



Land and Environment Court New South Wales

Case Name: Reinforced Concrete Pipes Australia (NSW) Pty Ltd v Maitland City Council

Medium Neutral Citation: [2024] NSWLEC 1338

Hearing Date(s): Conciliation conference on 12 June 2024

Date of Orders: 19 June 2024

Date of Decision: 19 June 2024

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development Consent No DA2006/1324 is modified in the terms in Annexure B.
(3) Development Consent No DA2006/1324 as modified by the Court is Annexure C.

Catchwords: APPEAL – modification application – alterations to consent for industrial facility for production of concrete pipes – conciliation conference – agreement reached – orders made

Legislation Cited: *Environmental Planning and Assessment Act 1979*, ss 4.15, 4.55, 8.9
Land and Environment Court Act 1979, s 34
Environmental Planning and Assessment Regulation 2021, s 113

Cases Cited: *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd* (No 3) [2015] NSWLEC 75
Ku-ring-gai Council v Buyozo Pty Ltd (2021) 248 LGERA 300; [2021] NSWCA 177

Category: Principal judgment

Parties: Reinforced Concrete Pipes Australia (NSW) Pty Ltd (Applicant)

Maitland City Council (Respondent)

Representation:

Counsel:

T Howard SC/T Poisel (Applicant)

J Farrell (Respondent)

Solicitors:

Hall and Wilcox (Applicant)

Sparke Helmore Lawyers (Respondent)

File Number(s):

2023/297875

Publication Restriction:

Nil

JUDGMENT

- 1 **COMMISSIONER:** In an industrial area in Thornton, the applicant operates an industrial facility at 8 Kestrel Avenue for the manufacture of concrete pipes, following the grant of a development consent in August 2006. The applicant now seeks to modify that consent to reflect changes to the location of plants and infrastructure on the site and to allow the construction of an acoustic barrier, hardstand along the trafficable areas, additional carparking and an updated stormwater management system. It lodged a modification application with Maitland City Council, the respondent, on 30 May 2023. Following the expiry of the period after which a modification application is deemed to be refused, the applicant lodged an appeal pursuant to s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act). In exercising the functions of the consent authority on the appeal, the Court has the power to determine the modification application pursuant to s 4.55(2) of the EPA Act. The final orders in this appeal, outlined in [12] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2 Following an adjournment of the hearing of the appeal, the Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 12 June 2024. I presided over the conciliation conference.
- 3 At the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The signed agreement was provided the same date, following the Council's approval of an application for an amendment to the modification application pursuant to s 113 of the Environmental Planning and Assessment Regulation 2021. The amendments update the location of the pipe machine within the existing shed, update the location and details of the hydraulics room external to the existing shed, incorporate a proposed upgrade to the existing stormwater management system, and change the design of the proposed acoustic barrier including the provision of additional landscaping to assist in screening the wall and softening its appearance.

- 4 The signed agreement is supported by an Agreed Jurisdictional Statement. Based on the Statement, the addendum to the Statement of Environmental Effects dated June 2024 and the documents referred to in Annexure A, I have considered such of the matters referred to in s 4.15(1) of the EPA Act that are of relevance to the development the subject of the application, consistent with s 4.55(3) of the EPA Act.
- 5 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction on the basis that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, for the following reasons:
- Quantitatively, there is no change to the size of the building on the site or to the production of concrete pipes, although there are changes to the location of plant and equipment. The proposed acoustic wall is to reduce acoustic impacts, the hardstand is to reduce air quality impacts, and the updated stormwater management system will better manage stormwater on the site.
 - Qualitatively, the modification results in a built form that is consistent with the approved plans in the development consent and remains for the same purpose.
- 6 The modification application relates to the site identified as Lot 1201 in DP 1043669 (8 Kestrel Avenue), and will also involve vehicular access via the adjoining site identified as Lot 802 in DP 1032401 and Lot 2 in DP 1268876 (21 Firebrick Drive). The registered proprietors of each of these sites have each consented to the lodgement of the modification application.
- 7 To the extent that the modification application relates to works that have already been carried out (such as the relocation of plant and equipment), a modification of a development consent under s 4.55 of the EPA Act may be granted even

where there is a breach of the consent (see *Ku-ring-gai Council v Buyozo Pty Ltd* (2021) 248 LGERA 300; [2021] NSWCA 177 at [35]; *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd* (No 3) [2015] NSWLEC 75 at [113]).

- 8 The modification application was notified by Council between 19 June 2023 and 17 July 2023 in accordance with s 4.55(2)(c) of the EPA Act. In response to the notification of the application, three submissions were received. I have considered the issues raised in the written submissions, some of which may be addressed through the proposed acoustic barrier and the sealing of the accessway.
- 9 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)).
- 10 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the modification application against the discretionary matters that arise pursuant to an assessment under ss 4.55(3) and 4.15(1) of the EPA Act.
- 11 The Court notes that:
 - (1) Pursuant to s 113(4) of the Environmental Planning and Assessment Regulation 2021, the Council agrees to the amendment of Modification Application No DA2006/1324/3 to rely upon the amended plans and documents which are referred to in Annexure A and filed online on 7 June 2024 and in Court on 12 June 2024.
 - (2) The Applicant has agreed to pay the Council’s costs thrown away (as a result of the Applicant’s amended application referred to in (1) above and as a result of the Applicant’s amended application the subject of leave granted by the Court on 4 March 2024) in the amount of \$40,000 (excluding GST).

12 The Court orders that:

- (1) The appeal is upheld.
- (2) Development Consent No DA2006/1324 is modified in the terms in Annexure B.
- (3) Development Consent No DA2006/1324 as modified by the Court is Annexure C.

I certify that this and the preceding 3 pages are a true copy of my reasons for judgment.



.....

J Gray

Commissioner of the Court

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DETERMINATION OF APPLICATION FOR MODIFICATION OF DEVELOPMENT CONSENT

Modification Application No:	DA2006/1324:3
Development Consent modified:	DA2006/1324
Description of development to be carried out under the consent (as previously modified):	Industrial development
Address and particulars of title of land on which development to be carried out:	8 Kestrel Avenue Thornton, NSW Lot 1201 in DP1043669
Description of modification to the development consent:	Section 4.55(2) Modification to Regularise Concrete Batching Plant, Aggregate Storage Bins and Pipe Testing Racks and Install New Acoustic Barrier, Paving, Relocation of On-Site Stormwater Detention

Determination: The development consent is modified as follows:

- 1 Amend condition 2 to read as:
The proposed development is to be carried out in accordance with Development Consent 2006/1324 as modified, as well as the following plans and documentation submitted with modification application 2006/1324:3, as amended by the conditions of this modification.

Plan and document reference	Sheet No.	Revn. No.	Date	Prepared by: (consultant)
Expansion Details to RCPA Facility - Cover Sheet	1 of 7	C	10/05/2024	RCPA Pty Ltd
Site plan, 70-42-0045	2 of 7	C	10/05/2024	RCPA Pty Ltd
Factory layout, 70-42-0045	3 of 7	C	10/05/2024	RCPA Pty Ltd
Extended	4 of 7	C	10/05/2024	RCPA Pty Ltd

factory details, 70-42-0045				
Batch plant and wash pit details, 70-42- 0045	5 of 7	C	10/05/2024	RCPA Pty Ltd
Ingredient bins and pipe testing details, 70-42-0045	6 of 7	C	10/05/2024	RCPA Pty Ltd
Southern border acoustic wall details, 70-42-0045	7 of 7	C	10/05/2024	RCPA Pty Ltd
Landscape Coversheet	000	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Landscape general arrangement, SS24-5347	100	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Long landscape sections, SS24-5347	601	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Detailed landscape section 01 and plant schedule, SS24-5347	602	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Detailed landscape section 02, SS24-5347	603	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Maintenance schedule, SS24-5347	700	B	10/05/2024	Site Image Landscape Architects
Proposed Acoustic Wall, Concept Design for Development	000	B	09/05/2024	Hoolihan Partners

Approval Title Sheet				
Acoustic wall, Plan, 29119	101	B	09/05/2024	Hoolihan Partners
Acoustic wall, Elevation, 29119	102	B	09/05/2024	Hoolihan Partners
Acoustic wall, Sections, 29119	103	B	09/05/2024	Hoolihan Partners
Acoustic wall, Sections, 29119	104	B	09/05/2024	Hoolihan Partners
Stormwater Upgrade to Existing Manufacturing Plant - Cover Sheet and Notes	C01	C	31/05/2024	Taylor Civil and Structural
Stormwater Upgrade to Existing Manufacturing Plant - Concept Stormwater and Levels plan	C02	E	31/05/2024	Taylor Civil and Structural
Stormwater Upgrade to Existing Manufacturing Plant - Stormwater Flow Diagram and Long Section	C03	B	31/05/2024	Taylor Civil and Structural
Stormwater Upgrade to Existing Manufacturing Plant - Pavement Plan	C04	E	31/05/2024	Taylor Civil and Structural
Stormwater Upgrade to Existing Manufacturing Plant - Stormwater Details	C10	E	31/05/2024	Taylor Civil and Structural
Stormwater Upgrade to Existing	C01	C	31/05/2024	Taylor Civil and Structural

**Manufacturing
Plant - Cover
Sheet and
Notes**

Document Title	Author	Reference	Date
Noise Management Plan	RCPA Pty Ltd	-	16/02/2024
Operational Environmental Management Plan	RCPA Pty Ltd	-	16/02/2024
Desktop contamination assessment and materials management plan	Douglas Partners	226909.01.R.001 Rev0	27/05/2024
Geotechnical report on assessment of retaining wall and acoustic barrier foundations	Douglas Partners	226909.00, Rev 0	29/01/2024
Geotechnical investigation – additional information report	Douglas Partners	226909.00, Rev 0	24/05/2024
Retaining wall structural integrity assessment	Hoolihan Partners	29119	15/02/2024
Operational noise and vibration assessment	Acoustics Consultants Australia	11.00398R-05	20/02/2024
Operational noise and vibration contentions response	Acoustics Consultants Australia	11.00398R-06	26/04/2024
Stormwater addendum report	Taylor Civil and Structural	2164B	24/04/2024

In the event of any inconsistency between Development Consent DA2006/1324 as modified and this modification approval DA2006/1324:3, this modification approval shall prevail to the extent of any inconsistency.

- 2 Delete Condition 4 and replace with:
Driveways, parking areas and vehicular turning areas are to be constructed in accordance with the approved plans.

3 Add condition 6A after condition 6 as follows:

6A Car parking details

Prior to the issue of a Construction Certificate for the Acoustic Wall, a suitably qualified engineer must review the plans which relate to parking facilities and provide written certification to the certifier that it complies with the relevant parts of AS 2890 Parking Facilities – Off-Street Carparking and Council's development control plan in regard to sight triangle, minimum driveway width, passing bay details, turning arrangement, design, clearances to obstructions, space sizes, aisle width according to the relevant Vehicle Class.

4 Add condition 6B after condition 6A as follows:

6B Prior to issue of an Occupation Certificate for the Acoustic Wall, to provide shade and to soften the visual impact of parking facilities, 4 suitable canopy trees shall be provided in and between car parking spaces (calculated at 1 tree per 10 spaces per controls in MDCP2011 section C.11(2.7), with 34 spaces pertaining to building 2A). Trees shall have a minimum pot size of 25L at planting and be capable of achieving a 20m² crown cover upon maturity. If this results in the loss of car parking spaces, the approved plans are amended by this condition accordingly.

5 Modify condition 12 to delete the following words:

"including siltation basin"

6 Add condition 12A after condition 12 as follows:

12A Stormwater Drainage requirements

Prior to issue of a Construction Certificate for the Acoustic Wall, a suitably qualified engineer must review the plans which relate to stormwater drainage and provide written certification to the certifier that the following stormwater requirements are complied with, in accordance with Council's Manual of Engineering Standards:

- a) Minimum storage volume of 600m³ for on-site detention (OSD) with a maximum permissible site discharge (entire site) limited to 1.15m³/second for the 1% AEP event and generally in accordance with Civil Concept Design for Stormwater Upgrades prepared by Taylor Civil & Structural, Consulting Engineers (Drawings: 2164-C01/C, C02/E, C03/B, C04/E & C10/E), and*
- b) Provide a staged outlet that reduces post-developed discharges to pre-developed discharges for the 63.2%, 10% and 1 % AEP critical storm events, and*
- c) Detailed pavement finished surface levels demonstrating 1% conveyance paths to, and 1% inlet capacity into the OSD tank/structure, and*
- d) Structural certification is required for the detention systems, and*
- e) Safety fencing of any open water storage structures, and*
- f) An emergency overland flow path for major storm events, that is directed to the public drainage system, and*
- g) Entrapment of gross pollutants, nutrients and hydrocarbons generated from the contributing ground-surface catchment areas, and*

- h) Conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties).*

- 7 Add condition 12B after condition 12A as follows:

12B Stormwater System Maintenance Procedure Plan

Prior to the issue of a Construction Certificate for the Acoustic Wall, a Stormwater System Maintenance Procedure Plan shall be prepared by an engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator and to Maitland City Council for supply of future owners as needed.

- 8 Add condition 12C after condition 12B as follows:

12C Construction of stormwater control system

Prior to issue of the Occupation Certificate for the Acoustic Wall, the stormwater-control system shall be constructed in accordance with the approved stormwater drainage plan. A qualified engineer shall supply written certification to the Principal Certifier and Council that the constructed system including detention volume and discharge rates achieve the consent requirements for detention.

- 9 Add condition 12D as follows:

12D Works-as executed plans and other documentary evidence

Prior to the issue of the Occupation Certificate for the Acoustic Wall, the applicant must submit, to the principal certifier and the Council, surveyed works-as-executed plans prepared by a Registered Surveyor, any compliance certificates, structural certifications and any other evidence confirming the following completed works:

- a) All stormwater drainage systems and storage systems; and*
- b) Acoustic wall.*

- 10 Add condition 15A after condition 15 as follows:

15A Prior to works commencing for DA/2006/1324:3:

- a) The applicant shall submit to Council a "Notice of Commencement" form at least two (2) days prior to the commencement of construction works.*
- b) Prior to the commencement of works an application for a Construction Certificate shall be submitted to, and be approved by, the certifier.*

- 11 Add condition 17A after condition 17 as follows:

17A Any residue of wet cement or cementitious waste-water shall be disposed of into a waste receptacle for disposal off-site (or into sewer in accordance with a Trade Waste Agreement with Hunter Water Corporation), and not into the stormwater system.

- 12 Add condition 17B after condition 17A as follows:

17B Within 4 weeks from the date of approval of DA/2006/1324:3 (unless

otherwise agreed in writing by Council), an amended Noise Management Plan (inclusive of a noise monitoring program) shall be submitted to Council for approval. Upon approval by Council, the development, including ongoing operations is to be carried out in accordance with the noise and vibration conditions contained within this document.

13 Add condition 17C after condition 17B as follows:

17C Within 4 weeks from the date of approval of DA/2006/1324:3 (unless otherwise agreed in writing by Council), an amended Operational Environmental Management Plan that includes consideration of the batching plant operations shall be submitted to Council for approval. Upon approval by Council, the development, including ongoing operations is to be carried out in accordance with this document.

14 Add condition 17D after condition 17C as follows:

17D The Acoustic Wall must be constructed within 14 weeks from the date of the Construction Certificate for the Acoustic Wall. Production of concrete products shall be limited to 15,000tpa commencing from the date of approval of DA/2006/1324:3 until such time as both an acoustic certification and an engineering certification are provided to the Council confirming that the Acoustic Wall complies with the approved plans.

15 Add condition 17E after condition 17D as follows:

17E The following noise mitigation measures identified in the Operational Noise and Vibration Assessment prepared by Acoustics Consultants Australia (Report 11.00398R-05, dated 20/2/2024) must be implemented within 12 weeks from the date of approval of DA/2006/1324:3:

- 1. Subject to item 2 below, disconnection of the vibrators on the externally located hoppers and conveyors.*
- 2. Replacing the one critical electrical vibrator on the overhead aggregate bin with a lower noise pneumatic agitator.*
- 3. Installing and maintaining noise curtains around the perimeter of the overhead aggregate bin hopper. The noise curtains shall be replaced where deterioration has occurred.*
- 4. Installing and maintaining noise curtains in front of the hydraulic room roller door facing the south-west boundary. The noise curtains shall be replaced where deterioration has occurred.*
- 5. Internally lining the walls of the pipe machine (radial press) building with sound absorbing material.*
- 6. Replacing the front-end loader (FEL) reverse alarm with a non-tonal type.*
- 7. Modifying FEL loading practice to discontinue shaking the FEL bucket.*

16 Add condition 17F after condition 17E as follows:

17F The development, including operations must comply with the following noise and vibration criteria:

1. *the PNTLs at residential, commercial, educational and industrial receivers provided in the response to contentions – Table 3.8 of the Operational Noise and Vibration Assessment prepared by Acoustics Consultants Australia (Report 11.00398R-05, dated 20/2/2024).*
2. *the maximum noise trigger levels (sleep disturbance screening levels) at residential, receivers provided in the response to contentions – Table D.13 of the Operational Noise and Vibration Assessment prepared by Acoustics Consultants Australia (Report 11.00398R-05, dated 20/2/2024).*
3. *the relevant vibration levels for commercial receivers outlined in the NSW EPA's Assessing Vibration a Technical Guideline (AVTG) with respect to human comfort.*

- 17 Add condition 17G after condition 17F as follows:

17G Within 6 weeks of the completion of the Acoustic Wall (unless otherwise agreed in writing by Council), the Applicant must provide Council with a noise monitoring report measuring the parameters specified in condition 17F.

- 18 Add condition 17H after condition 17G as follows:

17H. Not used

- 19 Add condition 17I after condition 17H as follows:

17I The applicant shall prepare and implement a complaint management process for the site operations. The complaint management process shall include a complaints register and actions that are to be undertaken to address complaints that are received. The complaint management process shall be recorded in the approved Operational Environmental Management Plan.

- 20 Add condition 17J after condition 17I as follows:

17J. Not used

- 21 Add condition 17K after condition 17J as follows:

17K Within 6 months of the date of issue of the Construction Certificate for the Acoustic Wall (unless otherwise agreed in writing by Council), an air quality management plan is to be submitted to the Council. Dust from site operations, including vehicle movements, the operation of machinery and construction activities shall be minimised and managed in accordance with the approved air quality management plan.

- 22 Add condition 17L after condition 17K as follows:

17L Prior to the sealing of the driveway as per approved plans and on an ongoing basis as needed, a mobile tanker shall be utilised for dust suppression. The mobile tanker shall be equipped with a pump and sprays capable of spraying water to suppress dust across the entirety of the site. This equipment shall be used to suppress dust from all roadways, loading and unloading operations.

- 23 Add condition 28A after condition 28 as follows:

28A Completion of landscape and tree works

Before the issue of an Occupation Certificate for the Acoustic Wall, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this modification approval.

- 24 Add condition 28B after condition 28A as follows:

28B Within 2 years of the date of this modification approval (unless otherwise agreed in writing by Council) the applicant must obtain an Occupation Certificate for the Acoustic Wall.

- 25 Add condition 33 after condition 32 as follows:

33 Maintenance of Wastewater and stormwater treatment device

During occupation and ongoing use of the building, the applicant must ensure all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) are regularly maintained, to remain effective and in accordance the Stormwater System Maintenance Procedure Plan.

- 26 Add condition 34 after condition 33 as follows:

34 Water Quality Monitoring

Water quality monitoring is required for three years to ensure ongoing operation of the facility is not polluting downstream waterways. Monitoring shall be conducted at the outlet of the On-Site Detention (OSD) tank, being the primary discharge point where site water flows into the easement.

Following issue of an Construction Certificate relating to the acoustic barrier, water quality monitoring shall be conducted and reports supplied to Council, prepared by a suitably qualified consultant annually for a period of 3 years thereafter Water monitoring shall test at times of discharge:

- oil and grease,*
- pH;*
- total suspended solids*

- 27 Add condition 35 after condition 34 as follows:

35 Maintenance of Landscaping

Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

- 28 Add condition 36 after condition 35 as follows:

36 Within 8 weeks from the date of approval of modification application DA/2006/1324:3 (unless otherwise agreed in writing by Council), the Applicant must submit to Council for approval an Operational Waste Management Plan. The development shall operate in accordance with the approved Operational Waste Management Plan.

- 29 Add the following heading after condition 36 as follows:

STRUCTURAL DESIGN

- 30 Add condition 37 after the heading 'STRUCTURAL DESIGN' as follows:

37 Acoustic Wall

Prior to the issue of a construction certificate for the Acoustic Wall a structural engineer shall design the acoustic wall and footings generally in accordance with the Proposed Acoustic Wall Plans (Rev B, dated 9 May 2024) by Hoolihan Partners and the design parameters and recommendations presented in the geotechnical report dated 24 May 2024 prepared by Douglas Partners.

- 31 Add condition 38 after condition 37 as follows:

38 Stormwater Infrastructure

Prior to the issue of a construction certificate a structural engineer shall design the stormwater infrastructure and footings of the onsite detention tank and GPT in accordance with the design parameters and recommendations presented in the geotechnical report dated 24 May 2024 prepared by Douglas Partners.

- 32 Add the following heading after condition 38 as follows:

BATCHING PLANT OPERATIONS

- 33 Add condition 39 after the heading 'BATCHING PLANT OPERATIONS' as follows:

39 Waste materials (including excavated material) are to be handled in accordance with relevant waste legislation and the approved Desktop Contamination Assessment and Materials Management Plan.

- 34 Add condition 40 after condition 39 as follows:

40 Prior to site activities exceeding operating capacity of 30,000tpa and increasing production beyond 12 hours per day, the applicant must satisfy the conditions of this consent and must obtain an environment protection licence in accordance with the requirements of the Protection of the Environment Operations Act 1997.

Annexure C

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2006/1324:3

Development: Industrial development

Site: 8 Kestrel Avenue Thornton, NSW
Lot 1201 in DP1043669

Schedule of Modifications:

Date approved	Modification Application Number	Decision maker (Land and Environment Court or relevant council)	Proceedings Name and Number (if applicable)
02/06/2014	DA2006/1324:1	Maitland City Council	NA
10/06/2014	DA2006/1324:2	Maitland City Council	NA
19/06/2024	DA2006/1324:3	Land and Environment Court	Reinforced Concrete Pipes (NSW) Pty Ltd v Maitland City Council; LEC No: 2023/297875

Date of determination: 29 August 2006

Date from which consent takes effect: Date of determination

Schedule of Conditions DA 06-1324

COMPLIANCE

Reason: The following condition(s) have been applied to confirm and clarify the terms of Council's Approval.

1. The applicant shall comply with all conditions within this schedule prior to occupancy of the proposed development.
2. The proposed development is to be carried out in accordance with Development Consent 2006/1324 as modified, as well as the following plans and documentation submitted with modification application 2006/1324:3, as amended by the conditions of this modification:

Plan and document reference	Sheet No.	Revn. No.	Date	Prepared by: (consultant)
Expansion Details to RCPA Facility - Cover Sheet	1 of 7	C	10/05/2024	RCPA Pty Ltd
Site plan, 70-42-0045	2 of 7	C	10/05/2024	RCPA Pty Ltd
Factory layout, 70-42-0045	3 of 7	C	10/05/2024	RCPA Pty Ltd
Extended factory details, 70-42-0045	4 of 7	C	10/05/2024	RCPA Pty Ltd
Batch plant and wash pit details, 70-42-0045	5 of 7	C	10/05/2024	RCPA Pty Ltd
Ingredient bins and pipe testing details, 70-42-0045	6 of 7	C	10/05/2024	RCPA Pty Ltd
Southern border acoustic wall details, 70-42-0045	7 of 7	C	10/05/2024	RCPA Pty Ltd
Landscape Coversheet	000	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Landscape general arrangement, SS24-5347	100	B	10/05/2024	Site Image Landscape Architects
Landscaping plans (acoustic wall), Long landscape sections, SS24-5347	601	B	10/05/2024	Site Image Landscape Architects
Landscaping plans	602	B	10/05/2024	Site Image Landscape

(acoustic wall), Detailed landscape section 01 and plant schedule, SS24-5347					Architects
Landscaping plans (acoustic wall), Detailed landscape section 02, SS24-5347	603	B	10/05/2024	Site Image Landscape Architects	
Landscaping plans (acoustic wall), Maintenance schedule, SS24-5347	700	B	10/05/2024	Site Image Landscape Architects	
Proposed Acoustic Wall, Concept Design for Development Approval Title Sheet	000	B	09/05/2024	Hoolihan Partners	
Acoustic wall, Plan, 29119	101	B	09/05/2024	Hoolihan Partners	
Acoustic wall, Elevation, 29119	102	B	09/05/2024	Hoolihan Partners	
Acoustic wall, Sections, 29119	103	B	09/05/2024	Hoolihan Partners	
Acoustic wall, Sections, 29119	104	B	09/05/2024	Hoolihan Partners	
Stormwater Upgrade to Existing Manufacturing Plant - Cover Sheet and Notes	C01	C	31/05/2024	Taylor Civil and Structural	
Stormwater Upgrade to Existing Manufacturing	C02	E	31/05/2024	Taylor Civil and Structural	

Plant - Concept Stormwater and Levels plan	C03	B	31/05/2024	Taylor	Civil
Stormwater Upgrade to Existing Manufacturing Plant - Stormwater Flow Diagram and Long Section	C04	E	31/05/2024	Taylor	Civil
Stormwater Upgrade to Existing Manufacturing Plant - Pavement Plan	C10	E	31/05/2024	Taylor	Civil
Stormwater Upgrade to Existing Manufacturing Plant - Stormwater Details	C01	C	31/05/2024	Taylor	Civil
Stormwater Upgrade to Existing Manufacturing Plant - Cover Sheet and Notes				and Structural	and Structural

Document Title	Author	Reference	Date
Noise Management Plan	RCPA Pty Ltd	-	16/02/2024
Operational Environmental Management Plan	RCPA Pty Ltd	-	16/02/2024
Desktop contamination assessment and materials management plan	Douglas Partners	226909.01.R.001 Rev0	27/05/2024

Geotechnical report on assessment of retaining wall and acoustic barrier foundations	Douglas Partners	226909.00, Rev 0	29/01/2024
Geotechnical investigation – additional information report	Douglas Partners	226909.00, Rev 0	24/05/2024
Retaining wall structural integrity assessment	Hoolihan Partners	29119	15/02/2024
Operational noise and vibration assessment	Acoustics Consultants Australia	11.00398R-05	20/02/2024
Operational noise and vibration contentions response	Acoustics Consultants Australia	11.00398R-06	26/04/2024
Stormwater addendum report	Taylor Civil and Structural	2164B	24/04/2024

In the event of any inconsistency between Development Consent DA2006/1324 as modified and this modification approval DA2006/1324:3, this modification approval shall prevail to the extent of any inconsistency.

3. The provision of on-site parking in accordance with Council's Car Parking Policy adopted 30th July, 2006. For the subject application the required car parking has been assessed at a minimum of 20 spaces.
4. Driveways, parking areas and vehicular turning areas are to be constructed in accordance with the approved plans.
5. All parking and loading/unloading bays, truck docks, driveways and turning areas are to be maintained clear of obstructions and under no circumstances are to be used for the storage of goods or waste materials.
6. All parking and loading bays shall be permanently marked out on the pavement surface, with loading bays being clearly indicated by means of appropriate signage.

6A. Car parking details

Prior to the issue of a Construction Certificate for the Acoustic Wall, a suitably qualified engineer must review the plans which relate to parking facilities and

provide written certification to the certifier that it complies with the relevant parts of AS 2890 Parking Facilities – Off-Street Carparking and Council's development control plan in regard to sight triangle, minimum driveway width, passing bay details, turning arrangement, design, clearances to obstructions, space sizes, aisle width according to the relevant Vehicle Class.

6B.

Prior to issue of an Occupation Certificate for the Acoustic Wall, to provide shade and to soften the visual impact of parking facilities, 4 suitable canopy trees shall be provided in and between car parking spaces (calculated at 1 tree per 10 spaces per controls in MDCP2011 section C.11(2.7), with 34 spaces pertaining to building 2A). Trees shall have a minimum pot size of 25L at planting and be capable of achieving a 20m² crown cover upon maturity. If this results in the loss of car parking spaces, the approved plans are amended by this condition accordingly.

DESIGN

Reason: The following condition(s) have been applied to ensure that:

- i. Buildings are constructed in a manner which has regard for the constraints affecting the subject land.
- ii. Buildings are constructed of suitable materials with respect to their function and location and that colour schemes and restoration works are appropriate and retain the integrity of existing structures.

7. The colour scheme shall match that of the existing and is approved as follows:

Walls	Colorbond 'Gull Grey'
Guttering	Colorbond 'Mountain Blue'
Roller Doors	Colorbond 'Gull Grey'
Roof	Zincalume
Downpipes	Colorbond 'Gull Grey'
Barges	Colorbond 'Mountain Blue'

CONTRIBUTIONS/FEEES

Reason: The following condition(s) have been applied to ensure that:

- i. Where the proposed development results in an increased demand for public amenities and services, payment towards the cost of providing those facilities/services is made in accordance

with Council's adopted contributions plan prepared via the provisions of section 94 of the *Environmental Planning and Assessment Act, 1979*.

- ii. Council's administration expenses are met with respect to the processing of the application.

8. Pursuant to Section 80A(1) of the *Environmental Planning and Assessment Act 1979*, and the Maitland S94A Levy Contributions Plan 2006, a contribution of \$4,500 shall be paid to the Council.

The above amount is to be adjusted at the time of the actual payment, in accordance with the provisions of the Maitland City Council S94A Levy Contributions Plan 2006.

The time of the above payment shall be as follows:

- Development applications involving building work - prior to release of the Construction Certificate.
- Development involving both subdivision and building work (eg. integrated housing developments) - prior to the release of the Construction Certificate, or the release of the Subdivision Certificate, whichever occurs first.
- Development applications where no construction certificate is required - prior to issue of an Occupation Certificate.

DRAINAGE

9. The completed building is to have a drainage system so that:
 - a. the land surrounding any structure is graded to divert surface water to the street, and is clear of existing and proposed structures and adjoining premises, and
 - b. if the water drains to the rear of the property, it is collected and drained via a gravity system to a Council stormwater line or disposed of in a manner consistent with Council's soil and water management policy.
10. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the area and are to be constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.

Where a retaining wall is planned for this purpose and such wall exceeds 1.0m in height at any part from finished ground level, plans and specifications for this construction **SHALL BE CHECKED AND APPROVED BY THE PCA BEFORE WORK ON THE RETAINING WALL COMMENCES.**

Plans and specifications for retaining walls greater than 1.0m in height **MUST BE CERTIFIED BY AN ACCREDITED CERTIFIER.**

Note: The submission of a separate Development Application is not required where a retaining wall has been indicated on the approved plans and is associated with this approval.

11. Prior to issue of the Construction Certificate, a detailed stormwater drainage plan, incorporating the relocation of the existing Interallotment Drainage Line traversing the site, is to be designed in accordance with Council's Manual Of Engineering Standards, and approved by the Principal Certifying Authority.

The design shall be generally based on the concept plan number 06124 dated 18.08.06.

12. Prior to issue of the Occupation Certificate, the stormwater system shall be constructed in accordance with the approved plans. Any variation to the works shall be approved by the designer, and a copy of Work As-Executed drawings shall be submitted to Council with the certificate.

12A. Stormwater Drainage requirements

Prior to issue of a Construction Certificate for the Acoustic Wall, a suitably qualified engineer must review the plans which relate to stormwater drainage and provide written certification to the certifier that the following stormwater requirements are complied with, in accordance with Council's Manual of Engineering Standards:

- a. Minimum storage volume of 600m³ for on-site detention (OSD) with a maximum permissible site discharge (entire site) limited to 1.15m³/second for the 1% AEP event and generally in accordance with Civil Concept Design for Stormwater Upgrades prepared by Taylor Civil & Structural, Consulting Engineers (Drawings: 2164-C01/C, C02/E, C03/B, C04/E & C10/E), and
- b. Provide a staged outlet that reduces post-developed discharges to pre-developed discharges for the 63.2%, 10% and 1 % AEP critical storm events, and
- c. Detailed pavement finished surface levels demonstrating 1% conveyance paths to, and 1% inlet capacity into the OSD tank/structure, and
- d. Structural certification is required for the detention systems, and
- e. Safety fencing of any open water storage structures, and
- f. An emergency overland flow path for major storm events, that is directed to the public drainage system, and
- g. Entrapment of gross pollutants, nutrients and hydrocarbons generated from the contributing ground-surface catchment areas, and
- h. Conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties).

12B. Stormwater System Maintenance Procedure Plan

Prior to the issue of a Construction Certificate for the Acoustic Wall, a Stormwater System Maintenance Procedure Plan shall be prepared by an engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator and to Maitland City Council for supply of future owners as needed.

12C. Construction of stormwater control system

Prior to issue of the Occupation Certificate for the Acoustic Wall, the stormwater-control system shall be constructed in accordance with the approved stormwater drainage plan. A qualified engineer shall supply written certification to the Principal Certifier and Council that the constructed system including detention volume and discharge rates achieve the consent requirements for detention.

12D. Works-as executed plans and other documentary evidence

Prior to the issue of the Occupation Certificate for the Acoustic Wall, the applicant must submit, to the principal certifier and the Council, surveyed works-as-executed plans prepared by a Registered Surveyor, any compliance certificates, structural certifications and any other evidence confirming the following completed works:

- a. All stormwater drainage systems and storage systems; and
- b. Acoustic wall.

Standard Building Conditions

Reason: The objectives of the following conditions is to draw to the attention of the applicant and owner their responsibilities to comply with various provisions of the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulations, 2000*, *Local Government Act 1993*; Regulations, Building Code of Australia and Local Policies relating to building construction and maintenance.

BEFORE ANY WORK COMMENCES

13. At least two days before any site work, building or demolition begins, the applicant must:

- a. Ensure that a "Construction Certificate" issued by an accredited Principal Certifying Authority (PCA) is obtained prior to commencing any construction works, and
- b. Where Council is *not* the PCA, submit to Council a "Notice of Appointment" of the PCA at least two (2) days prior to the commencement of construction works.

14. Where Council is the PCA the applicant shall submit to Council a "Notice of Commencement" at least two (2) days prior to the commencement of construction works.

15. Before any site works, building or demolition begins, the applicant must:

- a. notify Council of the name, address, phone number and licence number of the Principal Building Contractor and, where applicable, Home Owners Warranty insurance details, and
- b. erect signage at the front of the property with the PCA's and Principal Contractor's name, and contact number, site address and the number given by the Council to the application for the development approval, and
- c. provide temporary on-site toilet facilities if access to existing toilets is not adequate, and
- d. protect and support any neighbouring buildings and land, and
- e. protect any public land or place from obstruction, inconvenience or damage due to the carrying out of the development, and
- f. prevent any substance from falling onto any public land or place, and
- g. provide suitable and adequate measures to restrict public access to the site and building works, materials and equipment, and
- h. pay any Section 94 contributions if required by a contributions plan applying to the land, and
- i. comply with any other conditions prescribed by the *Environmental Planning & Assessment Regulation*.

Note: Various items do-not impose a requirement on an applicant where complied with by the builder.

15A. Prior to works commencing for DA/2006/1324:3:

- a. The applicant shall submit to Council a "Notice of Commencement" form at least two (2) days prior to the commencement of construction works.
- b. Prior to the commencement of works an application for a Construction Certificate shall be submitted to, and be approved by, the certifier.

SITE MANAGEMENT

16. Run-off and erosion controls must be implemented before construction to prevent soil erosion, water pollution or the discharge of loose sediment on surrounding land, as follows:

- a. erect a silt fence to prevent debris escaping into drainage systems or waterways, and

- b. prevent tracking of sediment by vehicles onto road B, and
- c. stockpile topsoil, excavated material, construction and landscaping supplies and debris within the site. In particular, no building materials, refuse or spoil shall be deposited on, or be allowed to remain on, Council's footpath.

17. Removal or disturbance of vegetation and topsoil must be confined to within 3 metres of the proposed building.

17A. Any residue of wet cement or cementitious waste-water shall be disposed of into a waste receptacle for disposal off-site (or into sewer in accordance with a Trade Waste Agreement with Hunter Water Corporation), and not into the stormwater system.

17B. Within 4 weeks from the date of approval of DA/2006/1324:3 (unless otherwise agreed in writing by Council), an amended Noise Management Plan (inclusive of a noise monitoring program) shall be submitted to Council for approval. Upon approval by Council, the development, including ongoing operations is to be carried out in accordance with the noise and vibration conditions contained within this document.

17C. Within 4 weeks from the date of approval of DA/2006/1324:3 (unless otherwise agreed in writing by Council), an amended Operational Environmental Management Plan that includes consideration of the batching plant operations shall be submitted to Council for approval. Upon approval by Council, the development, including ongoing operations is to be carried out in accordance with this document.

17D. The Acoustic Wall must be constructed within 14 weeks from the date of the Construction Certificate for the Acoustic Wall. Production of concrete products shall be limited to 15,000tpa commencing from the date of approval of DA/2006/1324:3 until such time as both an acoustic certification and an engineering certification are provided to the Council confirming that the Acoustic Wall complies with the approved plans.

17E. The following noise mitigation measures identified in the Operational Noise and Vibration Assessment prepared by Acoustics Consultants Australia (Report 11.00398R-05, dated 20/2/2024) must be implemented within 12 weeks from the date of approval of DA/2006/1324:3:

1. Subject to item 2 below, disconnection of the vibrators on the externally located hoppers and conveyors.
2. Replacing the one critical electrical vibrator on the overhead aggregate bin with a lower noise pneumatic agitator.
3. Installing and maintaining noise curtains around the perimeter of the overhead aggregate bin hopper. The noise curtains shall be replaced where deterioration has occurred.
4. Installing and maintaining noise curtains in front of the hydraulic room roller door facing the south-west boundary. The noise curtains shall be replaced where deterioration has occurred.
5. Internally lining the walls of the pipe machine (radial press) building with sound absorbing material.

6. Replacing the front-end loader (FEL) reverse alarm with a non-tonal type.
7. Modifying FEL loading practice to discontinue shaking the FEL bucket.

17F. The development, including operations must comply with the following noise and vibration criteria:

1. the PNTLs at residential, commercial, educational and industrial receivers provided in the response to contentions – Table 3.8 of the Operational Noise and Vibration Assessment prepared by Acoustics Consultants Australia (Report 11.00398R-05, dated 20/2/2024).
2. the maximum noise trigger levels (sleep disturbance screening levels) at residential, receivers provided in the response to contentions – Table D.13 of the Operational Noise and Vibration Assessment prepared by Acoustics Consultants Australia (Report 11.00398R-05, dated 20/2/2024).
3. the relevant vibration levels for commercial receivers outlined in the NSW EPA's Assessing Vibration a Technical Guideline (AVTG) with respect to human comfort.

17G. Within 6 weeks of the completion of the Acoustic Wall (unless otherwise agreed in writing by Council), the Applicant must provide Council with a noise monitoring report measuring the parameters specified in condition 17F.

17H. Not used.

17I. The applicant shall prepare and implement a complaint management process for the site operations. The complaint management process shall include a complaints register and actions that are to be undertaken to address complaints that are received. The complaint management process shall be recorded in the approved Operational Environmental Management Plan.

17J. Not used.

17K. Within 6 months of the date of issue of the Construction Certificate for the Acoustic Wall (unless otherwise agreed in writing by Council), an air quality management plan is to be submitted to the Council. Dust from site operations, including vehicle movements, the operation of machinery and construction activities shall be minimised and managed in accordance with the approved air quality management plan.

17L. Prior to the sealing of the driveway as per approved plans and on an ongoing basis as needed, a mobile tanker shall be utilised for dust suppression. The mobile tanker shall be equipped with a pump and sprays capable of spraying water to suppress dust across the entirety of the site. This equipment shall be used to suppress dust from all roadways, loading and unloading operations.

DEMOLITION

18. Any demolition works authorised by the certificate are to be carried out in accordance with AS 2601 – 2001 'The Demolition of Structures' and comply with any Council policy on waste management.

HOURS OF WORK

19. Any building work must be carried out between 7.00am and 6.00pm Monday to Fridays, and 7.00am to 5.00pm Saturdays, with no work permitted on Sundays or public holidays that may cause offensive noise.

CONSTRUCTION WITHIN BOUNDARIES

20. The owner of the property is to ensure that any structure, including a retaining wall, is constructed:
- a. to meet the setback requirements of the approved plans, and
 - b. so as to be clear of any boundary line and wholly within the confines of the lot, and
 - c. so as to be clear of any easement/s located within the allotment other than as may be approved on the stamped plans and specifications.

SITE ACCESS

21. If kerb and gutter is provided, driveways are to be a minimum of 500 millimetres clear of all drainage structures on the kerb and gutter and are not to interfere with the existing public utility infrastructure, including Council drainage structures, unless prior approval is obtained from the relevant authority.

22. Internal Driveways are to be constructed in accordance with any relevant requirements of AS 2890.1-1993 Parking Facilities Part 1: 'Off-Street Car Parking', with appropriate transition zones.

Note: The applicant is required to notify Council in writing, prior to commencing building operations, of any existing damage to kerbing and guttering and/or footpath paving. The absence of such notification shall signify that no damage exists and that the applicant will be liable for the cost of the reinstatement of any damage to kerbing and guttering or footpath paving which may be necessary after completion of the building operation.

SEWER AND DRAINAGE APPROVAL

23. Before a building is occupied, an approval from Hunter Water Corporation must be obtained, if required, for the water and sewerage connection.

CONSTRUCTION WORKS

24. All building work must be carried out in accordance with the provisions of the Building Code of Australia and in a professional and tradesperson like manner.
25. The proposed development is to be carried out strictly in accordance with the plans and documentation submitted with the application and any amendments to those plans arising through conditions to this consent.

GENERAL

26. Throughout the course of construction MANDATORY CRITICAL STAGE INSPECTIONS and any additional inspections nominated by the PCA are

required to be carried out in accordance with the Notice of Inspections provided by the PCA.

27. The owner and applicant should note that the issue of this development consent does not amount to a release, variation or modification by Council of any covenant or 'restriction as to user' applicable to this property and that any action taken by the applicant in accordance with the consent which results in any loss or damage by way of breach of the covenant will not be the responsibility of Council.

28. Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.

28A. Completion of landscape and tree works

Before the issue of an Occupation Certificate for the Acoustic Wall, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this modification approval.

28B.

Within 2 years of the date of this modification approval (unless otherwise agreed in writing by Council) the applicant must obtain an Occupation Certificate for the Acoustic Wall.

AT THE COMPLETION OF WORKS

29. The site is to be cleared of all building refuse and spoil immediately after completion of the building/structure.

30. The development or any portion of the development SHALL NOT BE USED OR OCCUPIED UNTIL an Occupation Certificate has been issued.

31. Hours of operation for the development are 24 hours a day seven (7) days a week.

32. The annual output of the site shall not exceed 60,000 tonnes.

33. Maintenance of Wastewater and stormwater treatment device

During occupation and ongoing use of the building, the applicant must ensure all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) are regularly maintained, to remain effective and in accordance the Stormwater System Maintenance Procedure Plan.

34. Water Quality Monitoring

Water quality monitoring is required for three years to ensure ongoing operation of the facility is not polluting downstream waterways. Monitoring

shall be conducted at the outlet of the On-Site Detention (OSD) tank, being the primary discharge point where site water flows into the easement.

Following issue of an Construction Certificate relating to the acoustic barrier, water quality monitoring shall be conducted and reports supplied to Council, prepared by a suitably qualified consultant annually for a period of 3 years thereafter Water monitoring shall test at times of discharge:

- oil and grease,
- pH;
- total suspended solids

35. Maintenance of Landscaping

Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

36. Within 8 weeks from the date of approval of modification application DA/2006/1324:3 (unless otherwise agreed in writing by Council), the Applicant must submit to Council for approval an Operational Waste Management Plan. The development shall operate in accordance with the approved Operational Waste Management Plan.

STRUCTURAL DESIGN

37. Acoustic Wall

Prior to the issue of a construction certificate for the Acoustic Wall a structural engineer shall design the acoustic wall and footings generally in accordance with the Proposed Acoustic Wall Plans (Rev B, dated 9 May 2024) by Hoolihan Partners and the design parameters and recommendations presented in the geotechnical report dated 24 May 2024 prepared by Douglas Partners.

38. Stormwater Infrastructure

Prior to the issue of a construction certificate a structural engineer shall design the stormwater infrastructure and footings of the onsite detention tank and GPT in accordance with the design parameters and recommendations presented in the geotechnical report dated 24 May 2024 prepared by Douglas Partners.

BATCHING PLANT OPERATIONS

39. Waste materials (including excavated material) are to be handled in accordance with relevant waste legislation and the approved Desktop Contamination Assessment and Materials Management Plan.

40. Prior to site activities exceeding operating capacity of 30,000tpa and increasing production beyond 12 hours per day, the applicant must satisfy the conditions of this consent and must obtain an environment protection licence in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

ADVISORY NOTES:

A It is the Applicant's responsibility to ensure compliance with any applicable requirements of the *Federal Disability Discrimination Act, 1992* (DDA) and it should be noted that compliance with the Building Code of Australia may not necessarily meet the requirements of the DDA.

B The use of any building/c associated with this development consent shall not be changed from the BCA classification approved of to that of another BCA classification unless the change of use has been approved under the *Environmental Planning and Assessment Act, 1979*.