 & Lot 103 DP1015391.

1.2 SITE AND LOCATION

Site Description

The site is situated on Hannell Street, Wickham within the Newcastle Local Government Area. The site is located on Lot 102 & Lot 103 DP1015391.

The site currently contains two buildings, one being the Newcastle Cruising Yacht Club (NCYC) and the other being utilised by East Coast Marine and Buy-A-Boat. There are other uses on the site (e.g. restaurant and NCYC offices).

Access to the site is available directly from Hannell Street to the west, with three (3) access/egress points.

Surrounding Environment

The site is located on the Newcastle harbour, with Hannell Street to the west and the harbour to the east. Marina Views Function Centre is located to the north of the site, with residential development located to the south.

1.3 EXISTING APPROVAL

The existing approval includes approval for a club and commercial building on the subject site (Appendix A). The proposal seeks to modify condition 1(c) of the consent. Clause 1 includes:

- (1) Construction of a two storey masonry building with a third storey pop-up structure not exceeding an overall GFA of 2,733m² and consisting of the following:
 - (a) Ground floor restaurant and club facilities (GFA 974m²);
 - (b) First Floor Commercial offices (GFA 1,116m²);
 - (c) Use of first floor offices for a period not exceeding ten (10) years and thereafter, to be reverted to NCYC facilities;
 - (d) Second floor club function room and associated facilities (GFA 643m²)

Overall, the site is approved for use by the NCYC and has been since the approval in 2004. The NCYC and existing tenants wish to continue to utilise the site and moving forward the NCYC has identified the need to remove condition 1(c).

2 PROPOSAL AND JUSTIFICATION

As noted this is Section 96 (1A) modification seeks to remove the following consent Condition, (Condition (1) (c)), from the current consent:

(1) *Construction of a two storey masonry building with a third storey pop-up structure not exceeding an overall GFA of 2,733m² and consisting of the following:*

(c) Use of first floor commercial offices for a period not exceeding ten (10) years and thereafter, to be reverted to NCYC facilities;

2.1 THE CURRENT FACILITIES

The Newcastle Cruising Yacht Club (NCYC) is located at Wickham in the all-weather, deep water working port of Newcastle. NCYC's precinct includes a marina, shipyard and maintenance facilities, commercial centre and licensed club. NCYC's floating marina comprises 180 marina berths of varying sizes, all with power and water, as well as a fuel wharf dispensing diesel and unleaded petrol and an effluent pump-out facility.

NCYC conducts keel boat racing on Sundays during the summer and winter months as well as summer twilight racing and Laser dinghy sailing on Wednesday and Friday afternoons, respectively. NCYC also runs a number of offshore distance races as well as the Inner Spring Regatta, the Friendship Cup and the HMRI Cup and has also recently established the NCYC Sailing Academy. The objective of the NCYC is to provide sailing/boating opportunities for a wide ranging demographic including school children.

With an ongoing objective of developing and promoting the sport of sailing in Newcastle, NCYC is focused on maintaining its approach to both "old salts" and those new to sailing, and investing in opportunities for a broader section of the community.

As such NCYC has invested and expanded the range of opportunities since operations began in December 2001. Strong associations have been established with other east coast Yacht and Game Fishing Clubs and NCYC is a member of Yachting Australia and Yachting NSW, the National and State governing bodies of the sport of sailing.

2.2 JUSTIFICATION

By removing this condition of consent and subsequently providing an increase in flexibility regarding the use and/or potential tenants able to use the subject site (i.e. the first floor premises), it is considered that the financial security of the current yacht club will increase by providing opportunities to a wider tenant market. Further, the primary use of the site will not be altered, with the proposed modification considered to still be substantially the same development as that approved. Overall, the proposal does not alter the existing layout or footprint of the approved development, and merely provides flexibility of the use of the first floor within the premises, to allow the NCYC to provide tenants suitable length leasing arrangements which provide for the long term sustainability of the NCYC.

It is considered that the proposed modification will provide a positive outcome for the subject site without impact the existing development application. Further, the proposal is considered to have no impacts on the existing and surrounding environment, as the proposal is for a modification to the conditions. No other changes, including traffic or parking, are therefore required, as the removal of the condition will ensure existing tenants will continue to utilise the premises.

3 PLANNING CONSIDERATIONS

This section identifies the strategic and statutory planning provisions that apply to the subject site.

Additional legislation was also examined as part of this submission which does not apply to the site.

The proposal is being determined under the provisions of Part 4 of the EP&A Act.

3.1 Section 96 Modification

A modification to the existing development consent is being sought under Section 96 of the EP&A Act.

Under Section 96 of the EP&A Act there are three general types of modifications (excluding modifications by the Court):

1. Section 96(1) refers to modifications involving a minor error, misdescription or miscalculation;
2. Section 96(1A) relates to modifications involving minimal environmental impact; and
3. Section 96(2) refers to other types of modifications.

The proposed modification is not the type identified in Section 96(1), and the proposal is not considered a minor error or misdescription. Thus the proposal will either be a modification of minor impact under Section 96(1A) or another type of modification under Section 96(2). In this case it is identified that the most appropriate clause for the modification to proceed under is Section 96(1A) given the proposal's negligible environmental impact.

For a modification under Section 96(1A) the following provisions apply:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In response to the aforementioned provisions, it is considered that the proposed removal of the consent condition will not increase the environmental impacts of the approved development, nor will it alter the use of the site.

Further, it is considered that the removal of this condition will provide flexibility regarding the use of the first floor premises. This will provide an increased financial stability for the subject site and existing facilities, and will not alter the overall use of the site for NCYC.

It can also be argued that the development is substantially the same development to that approved as the footprint of the development will not be altered, and the primary land use of the site will remain as is.

Overall, it is considered that the proposal is consistent with the provisions of Section 96(1A) of the EP&A Act. Further, it is considered that the removal

4 THE LIKELY IMPACTS OF THE DEVELOPMENT

As the proposed modification includes the removal of consent condition (1) (c), which refers to a restriction on the use of the first floor after ten (10) years, it is considered that the proposed modification will not affect the overall use of the site from a planning perspective, nor will the proposal adversely impact the surrounding environment. It is considered that the proposed modification will provide a positive outcome for the subject site without substantially impacting on the intent of the existing development application. Overall, the proposal does not alter the existing layout or footprint of the approved development application, and merely provides flexibility of the use of the first floor within the premises to ensure the integrity and intention of the approved development application continues into the future. This proposal will also provide additional financial security by providing flexibility regarding future tenants of the floor. This modification is considered to have no impact. The commercial premises are currently leased and this modification will ensure these business will be able to continue to use the first floor commercial suites in the NCYC which in turn will allow NCYC to further invest in maritime uses/facilities.

5 SITE SUITABILITY

The proposed modification does not increase the environmental impact, alter the approved footprint or layout of the development, and does not change the primary use of the subject site. The proposed modification is therefore considered substantially the same as the approved development. No additional environmental impacts, including traffic will be created as a result of the modification.

It is therefore considered that the site is capable of supporting the proposed modification and is compatible with the surrounding and existing land uses.

6 THE PUBLIC INTEREST

The proposed development meets the objectives of the zone and is generally consistent with the overarching approval under DA 102-5-2004. The proposed modification is considered to retain the existing use of the site but increase the flexibility of the use of the subject floor; and therefore, the proposal is considered to be in the public interest. The NCYC provide a service to the community and the wider yachting industry and the proposed modification will ensure the long term sustainability of maritime uses on the site and in Newcastle.

7 CONSULTATIONS

It is not anticipated that the application will be notified as the proposed amendments are relatively minor in nature and do not impact on adjoining owners.

The NCYC has had consultations with the maritime section of NSW Roads and Maritime Services (RMS) who have provided support for the proposal. It is understood that other similar maritime facilities in NSW have requested similar modifications to development approvals to ensure their long term sustainability. Correspondence with RMS is provided in Appendix B. The removal of condition 1(c) will allow the original intended use of the site to continue (i.e. the long term sustainability of the NCYC) and allow ongoing investment in maritime uses. RMS had always intended the site to be utilised by NCYC and the modification will continue to ensure NCYC utilises the site into the future.

8 CONCLUSION

This submission has been prepared to accompany the Section 96(1A) application to amend the existing development consent (DA 102-5-2004) for the Newcastle Cruising Yacht Club (NCYC).

It is considered that the proposed modification will result in no environmental impact and will remain largely the same as the development originally approved.

Overall, the proposal is consistent with local and regional planning strategies. The proposed amendment will ensure the NCYC continues to utilise the site as the original DA intended.

APPENDIX A

Current Consent

SCHEDULE 1**TABLE**

Application made by:	Newcastle Cruising Yacht Club 91 Hannell Street, Wickham NSW 2291
Application made to:	Minister for Infrastructure and Planning
Development Application:	DA 102-5-2004
On land comprising:	Lots 102 & 103 DP 1015391 91 Hannell Street, Wickham NSW 2291
For the carrying out of:	Development described in Condition A1, Part A, Schedule 2
Estimated Cost of Works	\$3,000,000
Type of development:	Integrated Development, Advertised Development
S.119 Public inquiry held:	An inquiry under s.119 of the Act was not held
Approval Body / Bodies:	Department of Infrastructure, Planning and Natural Resources Mine Subsidence Board Waterways Authority
Determination made on:	
Determination:	Development consent is granted subject to the conditions in the attached Schedule 2.
Date of commencement of consent:	This development consent commences on the date identified in the formal notification letter accompanying the Determination.
Date consent is liable to lapse	This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"> ▪ a shorter period of time is specified by the Regulations or ▪ a condition in Schedule 2, or ▪ the development has physically commenced.

NOTES RELATING TO THE DETERMINATION OF DA NO. 102-5-2004***Responsibility for other approvals / agreements***

The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Appeals

The Applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid for a development application, within 12 months after the date on which the Applicant received this notice.

Appeals—Third Party

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

Legal notices

Any advice or notice to the consent authority shall be served on the Director-General.

Section 94 Conditions

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies where imposed are in accordance with Newcastle City Council's Contribution Plan No.1 adopted by Newcastle City Council and effective from 8 October 2001 and Division 6 of the Act. The Contribution Plan may be inspected at Newcastle City Council, Customer Enquiry Centre, 282 King Street, Newcastle during normal business hours.

The specific public amenity or service or both are identified in the monetary contributions conditions in Part B of Schedule 2.

DEFINITIONS

In this consent,

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

Applicant means Newcastle Cruising Yacht Club or any party acting upon this consent.

Approval Body has the same meaning as within Division 5 of Part 4 of the Act,

BCA means the Building Code of Australia.

Certifying Authority has the same meaning as Part 4A of the Act.

Council means Newcastle City Council.

DA No. 102-5-2004 means the development application and supporting documentation submitted by the applicant on 3 May 2004 plus additional supporting material submitted during assessment of the application.

Department means the Department of Infrastructure, Planning and Natural Resources or its successors.

Director means the Director of the Urban Assessments (or its successors) within the Department.

Director-General means the Director-General of the Department.

Minister means the Minister for Infrastructure and Planning.

PCA means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

Regulations means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Senior Planner means the Senior Planner, Urban Assessments branch (or its successors) within the Department.

Subject Site has the same meaning as the land identified in the Table of this schedule.

Team Leader means the Team Leader, Urban Assessments, Urban Assessments branch (or its successors) within the Department.

SCHEDULE 2

CONDITIONS OF CONSENT

DEVELOPMENT APPLICATION NO. 102-5-2004

PART A—ADMINISTRATIVE CONDITIONS

A1 *Development Description*

Development consent is granted only to carrying out the development described in detail below:

- (1) Construction of a two storey masonry building with a third storey pop-up structure not exceeding an overall GFA of 2,733m² and consisting of the following:
 - (a) Ground floor restaurant and club facilities (GFA 974m²);
 - (b) First floor commercial offices (GFA 1,116m²);
 - (c) Use of first floor commercial offices for a period not exceeding ten (10) years and thereafter, to be reverted to NCYC facilities;
 - (d) Second floor club function room and associated facilities (GFA 643m²);
- (2) Use of the restaurant, club facilities and club function rooms by members and their guests of NCYC, but no more than 300 total patrons at any one time. The restriction on patron numbers may be lifted or amended by modification of the consent, based on the adequacy of parking allocation determined by the approved Traffic and Parking Assessment Report at Condition F9; and
- (3) Removal of underground fuel tanks from the subject site (Lot 103 DP 1015391) and refit new underground fuel tanks onto the adjoining Fisherman's Co-operative site (Lot 102 DP 1015391).

A2 *Development in Accordance with Plans*

The development shall be in accordance with development application number DA 102-5-2004 submitted by the applicant on 3 May 2004, and in accordance with the following:

Statement of Environmental Effects entitled <i>Proposed new club and commercial office building</i> prepared by EJE Architecture, dated January 2004.			
Architectural (or Design) Drawings prepared by EJE Architecture			
Drawing No.	Revision	Name of Plan	Date
A01	L	Site Plan	12.04
A02	L	Floor Plans	01.05
A03	K	Elevations/Sections	12.04
Survey Drawings prepared by LPI NSW			

Drawing No.	Revision	Name of Plan	Date
16879	N/A	Sheet 2 of 3 sheets	10.04.00
Pipework Layout Drawings prepared by MCHP Architects Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
G143T02	2	Diagrammatic Pipework Layout	30.10.03
Traffic Assessment Report prepared by B J Bradley and Associates Consulting Civil and Traffic Engineers dated 24 March 2004.			

A3 *Inconsistency Between Documents*

In the event that any inconsistency occurs between the conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.

A4 *Lapsing of Consent*

This consent shall lapse 5 years from the date from which the Minister signs the Instrument of Consent or, as the development consent is granted under section 80(5) of the Act, 2 years after the date from which a later or the latest development consent is granted in accordance with the conditions operates, whichever is the longer.

A5 *Prescribed Conditions*

The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

A6 *Applicant's Responsibilities*

- (1) The Applicant shall ensure that all contractors engaged to carry out works on the site are aware of the conditions of this consent and that these contractors are able to comply with the relevant conditions.
- (2) The Applicant is to take full responsibility to meet all expenses incurred in undertaking the development, including expenses incurred in complying with conditions imposed under this consent.
- (3) The Applicant shall notify the PCA for a final inspection on completion of work.

END OF PART A.

PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

Design Details and Changes

B1 Design Modifications

In order to achieve the objectives of sections 2.2 and 2.3 of DCP 37, the third storey of the NCYC building shall be redesigned to achieve a high quality and attractive design with a distinctive marina character that has a minimum impact on the view corridor.

In order to achieve these objectives, the Applicant shall lodge final plans and designs showing architectural treatment all to the satisfaction of the Director, prior to the issue of any Construction Certificate for building works.

B2 Details of Materials, Colours and Finishes

Final design details of the proposed external materials and finishes, including schedules and a sample board of materials and colours, shall be submitted to the Director for approval prior to the issue of any Construction Certificate for building works.

B3 Reflectivity

The visible light reflectivity from building materials used on the facades of the buildings shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A report demonstrating compliance with these requirements is to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for building works.

B4 Outdoor Lighting

All outdoor lighting 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*. Details demonstrating compliance with these requirements are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for building works.

B5 Disabled Access

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy. Prior to the issue of any Construction Certificate for building works, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the Certifying Authority.

Wind Effects

B6 Wind Impacts

A wind assessment shall be undertaken by an appropriately qualified person to demonstrate that the building will not create any adverse wind impacts on the public waterfront promenade, taking into account prevailing wind speed and wind direction for the Newcastle region and shall address any impacts arising from use of outdoor umbrellas, awnings or

furniture relating to the restaurant. Prior to the issue of any Construction Certificate for building works, the wind assessment report shall be submitted to the Certifying Authority for approval.

If it is found that any wind ameliorative or control measures or any design elements are required to be implemented or amended as a result of the wind assessment, full plans and reports detailing these measures or elements shall be submitted by the Applicant for the approval of the Director prior to the approval of the issue of any Construction Certificate for building works.

Remediation / Demolition / Earthworks

B7 Remediation of Land

- (1) Prior to the commencement of the removal of the underground fuel storage tanks, the Applicant shall submit to the Director a Remedial Action Plan (RAP) and a Hazardous Materials Survey for that portion of the site. The Remedial Action Plan must be accompanied by a statement from a site auditor accredited by the Environmental Protection Agency to issue site audit statements indicating the Auditor's approval of the RAP and is to include a summary of the *Geotechnical and Contamination Assessment* prepared by Coffey Geosciences Pty Ltd dated 31 August 2004.
- (2) Upon completion of the remediation works on the site, a detailed Remediation and Validation Report shall be prepared by a suitably qualified environmental consultant. This report, together with a site audit summary report and a final audit statement, prepared by an Environmental Protection Agency accredited environmental consultant and in accordance with the *Contaminated Land Management Act 1997*, including a Notice of Completion statement, pursuant to clauses 17(2) and 18 of *State Environmental Planning Policy No. 55 – Remediation of Land*, is to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for any works. The site audit must verify that the land has been appropriately remediated and is suitable for the proposed use and verify that the underground fuel storage tanks have not contaminated the remainder of the site and that the previous *Geotechnical and Contamination Assessment* prepared by Coffey Geosciences Pty Ltd dated 31 August 2004 remains valid for the rest of the site. If contamination throughout the remainder of the site has occurred, clauses B7(1) and (2) of this consent are to be re-applied.
- (3) Prior to any fill material imported to the site to backfill the tank pit excavations, it will be sampled and tested to ensure that it is suitable for the proposed use on site.

B8 Existing Underground Fuel Tanks

The existing underground fuel storage tanks being removed along with any associated contaminated soil need to be considered in accordance with the "Guidelines for Assessing Service Station Sites" provided by the NSW Environmental Protection Agency. A copy of the detailed site remediation works is to be submitted to Council for comment prior to the issue of any Construction Certificate for above ground works.

B9 Erosion and Sedimentation Control

Soil erosion and sediment control measures shall be designed in accordance with the document *Managing Urban Stormwater–Soils & Construction* (NSW Department of Housing, 1998), with particular attention to temporary measures, such as silt screens or barriers, that minimise the potential for materials, including sediment and other pollutants, to enter the Newcastle Harbour. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for any works.

B10 Drainage

Any alteration to natural surface levels on the site being undertaken in such a manner as to ensure that no surface water is drained onto or impounded on adjoining properties. Full details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for building works.

B11 Pre-Construction Dilapidation Reports

A Dilapidation Report detailing the current structural condition of the existing and adjoining buildings, infrastructure and roads shall be prepared and endorsed by a qualified structural engineer. The report shall be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for building works.

A copy of the report is to be forwarded to the Director and Council.

Flooding**B12 Flood Management Plan**

To ensure risks associated with extreme flood events are considered, the proposed development shall comply with the flood management design requirements outlined in the *Marina Precinct Flood Management Plan*, prepared by Lawson & Treloar Pty Ltd dated January 1999. In particular, the design should satisfy the following plan requirements:

- (1) Minimum habitable floor levels as provided in the Plan; and
- (2) Preparation of a Flood Emergency Response Plan.

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for building works.

Water Saving Measures**B13 Water Ratings**

All water fixtures installed within the premises are to have a AAA water rating or more. The Applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition prior to the issue of any Construction Certificate for above ground works.

Ecologically Sustainable Development (ESD) – Commercial**B14 SEDA Rating**

- (1) Level one of the NCYC building is to obtain the equivalent of a 4.5 star SEDA Building Greenhouse Rating;
- (2) Other parts of the building (club uses) are to be designed to target the equivalent of a 4.5 star SEDA Building Greenhouse Rating;
- (3) Prior to the issue of any Construction Certificate for above ground works, an Energy Conservation Report relating to the proposal shall be submitted to, and approved

by, the Director. The Report shall be prepared by a suitably qualified person and indicate the range of measures that will be taken to achieve the energy conservation target set above at parts (1) and (2) and how these measures will assist in reducing energy needs, including the following:

- (a) Use of on-site renewable energy sources to supplement energy needs during daily peak energy use;
 - (b) Use of building materials that are non toxic, have a low embodied energy and are sourced from renewable and abundant resources;
 - (c) Use of gas boosted solar, heat pump or electricity boosted solar, instantaneous gas or high efficiency centralised gas hot water heating systems;
 - (d) Use of movement control lighting and mechanical ventilation in public areas;
 - (e) Use of solar powered lighting for external areas;
 - (f) Use of thermal mass to hold heat in the building; and
 - (g) Provision of top floor ceilings and roofs with an insulation rating of R3.0 and walls R1.5.
- (4) All measures recommended in the study are to be implemented in the design and construction of the development and verified as having been achieved by a suitably qualified consultant between 1 and 2 years after the issue of an Occupation Certificate. A copy of the consultant's report shall be submitted to the Director.

Health

B15 Mechanical Ventilation

All areas not provided with natural ventilation in accordance with the provisions of the BCA, shall be provided with an adequate mechanical ventilation system complying with Australian Standard AS1668, Parts 1 and 2 "The use of mechanical ventilation and air conditioning in buildings" and AS3666 *Microbial Control of Air Handling and Water Systems of Buildings*, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environmental protection. Full details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for above ground works.

B16 Toilet Facilities

To ensure compliance with appropriate public health and hygiene standards, the premises must be provided with adequate toilet facilities and hand wash basins in accordance with the provisions of the Building Code of Australia. Full details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for above ground works.

B17 Design of Food Premises

To ensure the provisions of safe and equitable food for human consumption under the provisions of the *Food Act 2003* and the *Food Regulations 2004*, the design and construction of the proposed restaurant and associated food preparation and storage areas shall be in accordance with the relevant requirements of Australian Standard AS4674 "Design,

construction and fit-out of food premises". Details of compliance with the above relevant provisions shall be prepared by a suitably qualified person and submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for above ground works.

Waste Management

B18 Storage and Handling of Waste

The design and management of facilities for the storage and handling of waste (recyclable and non-recyclable) must comply with the requirements of the Council's relevant Policy. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate for above ground works.

B19 Liquid Waste

To prevent environmental pollution and to ensure observance of appropriate public health standards, any liquid wastes from the premises, other than stormwater discharge into the sewers of the Hunter Water Corporation Ltd, shall be in accordance with that Authority's requirements.

Monetary Contributions and Contributions-in-lieu

B20 Monetary Contributions – Open Space

A total open space monetary contribution of \$24,313.10 is to be paid to Council, pursuant to Section 94 of the Act, towards the provision of open space within the locality. This contribution is to be paid prior to the issue of any Construction Certificate for the proposed development.

Note: the amount of the contribution payable under this condition has been calculated on the basis of current costs as at the date of the consent and is to be indexed at the time of the actual payment in accordance with the "Consumer Price Index" weighted average of eight capital cities published by the Australian Bureau of Statistics each quarter. Any party intending to act on this consent should contact Council's s.94 Coordinator, City Strategy Group, for determination of the indexed amount of contribution as at the date of payment.

B21 Monetary Contributions – Hunter Water

The Applicant shall comply with all requirements of the Hunter Water Corporation Ltd regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's certificate of compliance is to be included in the documentation for any Construction Certificate.

Works

B22 Stormwater and Drainage Works Design

Final design plans of the stormwater drainage systems within the proposed subdivision shall be prepared by a qualified practicing Civil Engineer and in accordance with the requirements of Council's DCP 50 "*Stormwater Management for Development Sites*". Full details shall be submitted to the Certifying Authority prior to issue of a Construction Certificate for below ground works. The hydrology and hydraulic calculations shall be based on models described in the current edition of Australian Rainfall and Runoff.

B23 *Hunter Water Requirements*

The relevant approved plans, which show the building footprint, must be submitted to Hunter Water to determine whether the development will affect Hunter Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met prior to the issue of any Construction Certificate for building works.

Easement**B24 Easement**

Prior to the issue of any Construction Certificate for above ground works, the Applicant shall secure an easement relating to the overhang of the awning on the public domain on the eastern side of the building. The Applicant shall provide all evidence of indemnities and related requirements of the owner of the land and provide written evidence to the Department and Certifying Authority.

All costs associated with the above requirements are to be borne solely by the Applicant.

Compliance**B25 Compliance Report**

Prior to the issue of any Construction Certificate, the Applicant, or any party acting upon this consent, shall submit to the Department a report addressing compliance with all relevant conditions of this consent.

END OF PART B.

PART C—PRIOR TO COMMENCEMENT OF WORKS

Demolition Works

C1 *Statement of Compliance with Australian Standards*

The demolition work shall comply with the provisions of Australian Standard AS2601: 1991 *The Demolition of Structures*. The work plans required by AS2601: 1991 shall be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the statement of compliance shall be submitted to the satisfaction of the PCA prior to the commencement of works.

Stormwater

C2 *Stormwater Drains*

To prevent damage to property and to prevent the creation of unhealthy or dangerous conditions, the Applicant shall ensure that stormwater being conveyed to the existing property stormwater drains is via a sealed pipe. The existing drains are to be checked for adequacy and cleared of any obstructions.

Excavation Works

C3 *Notice to be Given Prior to Excavation*

The PCA and Council shall be given written notice, at least 48 hours prior to the commencement of excavation, shoring or underpinning works on the site.

Structural Works

C4 *Structural Details*

Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the PCA, structural drawings prepared and signed by a suitably qualified practising Structural Engineer that comply with:

- (1) the relevant clauses of the Building Code of Australia;
- (2) the relevant development consent, taking into account the geotechnical conditions of the site;
- (3) drawings and specifications comprising the Construction Certificate;
- (4) the requirements of the Mines Subsidence Board that the building shall be designed with a slip plane between the underside of the ground slab and any supporting piers/piles that may be installed as part of the design; and
- (5) the relevant Australian Standards listed in the BCA (Specification A1.3).

Environmental Management

C5 Environmental Management Plan

Prior to the commencement of any works on site that involve the disturbance of, or contact with, fill or soil on the site, other than clean soil in landscaped areas, are required to be carried out in accordance with the requirements of the *Environmental Management Plan: Honeysuckle Redevelopment, Newcastle*, prepared by AGC Woodward-Clyde Pty Ltd.

Construction Management**C6 Construction Management Plan**

Prior to the commencement of any works on the site, a Construction Management Plan shall be submitted to and approved by the PCA. The Plan shall address, but not be limited to, the following matters where relevant:

- (1) hours of work,
- (2) contact details of site manager,
- (3) environmental health and safety matters;
- (4) site security;
- (5) traffic management (see also C7 below),
- (6) noise and vibration management (see also C8 below),
- (7) waste management (see also C9 below),
- (8) erosion and sediment control (see also B10 above),
- (9) flora and fauna management,
- (10) dust management strategy (see also D12 below); and
- (11) the location of site shed/s and materials storage to minimise disruption to existing parking arrangements of the Fisherman's Co-operative, existing commercial buildings and marina.

The Applicant shall submit a copy of the approved plan to the Department and Council. The required plans shall be kept on site and made available to authorised Council Officers upon request.

C7 Construction Traffic & Pedestrian Management Plan

Prior to the commencement of any works on the site, a Construction Traffic and Pedestrian Management Plan prepared by a suitably qualified person shall be submitted to and approved by the PCA. The Plan shall address, but not be limited to, the following matters:

- (1) ingress and egress of vehicles to the site;
- (2) loading and unloading, including construction zones;
- (3) predicted traffic volumes, types and routes;
- (4) pedestrian and traffic management methods; and
- (5) means to ensure current parking is not impeded.

The Applicant shall submit a copy of the approved plan to the Department and Council.

C8 Noise and Vibration Management Plan

Prior to the commencement of any works on the site, a Noise and Vibration Management Plan prepared by a suitably qualified person shall be submitted to and approved by the PCA. The Plan shall address, but not be limited to, the following matters:

- (1) Identification of the specific activities that will be carried out and associated noise sources,
- (2) Identification of all potentially affected sensitive receivers including residences, schools, and properties containing noise sensitive equipment,
- (3) The construction noise objective specified in the conditions of this consent,
- (4) The construction vibration criteria specified in the conditions of this consent,
- (5) Determination of appropriate noise and vibration objectives for each identified sensitive receiver,
- (6) Noise and vibration monitoring, reporting and response procedures,
- (7) Assessment of potential noise and vibration from the proposed construction activities including noise from construction vehicles and any traffic diversions, in accordance with the EPA's *Environmental Criteria for Road Traffic Noise*,
- (8) Description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction and minimise any potential impacts,
- (9) Justification of any proposed activities outside the construction hours specified in the conditions of this consent.
- (10) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods, and frequency,
- (11) Procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration, and
- (12) Contingency plans to be implemented in the event of non-compliances and/or noise complaints.

The Applicant shall submit a copy of the approved plan to the Department and Council.

C9 Construction Waste Management Plan

Prior to the commencement of works, the Applicant shall submit to the satisfaction of the PCA a Waste Management Plan prepared by a suitably qualified person in accordance with Council's relevant policies. The Applicant shall submit a copy of the plan to the Department and Council.

C10 Contact Telephone Number

Prior to the commencement of the works, the Applicant shall forward to the Department and Council a 24 hour telephone number to be operated for the duration of the construction works.

Heritage

C11 Archival Record

No works shall commence until an archival record of existing buildings on the site has been prepared and submitted to the Heritage Office. This shall include measured drawings and an archival photographic record before any work commences. This archival record shall be prepared in accordance with the NSW Heritage Council guidelines.

Hazardous Materials

C12 Removal of Hazardous Materials

All hazardous materials shall be removed from the site and shall be disposed of at an approved waste disposal facility in accordance with the requirements of the relevant legislation, codes, standards and guidelines, prior to the commencement of any building works. Details demonstrating compliance with the relevant legislative requirements, particularly the method of containment and control of emission of fibres to the air, are to be submitted to the satisfaction of the PCA prior to the removal of any hazardous materials.

C13 Acid Sulphate Soils Management Plan

Where works require or are likely to require the excavation of potential or actual Acid Sulphate Soils, then the Applicant shall ensure that all work on site cease and an Acid Sulphate Soil Management Plan be prepared by a suitable qualified person in accordance with the *Acid Sulphate Soil Assessment Guidelines* (Acid Sulphate Soil Management Advisory Committee 1998). The Management Plan shall be submitted to and approved by the PCA prior to the recommencement of works.

C14 Site Audit

Prior to the commencement of building works, a Site Audit conducted by a suitably qualified person shall be undertaken to ascertain that all identified hazardous materials have been removed from the site and a copy of the final report shall be submitted to the PCA.

Utilities

C15 Hunter Water

Any building or structure proposed to be erected over any services or stormwater drain under the Corporation's control, shall comply with the requirements of the Hunter Water Corporation Ltd.

Compliance

C16 Compliance Report

Prior to the commencement of works, the Applicant, or any party acting upon this consent, shall submit to the Department a report addressing compliance with all relevant conditions of this consent.

END OF PART C.

PART D—DURING CONSTRUCTION

Site Maintenance

D1 Erosion and Sediment Control

All erosion and sediment control measures, as designed in accordance with Condition B10, are to be effectively implemented and maintained at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

D2 Pollution into Newcastle Harbour

Construction works are to be carried out in a manner that minimises the potential for materials, including sediment and other pollutants, to enter the Newcastle Harbour. Any material that enters the Newcastle Harbour must be removed immediately.

D3 Disposal of Seepage and Stormwater

Any seepage or rainwater collected on-site during construction shall not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.

D4 Excavated Material

Any excavated material removed from the site shall be assessed, classified, transported and disposed of in accordance with the NSW EPA *Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes*.

Structural Works

D5 Setting Out of Structures

The buildings shall be set out by a registered surveyor to verify the correct position of each structure in relation to property boundaries and the approved alignment levels. The registered surveyor shall submit a plan to the PCA certifying that structural works are in accordance with the approved development application.

Construction Management

D6 Approved Plans to be On-site

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 PCA.

D7 Site Notice

A site notice(s) shall be prominently displayed at the boundaries of the site for the purposes of informing the public of project details. The notice(s) is to satisfy all but not be limited to, the following requirements:

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

D8 *Contact Telephone Number*

The applicant shall ensure that the 24 hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.

D9 *Public Way to be Kept Clear*

The public way musty not be obstructed and the roadway, footway and waterfront promenade is to be kept clear at all times. All loading/unloading of vehicles is to take place inside the designated loading/unloading zone approved under condition C6 of this consent.

Current car parking spaces for the Fisherman's Co-operative, existing commercial building and marina shall not be impeded at any time during construction, as per condition C7 of this consent.

D10 *External Lighting*

External Lighting shall comply with AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Upon installation of lighting, but before it is finally commissioned, the applicant shall submit to the consent authority evidence from an independent qualified practitioner demonstrating compliance in accordance with this condition.

D11 *Protection of Trees – Street Trees*

All street trees shall be protected at all times during construction. Any tree on the footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of Council.

D12 *Protection of Trees – On-site Trees*

All trees on the site that are not approved for removal are to be suitably protected by way of tree guards, barriers or other measures as necessary are to be provided to protect root system, trunk and branches, during construction.

D13 *Dust Control Measures*

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures must be adopted:

- (1) Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions;
- (2) Earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed;
- (3) All materials shall be stored or stockpiled in the best locations on site;
- (4) The surfaces of all stockpiles should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs;
- (5) All vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material,
- (6) Covers are to be adequately secured,
- (7) Cleaning of footpaths must be carried out regularly,
- (8) Roadways must be kept clean,
- (9) Gates are closed between vehicle movements,
- (10) Gates are fitted with shade cloth, and
- (11) Wheel washes shall be installed for all vehicles exiting the site.

Noise and Vibration

D14 Hours of Work

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- (1) between 7:00 am and 6:00 pm, Mondays to Fridays inclusive;
- (2) between 8:00 am and 1:00 pm, Saturdays;
- (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;
- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
- (3) the work is approved through the Construction Noise and Vibration Management Plan; and
- (4) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

D15 Construction Noise Objective

The construction noise objective for the Project is to manage noise from construction. The construction noise objective is to comply with AS 2436-1981 "Guide to Noise Control on Construction".

If the noise from a construction activity is substantially tonal or impulsive in nature (as described in Chapter 4 of the NSW Industrial Noise Policy), 5dB(A) must be added to the measured construction noise level when comparing the measured noise with the construction noise objective.

D16 Construction Noise Management

The Applicant shall:

- (1) schedule rock breaking, rock hammering, sheet piling, pile driving and any similar activity only between the following hours unless otherwise approved in the Construction Noise and Vibration Management Plan:
 - (a) 9.00 am to 12.00 pm, Monday to Friday;
 - (b) 1.00 pm to 4.00 pm Monday to Friday; and
 - (c) 9.00 am to 12.00 pm, Saturday
- (2) ensure that wherever practical, and where sensitive receivers may be affected, piling activities are completed using bored piles. If driven piles are required they must only be installed where approved in the Construction Noise and Vibration Management Plan.

D17 Vibration Criteria

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

- (1) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and
- (2) for human exposure to vibration, the evaluation criteria presented in British Standard BS 6841- Guide to Evaluate Human Exposure to Vibration in Buildings (1Hz to 80 Hz) for low probability of adverse comment.

These limits apply unless otherwise approved in the Construction Noise and Vibration Management Plan.

D18 Vibration Management

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

Ecologically Sustainable Development***D19 Water Conservation***

Water saving showerheads shall be fitted to all showers within the development to reduce water consumption and promote energy efficiency.

D20 Recycling of Concrete

Any existing concrete of suitable volume, which is not used as fill, shall be taken to a concrete recycling works and evidence that this has occurred shall be provided to the PCA.

Compliance***D21 Compliance Report***

The Applicant, or any party acting upon this consent, shall, for the duration of construction period, submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent.

END OF PART D.

PART E—PRIOR TO SUBDIVISION OR STRATA SUBDIVISION

Subdivision does not form part of this consent.

PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE

Signage

F1 Signage Strategy

An external signage strategy which addresses the provisions of Council's DCP 19 – *Outdoor Advertising Code* is to be submitted to the consent authority as a separate development application and approved prior to the issue of any Occupation Certificate and prior to the placement of any signs.

Engineering

F2 Fire Safety Certificate

A Fire Safety Certificate shall be furnished to the PCA for all the Essential Fire or Other Safety Measures forming part of this approval prior to issue of any Occupation Certificate. A copy of the Fire Safety certificate must be submitted by the PCA to the consent authority, the Commissioner of NSW Fire Brigades and Council.

A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

F3 Annual Fire Safety Statement

An Annual Fire Safety Statement must be provided to Council and the NSW Fire Brigade commencing within 12 months after the date on which the consent authority initial Fire Safety Certificate is received.

F4 Mechanical Ventilation

Following completion, installation and testing of all the mechanical ventilation systems, the applicant shall provide evidence to the satisfaction of the PCA, prior to the issue of any Occupation Certificate, that the installation and performance of the mechanical systems complies with:

- (1) The Building Code of Australia;
- (2) Australian Standard AS1668 and other relevant codes;
- (3) The development consent and any relevant modifications; and,
- (4) Any dispensation granted by the New South Wales Fire Brigade.

F5 Structural Inspection Certificate

A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the PCA prior to the issue of any Occupation Certificate and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact consent authority for specific electronic format) shall be submitted to the consent authority and the Council after:

- (1) 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,
- (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

F6 Road Damage

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, is to be met in full by the applicant/developer prior to the issue of any Occupation Certificate.

Note: Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount; a separate invoice will be issued.

Easements

F7 Registration of Easements

Prior to the issue of any Occupation Certificate, the Applicant shall provide to the PCA evidence that all easements required by this consent, approvals, and other consents have been or will be registered on the certificates of title.

Hunter Water

F8 Hunter Water

The Applicant shall obtain a Compliance Certificate from Hunter Water Corporation Ltd under Section 50 of the *Hunter Water Act 1991*.

The Section 50 Certificate must be submitted to the Department prior to the issue of any Subdivision Certificate and/or Occupation Certificates, where relevant, under Part 4A of the Act.

Car Parking Allocation

F9 Car Parking

The Applicant shall engage a suitably qualified traffic consultant to prepare a Traffic and Parking Assessment Report detailing, but not limited to, the following:

- (1) Numbers of car parking spaces required in accordance to Newcastle DCP 24, Newcastle DCP 37, or the RTA Guidelines for each of the following existing uses: each of the uses in the Fisherman's Co-operative, broken down into a detailed list of customers and employees for each use including the Stockton ferries and trawler fleet; existing commercial buildings; and marina, broken down into details of approved berth type and marina employees;
- (2) Hours of approved operation for each of the uses listed in part (1) of this condition;

- (3) Numbers of existing car parking spaces allocated to each of the uses in the Fisherman's Co-operative during the day Monday-Sunday (broken down into customers and employees);
- (4) Numbers of existing car parking spaces potentially required by each of the uses in the Fisherman's Co-operative during the night Monday-Sunday (broken down into customers and employees);
- (5) Numbers of existing car parking spaces potentially required by the marina (broken down into wet berths, hardstand, employees) during the day Monday-Sunday;
- (6) Numbers of existing car parking spaces potentially required by the marina during the night (broken down into wet berths, hardstand, employees) Monday-Sunday;
- (7) Numbers of existing car parking spaces potentially required by the existing commercial building, according to the approved hours of operation;
- (8) Numbers of car parking spaces required in accordance with Newcastle DCP 24 for each of the uses approved under this consent during the day Monday-Sunday;
- (9) Numbers of car parking spaces required in accordance with Newcastle DCP 24 for each of the uses approved under this consent during the night Monday-Sunday;
- (10) The proposed allocation for the car parking spaces required under Parts (8) and (9) of this condition;
- (11) The basis of any discounting, reduction or cross-over in the car parking numbers listed in this condition;
- (12) An appropriate strategy (including signage, hours of use, club rules, etc) addressing how this cross-over is going to be enforced and controlled;
- (13) The inclusion of any concerns or comments raised by Council, particularly pertaining to the use of on-street parking in the positions outlined in the *Traffic Assessment Report* prepared by BJ Bradley & Associates dated 24 March 2004;
- (14) The inclusion of any concerns or comments raised by RTA, particularly relating to parking restrictions, pedestrian crossing points and a bus set down zone; and
- (15) Provisions made for a bus set down zone. Note: if this zone is proposed to take up allocated car parking spaces, the Report shall demonstrate that this will not affect car parking requirements of the NCYC or surrounding uses.
- (16) Provisions made for the on-site loading and unloading of service and delivery vehicles for the club, restaurant and commercial uses.

The Applicant shall submit the Traffic and Parking Assessment Report to the Director for approval prior to the issue of any Occupation Certificate.

(Note: Based on the approved Traffic and Parking Assessment Report, the restriction of club patrons at condition A1(2) may be varied by modification of the consent).

Management

F10 Plan of Management

The Applicant shall engage suitably qualified consultants to prepare a Plan of Management for the NCYC, excluding the commercial office component. The Plan of Management must include, but is not limited to, the following:

- (1) All measures employed to minimise internal and external noise impacts on adjoining properties, including the marina and port, surrounding residential developments and the street, particularly at closing time,
- (2) The procedures for minimising and managing waste generated on site, where the location of waste facilities are on site, and how and when waste is collected,
- (3) The number of staff employed on the premises at any one time (including contracted staff, such as cleaners and security),
- (4) All mechanical systems (including lighting, smoke detectors, fire sprinkler systems, and air conditioning) on the site are certified as being in working order with details given on the timing of their maintenance schedule,
- (5) Detailed arrangements for on-site security including information on the number of licensed security staff and the location of both physical barriers and electronic surveillance systems within the premises,
- (6) Methods for controlling and managing crowds within and outside the site,
- (7) The total number of people allowed on site at any one time,
- (8) Details on when and how the site will be cleaned and generally serviced.
- (9) Details on how the operation of the premises will satisfy the likely conditions of the Liquor License,
- (10) The methods employed by staff and management to implement harm minimisation and the responsible sale of alcohol requirements of the Department of Gaming and Racing (including the details of the premises' House Policy and Practices, Responsible Service of Alcohol Training Register),
- (11) Detail methods that will increase patrons awareness of public transport availability and provide measures that will assist patrons in using public transport,
- (12) Details on complaints handling and recording these complaints.

The Plan of Management shall be submitted to the Director for approval prior to the issue of any Occupation Certificate.

Subject to the terms of the approved Plan of Management, the hours of operation for the club may be extended as detailed in Condition G4.

Design Modifications

F11 Impacts on the Port

Prior to the issue of an Occupation Certificate, the Applicant shall be required to demonstrate, to the satisfaction of the PCA, an assessment report prepared by a suitably qualified consultant, that no aspect of the building design including, but not limited to, lighting, reflectivity, external glazing or cladding, do not represent hazards to safe navigation within the port, through the preparation of an assessment report, prepared by a suitable qualified person.

In the event that the results of assessment show any significant interference with navigation or maritime operations, the Applicant will undertake appropriate remedial work to ameliorate

these impacts, to the satisfaction of the Newcastle Port Corporation, prior to the issue of any Occupation Certificate.

F12 Noise Attenuation

Prior to the issue of any Occupation Certificate and in order to alleviate potential noise impacts on club or restaurant patrons or office workers within the NCYC building; the Applicant shall be required to submit, to the satisfaction of the PCA, a Noise Assessment Report prepared by a suitably qualified person. The report shall address, but not be limited to, the following:

- (1) Assessment of the potential noise impacts from surrounding land-uses, including plant, equipment and operations impacts to the development site; and
- (2) Assessment of the possible noise impacts from nearby port related and industrial activities to the development site.

If this assessment concludes that possible noise impacts may arise from these surrounding land-uses, suitable noise attenuation or control measures are required to be implemented through building design and the use of appropriate noise attenuation materials. Full plans and reports detailing these measures shall be submitted for the approval of the Director prior to the issue of an Occupation Certificate for the building.

Second Dilapidation Report

F13 Post-Construction Dilapidation Report

- (1) The Applicant shall engage a suitably qualified person to prepare a Post-Construction Dilapidation Report at the completion of the construction works. This report to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads.
- (2) The report is to be submitted to the PCA. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the PCA must:
 - (a) compare the Post-Construction Dilapidation Report with the Pre-Construction Dilapidation Report required by Condition B6, and
 - (b) have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads.
- (3) A copy of this report is to be forwarded to the Department and Council.

END OF PART F.

PART G—POST OCCUPATION

Fire Safety

G1 *Annual Fire Safety Certification*

The owner of the building shall certify to Council every year that the essential services installed in the building for the purpose of fire safety have been inspected and at the time of inspection are capable of operating to the required minimum standard. This purpose of this condition is to ensure that there is adequate safety of persons in the building in the event of fire and for the prevention of fire, the suppression of fire and the prevention of spread of fire.

Traffic and Parking

G2 *Loading and Unloading*

All loading and unloading of service vehicles in connection with the use of the premises shall be carried out wholly within the site at all times.

G3 *Unobstructed Driveways and Parking Areas*

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

Noise

G4 *Hours of Operation – NCYC Including Restaurant and Function Rooms*

The hours of operation for the NCYC including restaurant and function rooms shall be restricted to between:

Day	Commencement time	Cessation time	Cessation time subject to *Note below
Monday	7.00 am	10.00 pm	12.00 pm
Tuesday	7.00 am	10.00 pm	12.00 pm
Wednesday	7.00 am	10.00 pm	12.00 pm
Thursday	7.00 am	10.00 pm	12.00 pm
Friday	7.00 am	10.00 pm	12.00 pm
Saturday	7.00 am	10.00 pm	12.00 pm
Sunday	7.00 am	10.00 pm	12.00 pm
Public Holidays	7.00 am	10.00 pm	12.00 pm

*Note: hours may be extended as above where approved in accordance with the Plan of Management at Condition F10.

G5 Hour of Operation – Service Vehicles

No trucks, service or delivery vehicles or heavy machinery are to enter or leave the site outside the hours of 7.00am and 6.00pm Monday to Friday and 8.00am and 4.00pm on Saturdays, Sundays and Public Holidays.

G6 Hours of Operation – Commercial Offices

The hours of operation for the commercial offices located within the NCYC shall be restricted to between:

Day	Commencement time	Cessation time
Monday	7.00 am	6.00 pm
Tuesday	7.00 am	6.00 pm
Wednesday	7.00 am	6.00 pm
Thursday	7.00 am	6.00 pm
Friday	7.00 am	6.00 pm
Saturday	Closed	Closed
Sunday	Closed	Closed
Public Holidays	Closed	Closed

G7 Noise Control – Music and Entertainment

Any recorded music, live music or other entertainment played or provided within the premises shall be controlled to comply with the requirements of the *Environmental Noise Control Manual 1985* and the *Protection of the Environment Operations Act 1997*. Noise shall not exceed 5dB(A) above the background noise level when measured at the boundary of the nearest residential property.

G8 Noise Control – Licensed Premises

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5 dB between 7:00 am and 11.00 pm and is to be inaudible between 11.00 pm and 7:00 am at the boundary of any affected residence.

G9 Noise Control – Plant and Machinery

Noise associated with the operation of any plant, machinery or other equipment on the site, shall not exceed 5dB(A) above the background noise level when measured at the boundary of the site.

G10 Noise Monitoring

The Applicant shall undertake a noise monitoring program, for any use of the facilities for entertainment, functions and use of the club house beyond 10.00 pm, for a minimum period of 18 months following the commencement of operations on the site. The monitoring program shall be undertaken by an appropriately qualified person and monitoring reports shall be submitted to the Department at intervals of 3 months.

Hazardous Materials***G11 Storage of Hazardous or Toxic Material***

Any hazardous or toxic materials must be stored in accordance with WorkCover Authority requirements and all tanks, drums and containers of toxic and hazardous materials shall be stored in a bunded area. The bund walls and floors shall be constructed of impervious materials and shall be of sufficient size to contain 110% of the volume of the largest tank plus the volume displaced by any additional tanks within the bunded area.

G12 *Waste Materials*

Adequate facilities are to be provided in an appropriately screened location within the premises for the separate storage of recyclable and non-recyclable material, and arrangement being made for regular removal and disposal.

Public Access**G13 *Public Way to be Unobstructed***

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.

Compliance**G14 *Compliance Report***

The Applicant, or any party acting upon this consent, shall submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent.

END OF PART G.

PART H—GENERAL TERMS

Department of Infrastructure, Planning and Natural Resources

H1 *Dewatering Bore/s*

DIPNR (Hunter Region) submitted General Terms of Approval for the Water Act 1912 (Part 5) as follows:

- (1) The bore/s drilling operations shall be carried out by a licensed driller;
- (2) Bore/s shall be constructed as per the Australian standards (Minimum Construction Requirements for Water Bores in Australia);
- (3) The Applicant shall, within two months of completion or after the issue of a licence if the work is existing, furnish to the Department:
 - (a) Details of the work as set out in the attached Form “A”;
 - (b) A plan showing accurately the location of the work in relation to portion and property boundaries; and
 - (c) Details of any water analysis and/or pumping tests;
- (4) The Applicant shall allow the Department or any person authorised by it, full and free access to the works either during or after construction, for the purpose of carrying out any inspection or test of the works and its fittings, and shall carry out any work or make any alterations deemed necessary by the Department for the protection or proper maintenance of the works, or the control of the water extracted and for the protection of the quality and prevention from pollution or contamination of sub-surface water;
- (5) If a work is abandoned at any time, the Applicant shall notify the Department that the work has been abandoned and seal off the aquifer by:
 - (a) Backfilling the work to ground level with clay or cement (or mixture thereof) after withdrawing the casing (lining); or
 - (b) Such methods as agreed to or directed by the Department;
- (6) Any water extracted from the works shall not be discharged into any watercourse or source of groundwater unless it meets the requirements of the *Protection of the Environment Operations Act 1997*. Applicant shall produce the discharge approval or permit from the relevant authority to consider the issue of the Licence;
- (7) Works used for the purpose of conveying, distributing or storing water from the work authorised by the licence shall not be constructed or installed so as to obstruct the free passage of floodwaters flowing in, to or from a stream, river or lake;
- (8) Water shall not be pumped from the bore authorised by this licence for any purpose other than groundwater investigations and dewatering;
- (9) The Appliance shall install to the satisfaction of the Department in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or

weirs with automatic recorder, or meter or meters of the Dethridge type, or such other class of meter or means of measurement as may be approved by the Department. The appliance(s) shall be maintained in good working order and condition. A record of all water extracted from the works shall be kept and supplied to the Department upon request. The licensee when requested must provide a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person or authority duly qualified;

- (10) The Applicant shall make suitable provision to the satisfaction of the Department to prevent tailings or other materials from being washed into any watercourse by floods;
- (11) The Applicant shall notify the Department in advance any changes or modifications to operations of groundwater works associated with the licence (rate or duration of pumping);
- (12) The licensee shall maintain water quality records for the bore and provide reports to the Department upon request by the Department for environmental monitoring and review;
- (13) All operations relating to groundwater works (interference with groundwater) must comply with regional water management plans issued from time to time by the Department;
- (14) The licence holder shall undertake remedial action if monitoring results indicate that the agreed standards or performance indicator levels are not being achieved due to failure or ineffectiveness of the management strategies.

Mines Subsidence Board

H2 Conditions

Mines Subsidence Board granted their approval subject to the following conditions:

- (1) The final drawings to be submitted prior to commencement of construction are to contain certification by a qualified structural engineer to the effect that any improvement constructed to meet the specifications of final drawings will be safe, serviceable and repairable taking into account the geotechnical conditions on site;
- (2) The building is to be designed with a slip plane between the underside of the ground slab and any supporting piers/piles that may be installed as part of the design.

NSW Maritime

H3 Part 3A Permit

NSW Maritime advised that a Part 3A Permit under the *Rivers and Foreshores Improvement Act 1948* would not be required subject to the following requirements:

- (1) No materials are eroded, or likely to be eroded, are deposited, or likely to be deposited, on the bed or shore or into the waters of the Newcastle Harbour;
- (2) No materials are likely to be carried by natural forces to the bed, shore or waters of the Newcastle Harbour;

- (3) Any material that enters Newcastle Harbour must be removed immediately;
- (4) Best practice methods shall be adopted for the on-site control of run-off, sediment and other pollutants during, and post construction. Methods shall be in accordance with the relevant specifications and standards contained in the manual *Managing Urban Stormwater – Soils & Construction* issued by the NSW Department of Housing in 1998 and any other relevant Council requirements;
- (5) The erosion, sediment and pollution control system is to effectively maintained at or above design capacity for the duration of the works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment;
- (6) The erosion, sediment and pollution controls shall be installed and stabilised before commencement of site works. This does not include the works associated with the construction of the appropriate controls;
- (7) Any material that is to be stockpiled on site is to be stabilised to prevent contamination, erosion or dispersal of the material. Consideration should be given to covering stockpiles when not in use;
- (8) Construction works are carried out in a manner that minimises the potential for materials, including sediment and other pollutants, to enter the Newcastle Harbour. In this regard, a combination of temporary measures such as silt screens and barriers may be required when carrying out particular works; and
- (9) Any material to be used as fill is to be clean and free from any contaminants.

END OF PART H.

ADVISORY NOTES

AN1 Compliance Certificate, Water Supply Authority Act, 2000

Prior to issuing a subdivision certificate, a Compliance Certificate shall be provided to the consent authority showing that the development has met with the detailed requirements of the relevant water supply authority for the region that the subject site is located within.

The developer shall obtain the Compliance Certificate from the relevant local water supply authority and produce this to the satisfaction of:

- (1) the certifying authority before release of the Construction Certificate,
- (2) the consent authority before the release of the subdivision certificate, and
- (3) the principal certifying authority prior to occupation.

AN2 Requirements of Public Authorities for Connection to Services

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Sydney Water, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

AN3 Compliance with Building Code of Australia

The applicant is advised to consult with the PCA about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

AN4 Application for Hoardings and Scaffolding

A separate application shall be made to Council for approval under Section 68 of the *Local Government Act, 1993*, to erect a hoarding or scaffolding in a public place. Such an application shall include:

- (1) Architectural, construction and structural details of the design in accordance with the relevant Council's Policy; and
- (2) Structural certification prepared and signed by a suitably qualified practising structural engineer.

The applicant shall provide evidence of the issue of a Structural Works Inspection Certificate and structural certification shall be submitted to the satisfaction of the PCA prior to the commencement of works.

AN5 Use of Mobile Cranes

The applicant shall obtain all necessary permits required for the use of mobile cranes on or surrounding the site, prior to the commencement of works. In particular, the following matters shall be complied with to the satisfaction of the PCA:

- (1) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on street use of mobile cranes, permits must be obtained from Council:
 - (a) at least 48 hours prior to the works for partial road closures which, in the opinion of Council will create minimal traffic disruptions, and
 - (b) at least 4 weeks prior to the works for full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (2) The use of mobile cranes must comply with the approved hours of construction and shall not be delivered to the site prior to 7.30am without the prior approval of Council.

AN6 *Movement of Trucks Transporting Waste Material*

The applicant shall notify the Roads and Traffic Authority's Traffic Management Centre (TMC) of the truck route(s) to be followed by trucks transporting waste material from the site, prior to the commencement of the removal of any waste material from the site.

AN7 *Construction Inspections*

Compliance certificate/s shall be issued by the Principal Certifying Authority and submitted to Council in accordance with the mandatory inspection requirements of the *Building Legislation Amendment—Quality of Construction Act, 2002* for each stage of construction, such as the following:

- (1) Foundations,
- (2) Footings,
- (3) Damp proof courses and waterproofing installation,
- (4) Structural concrete, including placing of reinforcement and formwork prior to pouring,
- (5) Structural beam and column framing,
- (6) Timber wall and roof framing, and
- (7) Stormwater disposal.

Any Compliance Certificate issued for the above stages of construction shall certify that all relevant ancillary or dependent work has been undertaken in accordance with the Building Code of Australia and any other conditions of consent.

AN8 *Noise Generation*

Any noise generated during the construction of the development shall not exceed the limits specified in the *Protection of the Environment Operations Act, 1997* or exceed approved noise limits for the site.

AN9 *Excavation – Aboriginal Relics*

Should any Aboriginal relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the National Parks and Wildlife Service shall be informed in accordance with Section 91 of the *National Parks and Wildlife Act, 1974*.

AN10 Excavation – Historical Relics

Should any historical relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the Heritage Council of NSW shall be informed in accordance with Section 146 of the *Heritage Act, 1977*.

AN11 Application under Part 4A of the Act

An application under Part 4A of the Act shall be submitted to the consent authority or the council along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate.

AN12 Application under Section 37 of Strata Schemes (Freehold Development) Act, 1973

Section 37 and 37A of the *Strata Schemes (Freehold Development) Act, 1973* require an application to be submitted to the council or accredited certifier for approval prior to the issue of the certified strata plan of subdivision.

AN13 Compliance with Conditions

The applicant will be required to submit, documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 102-5-2004 and of compliance (or a Compliance Certificate) with the conditions of that consent, prior to the issuing of Strata Plan of Subdivision.

AN14 Street Numbering

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages in accordance with the relevant Council's Policy, prior to the occupation of the building(s) or commencement of the use.

If street numbers or changes to street numbers are required, a separate application shall be made to Council.

AN15 Compliance with National Code for Construction and fit-out of food premises

An applicant shall obtain a certificate from a suitably qualified tradesperson, certifying that the kitchen, food storage and food preparation areas have been fitted in accordance with the *National Code for the Construction and Fit-out of Food Premises*. The applicant shall provide evidence of receipt of the certificate to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.

AN16 Stormwater drainage works or effluent systems

A construction certificate for works that involve any of the following:

- (1) water supply, sewerage and stormwater drainage work;
- (2) management of waste;

as defined by Section 68 of the Local Government Act, 1993 will not be issued until prior separate approval to do so has been granted by Council under Section 68 of that Act. Applications for these works must be submitted on Council's standard Section 68 application form accompanied by the required attachments and the prescribed fees.

AN17 Temporary Structures

An approval under Section 68 of the Local Government Act 1993 must be obtained from the Council for the erection of the temporary structures. The application must be supported by a report detailing compliance with the provisions of the Building Code of Australia.

Structural certification from an appropriately qualified practicing structural engineer must be submitted to the Council with the application under Section 68 of the Local Government Act 1993 to certify the structural adequacy of the design of the temporary structures.

AN18 Place of Public Entertainment

An approval from the Council under Section 68 of the *Local Government Act 1993* may be obtained for a "Place of Public Entertainment Licence" prior to the use of the premises commencing but not for more patrons and hours than are approved by this consent. The applicant may be required to provide evidence of receipt of the approval to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.

AN19 Liquor Licence

An approval under the *Liquor Act 1982* may be obtained prior to the use of the premises commencing but not for more patrons and hours than are approved by this consent. The applicant may be required to provide evidence of receipt of the approval to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.

APPENDIX B

Consultations

From: Aaron Gaida [mailto:agaida@ciaustralia.com.au]

Sent: Friday, 6 November 2015 4:37 PM

To: CEO | NCYC <aaron.harpham@ncyc.net.au>

Subject: RE: NCYC Dry lease

Hi Aaron,

Please be advised that I have discussed the conditions of consent for DA 102-5-2004 regarding your leased premises with Roads and Maritime Services and they have no objection to the space continuing to be used as Commercial Suites following the 10 year period.

As this is a condition imposed upon the premises via Newcastle Council, you will be required to lodge a S96 – Modification of Development Consent Application with Council in order to request the removal of this condition from the consent. Alternatively you may be able to receive written confirmation from the Council that they do not wish to impose this condition upon Newcastle Cruising Yacht Club.

I am happy to discuss this further with you next week as Roads and Maritime Services are required to provide their owners consent signoff to any application lodged over the leased premises.

Regards,



Aaron Gaida | Property Manager|

P: +61 2 8238 0000 | D: +61 2 8238 0080 | M: +61 405 172 300 | F: +61 2 8238 0099
| www.ciaustralia.com.au

