

ATTACHMENT 3 – RECOMMENDED CONDITIONS OF CONSENT

PART A - CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL

DEFERRED COMMENCEMENT

Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, these are deferred commencement conditions. The consent is not to operate until the Applicant satisfies Council that:

- a) Documentary evidence has been submitted to Council demonstrating that the land subject of this consent benefits from a drainage easement from downstream properties to convey the 1% Annual Exceedance Probability (AEP) stormwater from the development to Council's public drainage system.
- b) The width of the drainage easement/s must be in accordance with Council's Infrastructure Specifications.

This documentary evidence must include confirmation that the easement has been registered on the title of the relevant lot(s).

The Applicant shall satisfy the deferred commencement conditions listed in Part A, within **24 months** from the date of issue of the deferred commencement consent. The consent will lapse if the conditions are not satisfied within this period.

Upon satisfaction of the matters listed under Part A, and written confirmation from Council to that effect, the consent shall become operative from the date of endorsement included in the written notification subject to the conditions listed in Part B.

PART B – CONDITIONS OF CONSENT APPLICABLE AFTER SATISFACTION OF DEFERRED COMMENCEMENT CONDITION(S)

Part B Conditions

1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **General terms of approval** – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development. The General Terms of Approval are:

1. NSW Rural Fire Service, reference number D18/8453 dated 10 January 2019.

A copy of the General Terms of Approval is attached to this determination notice.

- (2) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing no.	Name of plan	Prepared by	Date
3846-DA1101-Rev. F	Site Plan	SHAC	15/11/18
3846-DA2101-Rev. J	Ground Floor Plan	SHAC	15/11/18
3846-DA2102-Rev. H	First Floor Plan	SHAC	15/11/18
3846-DA2103-Rev. H	Second Floor Plan	SHAC	15/11/18
3846-DA2301-Rev. E	Roof Plan	SHAC	15/11/18
3846-DA3101-Rev. G	Elevations - 01	SHAC	15/11/18
3846-DA3101-Rev. E	Elevations - 02	SHAC	15/11/18
3846-DA3201-Rev. E	Sections - 01	SHAC	15/11/18
3846-DA3202-Rev. D	Sections - 01	SHAC	15/11/18
3846-DA8001-Rev. C	Landscape Plan	SHAC	15/11/18
180802 - Rev. E	Stormwater Management Plan	MPC Consulting Engineers	23/08/19

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

- (3) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

2.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer

and submitted to the Certifying Authority. Details demonstrating compliance must be provided to the Certifying Authority.

The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.

- (2) **Civil engineering plans** – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

- (3) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council). Details demonstrating compliance must be provided to the Certifying Authority.
- (4) **Stormwater System Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal. Details demonstrating compliance must be provided to the Certifying Authority.
- (5) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (6) **Construction Environmental Management Plan** – A Construction Environmental Management Plan (CEMP) is to be submitted to the Certifying Authority. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, traffic management and environmental management.
- (7) **Hunter Water Corporation approval** - A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (8) **Section 7.12 development contributions** - A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Fixed Development Contributions Plan, related

to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25 of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (% of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the fixed development consent levy is to be accompanied by a Cost Summary Report Form setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Council Fixed Development Contributions Plan.

Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a Registered Associate member or above, of the Australian Institute of Quantity Surveyors.

This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition. Payment of the above amount must be made prior to issue of the **Construction Certificate**.

- (9) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.

3.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) a description of the work to be carried out;
 - b) the address of the land on which the work is to be carried out;
 - c) the Registered number and date of issue of the relevant development consent;
 - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;

- e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
- f) a telephone number on which the PCA may be contacted for business purposes.

(2) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:

- a) the name and address of the person by whom the notice is being given;
- b) a description of the work to be carried out;
- c) the address of the land on which the work is to be carried out;
- d) the Registered number and date of issue of the relevant development consent and construction certificate;
- e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
- f) the date on which the work is intended to commence.

(3) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:

- a) that unauthorised entry to the work site is prohibited;
- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

(4) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- a) a Construction Certificate has been issued by a Consent Authority;
- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

(5) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with

securing the site during construction) is to be removed upon the completion of works.

- (6) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.

Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.

- (7) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction (the blue book)' and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (8) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.

No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

4.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.
- (2) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.

- (4) **Traffic Management Plan implementation** - All construction traffic management procedures and systems identified in the approved Construction Environmental Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (5) **Location of stockpiles** – Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.
- (6) **Protection of trees/existing street trees** – All trees to be retained must be protected in accordance with AS4970 'Protection of Trees on Development Sites' for the duration of construction.
- (7) **Unexpected finds contingency** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.

In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.

Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

Should any additional contamination or hazardous materials be encountered during any stage of the remediation process, all remediation works in the vicinity of the findings must cease and compliance with the contingency recommendations in the approved RAP must be adopted.

- (8) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

5.0 - Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (2) **Fire Safety Certificates** - A Fire Safety Certificate must be provided to the PCA in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.
- (3) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed. The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
- (5) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.

- (6) **Works As Executed Plans** - Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.
- (7) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.
- (8) **Section 88B Instrument** - The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
 - a) easement to drain water and drainage easement/s over overland flow paths;
 - b) positive covenant over the on-site detention/water quality facility for the maintenance, repair and insurance of such a facility.
- (9) **Bushfire Safety** - The Principal Certifying Authority is to be provided with documentary evidence prepared by a suitably qualified consultant that all requirements set out under the NSW Rural Fire Service General Terms of Approval (D18/8453 dated 10 January 2019) have been complied with.

6.0 – Ongoing Use

The following conditions of consent are operational conditions applying to the development.

- (1) **Approved signage maintenance** – The approved signs must be maintained in a presentable and satisfactory state of repair. The level of illumination and/or lighting intensity used to illuminate the sign/s must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (2) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (3) **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (4) **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.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

- (4) **Waste Management** – All onsite waste is to be stored in covered/enclosed bins.

Advice Note(s):

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

- (3) **Premise standard** – It is the Applicants responsibility to ensure compliance with the requirements of the *Disability Discrimination Act 1992* (DDA).

Note: Compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.

- (4) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (5) **Regulated premises inspections** – The premises will be incorporated in Council's Surveillance Program and will be subject to ongoing annual inspections.
- (6) **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- (7) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.
- (8) **Review of Determination** - Part 8, Division 8.2 of the *Environmental Planning and Assessment Act 1979* provides that the applicant may request a review of this determination within 6 months of the date of the determination, following the payment of the prescribed fee.
- (9) **Offences** - Section 9.50 of the *Environmental Planning and Assessment Act 1979* provides that any person who contravenes or causes or permits to be contravened the conditions of this consent shall be guilty of an offence.
- (10) **Penalties** - Section 9.50 of the *Environmental Planning and Assessment Act 1979* provides that any person guilty of an offence against this Act shall, for every such offence, be liable to penalties as stated in this section.