

Notice of determination of modification



17 February 2020

University of Newcastle
130 University Drive
CALLAGHAN NSW 2308

Dear Sir

Modification Application No: DA2018/00933.01

Development Application No: DA2018/00933

Land: Lot 1 DP 1163346
Lot 2 DP 1163346
Lot 3 DP 1163346
Lot 1 DP 1247375
Lot 2 DP 1247375
Lot 3 DP 1247375
Lot 5 DP 1247375
Lot 6 DP 1247375

Property Address: 16 Honeysuckle Drive Newcastle NSW 230016
Honeysuckle Drive Newcastle NSW 2300
430 Hunter Street Newcastle NSW 2300
20B Wright Lane Newcastle NSW 2300
16B Honeysuckle Drive Newcastle NSW 2300
16A Honeysuckle Drive Newcastle NSW 2300

Development: Site preparation works

Your application of 6 November 2019 has been considered, pursuant to the provisions of Section 4.55 of the Act. The application has been **Approved** and the details of development consent granted by Council as per Notice of Determination dated 1 July 2019 are hereby modified, as specifically outlined in the modification details below and in the modified Notice of Determination that follows.

MODIFICATION DETAILS

A. Amended conditions

1. A total monetary contribution of \$99,842.76 is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the commencement of works in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of *The City of*

Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.
- d) CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

| Indexation quarters | Approx release date |
|----------------------------|----------------------------|
| September | Late October |
| December | Late January |
| March | Late April |
| June | Late July |

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

Review of Determination:

- (i) You have the right to request a review of this determination under the Environmental Planning and Assessment Act 1979 provided that this determination is not made in respect of designated or crown development. The determination cannot be reviewed after a 6 month time period, from the date of determination or after an appeal to the Land and Environment Court is disposed of by the Land and Environment Court. To comply with these time frames any request for a review should be promptly made to Council.

Rights of Appeal:

- (ii) If you are dissatisfied with the determination of Council you may appeal to the Land and Environment Court within 6 months after the date on which you receive notice of the determination of the application or review. Otherwise the right to appeal is exercisable in accordance with the rules of the Land and Environment Court.

If you are considering exercising your rights of appeal or lodging a request for a review, it may be advisable to obtain legal advice regarding the interpretation of your rights in relation to such matters.

Ian Clark
SENIOR DEVELOPMENT OFFICER

17 February 2020
Date of Determination

MODIFIED NOTICE OF DETERMINATION

Modified Application No: DA2018/00933.01

SCHEDULE 1

APPROVED DOCUMENTATION

2. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

| Plan No / Supporting Document | Reference / Version | Prepared by | Dated |
|--|---|----------------|---------------|
| Bulk Earthworks Plan - Site 1 Drawing C10.1 | NL172766 Revision 1 | Northrop | 05/07/2018 |
| Statement of Environmental Effects | 218153 | Ethos Urban | 08/03/2019 |
| Heritage Impact Statement | n/a | Curio Projects | August 2018 |
| Aboriginal Cultural Heritage Assessment | n/a | Curio Projects | October 2018 |
| Archaeological Assessment | Revision B | Curio Projects | 16 April 2018 |
| Historical Archaeological Research Design | n/a | Curio Projects | November 2018 |
| Early Works Application - Civil, Water and Sewer | NL 172766 Revision D | Northrop | 04/03/2019 |
| Concept Erosion and Sediment Control Plan Drawing C10.4 | NL172766 Revision 1 | Northrop | 05/07/2018 |
| Electrical and Communications | 2219320 | GHD | March 2019 |
| Site Reticulation Power, Communications and NBN Layout | Drawing No: 22-19320-E002 Rev: D | GHD | 04/03/2019 |
| Preliminary Construction Management Plan | File no: NSW 155 2.6.3 Revision: V1.2 | John staff | 05/03/2019 |
| Contamination Land Management Plan and Unexpected Finds Protocol, Site 1 | 754- NTLEN213472- R05 Rev1 | Coffey | 05/03/2019 |
| Detailed Site Investigation - Site 1 | Revision 2 | Coffey | 05/03/2019 |

| | | | |
|--|---------------------|--------|------------|
| Remedial Action Plan Category 2 | 754-NTLEN213472-R02 | Coffey | 05/03/2019 |
| Dewatering Advice | 754-NTLEN213472-L08 | Coffey | 15/02/2019 |
| Acid Sulfate Soil Management Plan - Site 1 | n/a | Coffey | 08/02/2019 |

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING CONSTRUCTION

3. A total monetary contribution of \$99,842.76 is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the commencement of works in respect of the proposed development.

Note:

- e) This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- f) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- g) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.
- h) CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

| Indexation quarters | Approx release date |
|---------------------|---------------------|
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| June | Late July |

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

4. A dilapidation report prepared by a suitability qualified person shall be submitted to the Certifying Authority, Newcastle City Council and the relevant Roads Authority prior to commencement of any works. The dilapidation report shall document and photograph the current structural condition of the Council and State Government infrastructure and roads. An electronic copy of the dilapidation report is to be provided to Council.
5. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:
 - a) Control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins.
 - b) Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1* (the "Blue Book") published by Landcom, 2004.
6. A separate application must be lodged, and consent obtained from the Roads Authority for all works within the road reserve pursuant to Section 138 *Roads Act 1993* (NSW), before the commencement of works.
7. Any proposed paving works within the public footway are to be in accordance with the requirements of Council's specifications and standards or as directed by the Roads Authority.

Note: It will be necessary for the Developer to notify water, telecommunications, gas and electricity authorities of the proposed paving works to enable the various authorities to carry out and complete any necessary repairs and/or amplification to their respective services before such works are commenced.

8. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveyors and Spatial Information Act 2002*.
9. Prior to commencement of any site works the developer is to submit to Council and the relevant Roads Authority for approval a Construction Traffic Management Plan (TMP) addressing traffic control measures to be utilised in the public road reserve during the construction phase. The TMP is to provide details of any changes to on-street parking, the manoeuvring drawings for the largest truck expected to be used and any special traffic control required for heavy equipment haulage to/from the site.
10. The Construction Traffic Management Plan is to be prepared by a Roads & Traffic Authority accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3 - 2002. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve and shall be submitted to the City of Newcastle and any other relevant authority prior to commencement of any works.

11. Before any works commence on site, all contractors and subcontractors shall undergo an induction session, prepared and delivered by the Heritage Consultant, highlighting the historical significance of the site and in particular those building elements and archaeology requiring conservation.
12. An Aboriginal Heritage Impact Permit (AHIP) shall be obtained if required the Office of Environment and Heritage (OEH) under Part 6 of the *National Parks and Wildlife Act 1974* prior to the commencement of ground disturbance works. The AHIP is to include provision for the completion of Aboriginal archaeological investigations in the form of test excavations and (if required) further salvage activities.

During any excavation work, in the event that any Aboriginal objects are identified within the area of works, works within the immediate vicinity of the Aboriginal object should cease and Office of Environment and Heritage (OEH) should be contacted so that appropriate management strategies can be identified.

In the unlikely event that a potential burial site or potential human skeletal material is exposed, work in the vicinity of the remains is to halt immediately to allow assessment and management. If the remains are suspected to be human, it will be necessary to contact local police, OEH and the Heritage Division to determine an appropriate course of action.

13. Archaeology requirements:
 - a) Prior to any ground disturbance works occurring on site, the Applicant must obtain an approved s.140 application under the *Heritage Act 1977* to undertake archaeological excavation of this site. The Applicant must comply with all the approval conditions of the s.140 approval.
 - b) In the event the subject site is found to contain substantially intact state significant archaeological relics which are undocumented and associated with the pre-1840s convict occupation of Newcastle, modification of the detailed design to avoid harm and retain these in situ should be undertaken. This is consistent with previous advice of the Heritage Council of NSW for this site. Additional approval under s.140 of the *Heritage Act 1977* may be required to harm such remains if detailed design cannot be redesigned to avoid harm to these resources in whole or part.
 - c) The conclusions and recommendations of the 'Archaeological Assessment' (Curio, 18 April 2018) are to be implemented. This includes the investigation and research methodology framework outlined in Historical Research Design (Curio, November 2018).
14. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

15. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.
16. All excavations and backfilling are to be executed in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

17. Any building materials, plant and equipment are to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
18. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
19. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*.
20. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.
21. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
22. The proposed site preparation works being carried out in accordance with the Interim Construction Noise Guidelines prepared by the NSW Environment Protection Authority.

Should Council consider that the works do not comply with the guidelines, the principal contractor will be required to engage an appropriately qualified acoustic consultant to review the works being conducted and make recommendations on any necessary measures required to be implemented within a nominated period to comply with the guidelines. Furthermore, written certification from the said consultant confirming the recommended measures have been satisfactorily implemented will be required to be submitted to the Council within 7 days of the expiration of the nominated period.

23. Council's 'PREVENT POLLUTION' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council's 'PREVENT POLLUTION' sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter at 282 King Street Newcastle.

CONDITIONS TO BE SATISFIED AFTER COMPLETION OF THE APPROVED WORKS

24. A post construction dilapidation report prepared by a suitability qualified person shall be submitted to the Principal Certifying Authority and City of Newcastle within 30 days of

the completion of the proposed development works, to ascertain if any structural damage has occurred to Council's and the relevant Roads Authority infrastructure and roads. The report shall be forwarded to Council and any damages arising due to the construction works will need to be rectified in consultation with Council. In this regard, a separate bond may be required to be provided to Council to ensure that repair works are carried out to Council satisfaction.

25. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's and the relevant Roads Authority satisfaction within 45 days after the completion of the proposed development or alternative arrangements are to be made with Council.
26. The proposed remediation work being carried out in accordance with the requirements set out in the Coffey Services Australia Pty Ltd Remedial Action Plan dated 5 March 2019, the requirements of the appointed NSW EPA Accredited Site Auditor and the conditions of this consent.
27. On completion of all remediation works, a Site Audit Statement (SAS) prepared by a NSW EPA Accredited Site Auditor in accordance with the provisions of the *Contaminated Land Management Act 1997*, shall be submitted to Council, along with the validation and monitoring report.

The SAS is to certify that the site is suitable (Section A SAS) for commercial/industrial and open space/recreational land uses. All submitted documents are to be provided as electronic copies (in pdf file format)

28. The final versions of the following plans are to be agreed to by the appointed NSW EPA Accredited Site Auditor in writing prior to the commencement of any earthworks on the site:
 - The Contaminated Land Management Plan and Unexpected Finds Protocol;
 - The principal contractor's construction environmental management plan, including details of any approvals and/or permits required;
 - The principal contractor's work health and safety plan (as it relates to contaminated land);
 - The environmental consultant's plan for groundwater monitoring and assessment during the development stages of the site;
 - The details of the site-specific Dewatering Management Plan;
 - The details of any required site-specific Acid Sulfate Soils Management Plan; and
 - The environmental consultant's data quality objectives and sampling, analysis and quality plan for remediation and validation.
29. On completion of works on the site, the applicant must write to Council and demonstrate they have satisfied the requirements for lodging all final archaeological excavation reports required under any and all s.140 applications under the *Heritage Act 1977*, which have been approved by the Heritage Council of NSW for this site.

ADVISORY MATTERS

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.

