

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	23 December 2022
DATE OF PANEL DECISION	23 December 2022
PANEL MEMBERS	Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Giacomo Arnott and Leah Anderson
APOLOGIES	None
DECLARATIONS OF INTEREST	Ryan Palmer declared a conflict of interest, as his children attend the school which is the subject of this determination application.

Papers circulated electronically on 16 December 2022.

MATTER DETERMINED

PPSHCC-122 – Port Stephens – DA 16-2022-97-1 at 12 Sproule St, Nelson Bay – alterations and additions to existing school (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel last considered this matter in November 2022 where the matter was deferred for further information regarding:

- Subdivision plan;
- Drop-off / pick-up arrangements;
- Stormwater solution;
- Landscape outcome on the eastern boundary; and
- Clarification of acoustic assumptions and mitigation measures.

The applicant has submitted further information addressing the above, and the Council has prepared a supplementary report including revised conditions which the Panel has considered.

The Panel in their consideration of the matter is satisfied with the subdivision plan, drop-off / pick-up arrangements, stormwater solution, acoustic assumptions and mitigation measures.

The Panel notes that the school wishes to rely on the existing bus arrangements without any upgrade works. Given the additional information, the traffic management plan provided, and the fact that there is no increase in student numbers, the Panel is satisfied that the existing arrangements are appropriate. The Panel has imposed a condition limiting student numbers to 399 (as existing).

The landscape plan requires additional detail to ensure that canopy trees are replaced and the spacing of canopy trees along the eastern boundary is detailed. An additional condition has been included as a deferred commencement condition.

The Panel has also limited the hours of operation of the school to 7:00am to 5:00pm five (5) days a week noting that the school will need to document and seek approval for any activities outside of these hours.

The Panel is satisfied that the proposed development is suitable for the site and that any impacts can be reasonably managed.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* subject to the conditions in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons included in Schedule 2.

CONDITIONS

The Development Application was approved subject to the conditions at Schedule 2 . The conditions were amended from those attached to the Council Addendum report by:





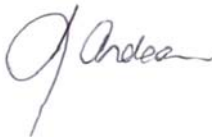
- Addition of condition 2 as a deferred commencement condition to address landscape requirements.
- Deletion of condition at section 2 (10)(b).
- Amendment to condition at section 8 (1) to prevent use outside nominated hours.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Car parking and traffic
- Amenity impacts
- Noise impacts
- Stormwater impacts

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised. The Panel notes that in addressing these issues appropriate conditions have been imposed.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Sandra Hutton
 Juliet Grant	 Giacomo Arnott
 Leah Anderson	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-122 – Port Stephens – DA 16-2022-97-1
2	PROPOSED DEVELOPMENT	Alterations and additions to existing educational establishment (St Michael's School, Nelson Bay) including refurbishment of grounds and buildings, removal of existing demountable buildings, new centre based child care including out-of-school hours care, new admin building, new car park, subdivision, landscaping, fencing and associated civil works.
3	STREET ADDRESS	LOT: 2 DP: 216064 12 Sproule Street NELSON BAY
4	APPLICANT OWNER	CKDS Architecture Pty Ltd Trustees of the Roman Catholic Church
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Precincts—Regional) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Industry and Employment) 2021 Port Stephens Local Environmental Plan 2013 Draft environmental planning instruments: Development control plans: <ul style="list-style-type: none"> Port Stephens Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 2 November 2022 Supplementary Council assessment report: 15 December 2022 Written submissions during public exhibition: seven (7)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 31 March 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Giacomo Arnott <u>Applicant</u>: Ben Rapley, David Crofts, Phill Samaras and John Tobin <u>Council assessment staff</u>: Dylan Mitchell <u>Department staff</u>: Carolyn Hunt and Lisa Foley Briefing: 6 July 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair) and Leah Anderson <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire and Isaac Lancaster <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley

		<ul style="list-style-type: none"> • Site inspection: 29 July 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair) and Sandra Hutton ○ <u>Council assessment staff</u>: Ryan Falkenmire ○ <u>Applicant</u>: Ben Rapley, Phill Samaras, Helen Bourne and John Tobain • Final briefing to discuss Council's recommendation: 9 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Giacomo Arnott and Leah Anderson ○ <u>Council assessment staff</u>: Dylan Mitchell and Ryan Falkenmire ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley • Submitter Briefing: 9 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Giacomo Arnott and Leah Anderson ○ <u>Council assessment staff</u>: Dylan Mitchell and Ryan Falkenmire ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley ○ <u>Submitter</u>: David Straw <p><u>Note</u>: Submitter briefing was requested to provide the Panel with clarification on written submissions</p> • Applicant Briefing: 9 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Giacomo Arnott and Leah Anderson ○ <u>Council assessment staff</u>: Dylan Mitchell and Ryan Falkenmire ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley ○ <u>Applicant representatives</u>: Ben Rapley, David Crofts, Phill Samaras, Kurt Daley and Ray Bowen <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p> • Final briefing to discuss Council's recommendation: 20 December 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Giacomo Arnott and Leah Anderson ○ <u>Council assessment staff</u>: Dylan Mitchell ○ <u>Department staff</u>: Leanne Harris and Lisa Foley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report

CONDITIONS OF CONSENT - DA 16-2022-97-1 - 12 SPROULE STREET NELSON BAY 2315

PART A - CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, these are deferred commencement conditions.

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.

1.0 - Deferred Commencement

The following matters must be complied with to Council's satisfaction:

- (1) **Stormwater Management** - Documentary evidence has been submitted to Council confirming the registration of an easement to drain water over lot 1, 2 and 3 of DP1098930 benefitting the proposed new lot, residue lot and Port Stephens Council. The width of the drainage easement/s must be in accordance with the Port Stephens Council Infrastructure Specifications, or

Detailed design for augmentation of the existing stormwater in Wahgunyah Road to enable the discharge from the subject site to the legal point of discharge at Lot 22 DP 1064337 (Pirrarea Gardens) in accordance with the Port Stephens Council Infrastructure Specification.

- (2) An amended landscape plan that includes the planting schedule and spacing for the planting of 52 canopy trees including their location, quantity of each species and mature height. A canopy tree is to be a minimum of 8 metres in height at maturity.

The landscape plan shall also detail the proposed blue berry ash trees along the eastern boundary at a spacing of a maximum of 3 metres along the length of this boundary.

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

1.0 - General Conditions of Consent

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

- (1) **External agency approvals** – The requirements from the following agencies must be complied with prior to, during, and at the completion of the development.

The Requirements are:

1. Ausgrid, reference no. 1900112863, dated 26/03/2022.

A copy of the Requirements is attached to this determination notice.

- (2) **Approved plans and supporting documentation** – Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
A-0201	10	Site Plan	CKDS	6/10/2022
A-0202	4	Site Plan – Security/Fencing	CKDS	6/10/2022
A-0203	5	Concept Subdivision Plan	CKDS	13/12/2022
A-0204	7	Site Elevations	CKDS	8/9/2020
A-0205	6	Site Sections	CKDS	28/7/2020
A-0207 & A-0208	1	Staging Plans	CKDS	4/7/2022
A-1001, A-1101 & A-1201	9	Block I Plans	CKDS	8/9/2020
A-1002	8	Block I Roof Plan	CKDS	28/7/2020
A-2001, A-2101	2	Block B Lower & H Plan, Block B & H Elev & Section	CKDS	28/7/2020
A-2002,	1	Block H Undercroft Plan	CKDS	8/2/2022
A-4001,	7	Block A-D Floor Plan	CKDS	28/7/2020
A-4002,	6	Block A-D Roof Plan	CKDS	28/7/2020
A-4101 & A-4102	6	Block A-D Elevations	CKDS	28/7/2020
A-4103 & A-4104	4	Block A-D Elevations	CKDS	28/7/2020
A-4201	6	Block A-D Sections	CKDS	28/7/2020
A-4202	4	Block A-D Sections	CKDS	28/7/2020
A-5001, A-5002, A-5101, A-5201	6	Block E Plans	CKDS	28/7/2020
A-6002	1	Signage	CKDS	21/8/2020
A-6101	2	Block J Lower Floor Plan	CKDS	28/7/2020
A-6102	9	Block J Upper Floor Plan	CKDS	6/10/2022
A-6103	6	Block J Roof	CKDS	28/7/2020

		Plan		
A-6201	9	Block J Elevations	CKDS	7/10/2022
A-6202	8	Block J Elevations	CKDS	8/9/2020
A-6203	7	Block J Elevations	CKDS	8/9/2020
A-6301	7	Block J Sections	CKDS	21/8/2020
A-6302	2	Block J Sections	CKDS	6/10/2022
13099.5 L03	1	Landscape Plan	Terras Landscape Architects	13/12/2022
13099.5 L04	1	Tree Removal and Retention Plan	Terras Landscape Architects	13/12/2022
13099.5 L05	1	Concept Layout: Part 1	Terras Landscape Architects	13/12/2022
13099.5 L06	1	Landscape Payout: Part 2	Terras Landscape Architects	13/12/2022
13099.5 L07	1	Concept Layout: Ramp Area	Terras Landscape Architects	13/12/2022
13099.5 L08	1	Concept Layout: Courtyard Area	Terras Landscape Architects	13/12/2022
13099.5 L09	1	Layout EEC	Terras Landscape Architects	13/12/2022
13099.5 L10	1	Section: EEC	Terras Landscape Architects	13/12/2022
13099.5 L12	1	Section: EEC	Terras Landscape Architects	13/12/2022
NL200762 DA-C1.00	3	Concept Erosion and Sediment Control Plan	Northrop	25/7/2022
NL200762 DA-C2.00	4	Concept Stormwater management Plan Sheet 1	Northrop	6/10/2022
NL200762 DA-C3.00	4	Concept Civil Details Sheet 1	Northrop	6/10/2022
NL200762 DA-C3.01	1	Concept Civil Details Sheet 2	Northrop	25/7/2022
NL200762	-	External Connection Sketch	Northrop	25/11/2022

Document Title.	Version No.	Prepared By.	Dated.
Additional Geotechnical Assessment	NEW19-P-0150-AE	Qualtest	24 June 2020
Noise Impact Assessment	19-2469-R1	Reverb Acoustics	August 2020
Letter - RE: - REQUEST FOR ADDITIONAL INFORMATION ST MICHAEL'S PRIMARY SCHOOL, NELSON BAY	19-2469-L2	Reverb Acoustics	15 July 2022
Traffic Management Plan	Revision 1	Catholic Diocese of Maitland-Newcastle	1 December 2022
Flora and Fauna Assessment Report – St Michael's Public School	Version 2.0	Kleinfelder	28 May 2020
Waste Management Plan	Issue A	Diocese of Maitland - Newcastle c/- CKDS Architecture	8 February 2022
Disability Access Report	Revision 2	Lindsay Perry Access	17 January 2022

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

- (3) **Approved report recommendations** – Construction of the development must comply with the recommendations of the Noise Impact Assessment, reference no. 19-2469-R1, prepared by Reverb Acoustics dated August 2020 and the Reverb Acoustics letter titled 'Letter - RE: - REQUEST FOR ADDITIONAL INFORMATION ST MICHAEL'S PRIMARY SCHOOL, NELSON BAY', dated 15 July 2022 as follows:
- a) An acoustic fence must be erected at the following locations to the corresponding height:

<i>Location</i>	<i>Height above finished ground level</i>
NW site boundary adjacent Blocks C & E Courtyards	1.8m

E site boundary adjacent child care outdoor play	2.1m
E site boundary adjacent Carparks	1.8m

- (4) **Design Amendments** – Before the issue of a construction certificate or subdivision works certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.
- a) The approved stormwater plans, NL200762, DA-C2.00 & C3.00, Revision 4, prepared by Northrop and dated 6/10/2022 are to be amended as follows:
 - i. Stormwater plans that comply with the Port Stephens Development Control Plan 2014 and Council's Infrastructure Specifications.
 - ii. All new downpipes and in-ground stormwater for the proposed development footprint must be sized to convey the 1% AEP storm to the infiltration trenches.
 - iii. Upgrade the two pipelines located on the southern boundary (reach 1848mm and reach 1849mm from DRAINs model) from 525mm to 600mm.
 - iv. Add note on the Concept Stormwater Management Plan to the two proposed GSIP located on the southern lot boundary adjacent Wahgunyah Road 'Shape inlet and provide an earth mound or equivalent to direct runoff upstream and to the east into the pit so it doesn't bypass to Wahgunyah Road'.
 - v. Plans for a diversion drain, or subsoil equivalent, in the northern road shoulder of Wahgunyah Road adjacent 35-39 Primary Crescent draining Primary Crescent. Any surcharge from the existing pit located in the south western corner of the development site (Lot 2 DP216064) must be directed into the diversion drain to prevent any overflow into 35-39 Primary Crescent.
 - vi. Plans for a bund or equivalent, to collect runoff from the development site (lot 2 DP216064), to the existing and two proposed GSIP (located on the southern boundary) to prevent runoff from discharging to Wahgunyah Road.
- (5) **Separate approval for signs** – A separate development application for any proposed signs additional to those signs approved as part of this development consent, must be provide to, and approved by, the Consent Authority or under the provision of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 if applicable prior to the erection or display of any such signs.
- (6) **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.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
- (8) **Tree removal/pruning** – Only the trees/vegetation identified as 'Vegetation Areas Impacted' on 'Figure 4 - Vegetation Communities, Habitat Features and Impact Areas'

in the 'Flora and Fauna Assessment Report – St Michael's Public School', prepared by Kleinfelder, dated 28 May 2020 are approved for removal.

- (9) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (10) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
- (11) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.

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) **Staging of construction works** – The development is to be completed in stages in accordance with the approved Staging Plans no. A-0207 & A-0208, prepared by CKDS and dated 4/7/2022.

One Construction Certificate may be issued for all stages, or a single Construction Certificate may be issued.

- (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.

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

- (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) **Retaining walls** – All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (6) **Erosion and sediment control plan**– Before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

- (7) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including roads, footpaths and vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

- (8) **Construction site management plan** - Before the issue of a construction or subdivision works certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- a) Staging and sequencing of works within school holiday periods and outside of school operating hours where possible
- b) location and materials for protective fencing and hoardings to the perimeter on the site
- c) provisions for public safety
- d) pedestrian and vehicular site access points and construction activity zones
- e) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- f) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- g) details of any bulk earthworks to be carried out
- h) location of site storage areas and sheds
- i) equipment used to carry out all works
- j) a garbage container with a tight-fitting lid
- k) dust, noise and vibration control measures
- l) location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan

is kept on-site at all times during construction.

Note. Condition only applies to dual occupancy developments and above.

- (9) **Mechanical exhaust system** – Mechanical exhaust system(s) must comply with AS 1668 'The use and Ventilation and Air Conditioning in Buildings' Parts 1 and 2 (including exhaust air quantities and discharge location points).

Details demonstrating compliance must be provided to the Certifying Authority.

- (10) **Roads Act Application** – The following information must be provided to Council as the Roads Authority with the Roads Act application:

- a) Detailed design for augmentation of the existing stormwater in Wahgunyah Road to enable the discharge from the subject site to the legal point of discharge at Lot 22 DP 1064337 (Pirrarea Gardens) in accordance with the PSC Infrastructure Specification.

- (11) **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.

- (12) **Food Premises Fit Out** - A detailed floor plan of the child care facility kitchen fit out that demonstrates compliance with AS4674-2004 and the Australia New Zealand Food Standards code is to be submitted to Council for approval.

This plan will need to clearly identify all relevant fixtures and fittings (including but not limited to, the designated hand wash basins, and cleaning/utility sinks).

If mechanical ventilation is required, the installation and fit-out must comply with AS 1668.2-2012 (as amended from time to time), the building code of Australia, and any other relevant standard or legislative instrument.

- (13) **Infrastructure 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 Local Infrastructure Contributions Plan 2020, related to the cost of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Cost of development	Levy Rate
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 cost of development in accordance with Appendix C of the Port Stephens Council Local Infrastructure 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 cost of development stated on a cost summary report submitted to Council in accordance with this condition.

Payment of the above amount must apply to Development Applications as follows:

- a) Building work only - prior to issue of the Construction Certificate.

3.0 - Prior to Issue of a Subdivision Works Certificate

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

- (1) **Staging of construction works** – The development is to be completed in stages in accordance with the approved Staging Plans no. A-0207 & A-0208, prepared by CKDS and dated 4/7/2022.

One Construction Certificate may be issued for all stages, or a single Construction Certificate may be issued.

- (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.

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

- (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) **Retaining walls** – All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (6) **Erosion and sediment control plan**– Before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

- (7) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

- (8) **Car parking details** – Before the issue of the relevant construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.

- (9) **Construction site management plan** - Before the issue of a construction or subdivision works certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- a) Staging and sequencing of works within school holiday periods and outside of school operating hours where possible
- b) location and materials for protective fencing and hoardings to the perimeter on the site
- c) provisions for public safety
- d) pedestrian and vehicular site access points and construction activity zones
- e) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- f) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- g) details of any bulk earthworks to be carried out
- h) location of site storage areas and sheds
- i) equipment used to carry out all works
- j) a garbage container with a tight-fitting lid
- k) dust, noise and vibration control measures
- l) location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

4.0 - Prior to Commencement of Works

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

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

- (2) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. 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 Certifier and the person who appointed the principal certifier;
- e) if the principal certifier is a registered certifier
 - i) the certifier's registration number, and
 - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
 - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

- (3) **Notice commencement of work** – Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- a) the name and address of the person;
- 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 numbers and date of issue of the development consent and construction certificate;

- e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and
- f) the date on which the work is intended to commence.

The notice must be lodged on the NSW planning portal.

(4) **Signs on site** – A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

(5) **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.

(6) **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.

(7) **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.

(8) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare

groundon site).

- (9) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

No materials, waste or the like are to be stored on the all-weather access at any time.

- (10) **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.

- (11) **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites'.

- (12) **Hazardous Building Materials Assessment** - A Hazardous Building Material Assessment (HBMA) must be undertaken on all buildings and structures to be demolished that identifies all hazardous components on site. A HBMA report must be provided to the PCA and Council.

Once hazardous components are identified, all demolition works that involve the demolition and removal of the hazardous materials must ensure that all site personnel are protected from risk of exposure in accordance with relevant SafeWork NSW and NSW Demolition Guidelines. Premises and occupants on adjoining land must also be protected from exposure to any hazardous materials.

5.0 - During Works

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

- (1) **Shoring and adequacy of adjoining property** - If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —

- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (2) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

7.00am to 5.00pm on Monday to Saturday

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

- (3) **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) **Compliance with the Building Code of Australia** – Building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (5) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:

- a) preserve and protect the building from damage; and
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (6) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (7) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
- b) At other stages of construction – any marks that are required by the principal certifier.

- (8) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining properties and traffic systems.
- (9) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Diverted to the approved storm water drainage system.
- (10) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
- Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (11) **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.
- (12) **Tree protection (if relevant)** – All trees to be retained must be protected in accordance with AS4970 'Protection of Trees on Development Sites' for the duration of construction.
- (13) **Unexpected finds contingency (general)** – 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.
- (14) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (15) **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.
- (16) **Cut and fill (if applicable)** – While building work is being carried out, the principal

certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

- (17) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- "relic" means any deposit, artefact, object or material evidence that:
 - (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - (b) is of State or local heritage significance; and
- "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

- (18) **Tree Removal/Pruning** – All approved tree removal/Pruning is subject to all pruning works being undertaken by a qualified arborist with minimum Australian Qualification Framework Level 3 qualifications or higher. All works are to be undertaken in accordance with the relevant provisions of AS 4373 'Pruning of Amenity trees'.

- (19) **Hazardous Building Materials Assessment** - All works (including demolition and materials handling, storage, transport and disposal) must be undertaken in accordance with the requirements outlined in the Hazardous Building Material Assessment (HBMA).

- (20) **Water Quality Devices** - No trees and shrubs are to be planted on top of the infiltration system and bio-retention area as they will interfere with the function of the infiltration and bio-retention system.

6.0 - Prior to Issue of a Subdivision Certificate

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

- (1) **Requirement for a Subdivision Certificate** - The application for Subdivision Certificate(s) must be made in accordance with the requirements of Section 54 of the

Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 and Section 6.33(1) Environmental Planning and Assessment Act 1979.

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2022-97-1, and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.

In addition, one signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.

- (2) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.

- (3) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.

Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.

- (4) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.

Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.

- (5) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity.
- b) Water.
- c) Sewer.
- d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

- (6) **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 for services;
- b) 3m wide easement to drain water, benefiting Port Stephens Council, over the stormwater lines that receive discharge from Sproule Street to the Port Stephens Council road reserve boundary.
- c) easement for on-site detention;

- d) positive covenant over the on-site detention / water quality facility for the maintenance, repair and insurance of such a facility;
- e) reciprocal right of carriageway (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway);
- f) easement for services;
- g) 3m wide easement to drain water, benefiting Port Stephens Council, over the stormwater lines that receive discharge from Sproule Street to the Port Stephens Council road reserve boundary;
- h) easement for on-site detention;
- i) positive covenant over the on-site detention / water quality facility for the maintenance, repair and insurance of such a facility;
- j) reciprocal right of carriageway (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway);
- k) right of access for parking over the proposed lot, benefitting the residual lot, allowing the church patrons to park within the childcare spaces, as indicated in the approved plans;
- l) right of access for parking over the residue lot, benefitting the proposed lot, allowing the OOSH to utilise the school car park, as indicated in the approved plans.

7.0 - Prior to Issue of an Occupation Certificate

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

- (1) **Hunter Water Corporation approval** - A Section 50 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.
- (2) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.

The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (3) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (4) **Footpath and road construction** – All required road, driveway and footpath works must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.

Note: A Works on Public Infrastructure approval must be obtained prior to the commencement of such works.

- (5) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
- a) Electricity;
 - b) Water;
 - c) Sewer; and
 - d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

- (6) **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.

- (7) **Repair of infrastructure** – Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

- (8) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.

- (9) **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.

- (10) **Completion of landscape and tree works** – Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

- (11) **Car parking requirements** – Car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

The parking spaces 1 to 21 must be signposted as childcare parking only from Monday to Friday.

Parking space 34, must be signposted as a delivery space between the hours of 8:00am – 4:00pm Monday to Friday.

- (12) **Waste disposal** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.
- (13) **Mechanical exhaust system** – A Certificate of Compliance prepared by a qualified Engineer confirming that the mechanical exhaust systems have been designed, constructed and installed in accordance with the relevant requirements of Clause F4.12 of the Building Code of Australia and AS1668 'The use and Ventilation and Air Conditioning in must be provided to the Certifying Authority.
- Certification must be provided that the air handling system as installed has been tested and complies with the approved plans and specifications, including ventilation requirements and fire precautions.
- (14) **Construction to be in accordance with Acoustic Report** – Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the development complies with the recommendations of the Noise Impact Assessment, reference no. 19-2469-R1, prepared by Reverb Acoustics dated August 2020 and the Reverb Acoustics letter titled 'Letter - RE: - REQUEST FOR ADDITIONAL INFORMATION ST MICHAEL'S PRIMARY SCHOOL, NELSON BAY'.
- (15) **Child Care Facility Operation Approval** - Prior to the occupation of use of the child care facility, the applicant must obtain a Service Approval for the operation of a child care facility from the Regulatory Authority.
- (16) **Plan of Management** - A Plan of Management for the operation of the childcare centre and out of hours school care is to be provided to Council for approval prior to issue of any Occupation Certificate. The ongoing operation of the centre must be in accordance with the plan, taking into consideration any recommendations made by a suitably qualified and experienced acoustic consultant. The Plan of Management must include, but is not limited to the following:
- a) Mitigating measures to minimise amenity impacts on surrounding residential properties;
 - b) Mitigating measures to minimise acoustic amenity impacts on occupants of the facility;
 - c) Managing noise impacts emanating from the premises;
 - d) Identifying measures to minimise potential noise impacts from outdoor play areas and specifically:
 - the number of children and their age groups in each area.
 - the type of play those children will engage in in those areas.
 - the hours of play for those children in those areas.
 - e) Deliveries and waste collection services;
 - f) Management of carpark operations including drop off and pick up and the designation of areas.

- (17) **Emergency Evacuation** - An emergency evacuation plan for the childcare facility is to be prepared in accordance with the Education and Care Services National Regulations and the latest version of the Child Care Planning Guideline (NSW Department of Planning & Environment) and provided to the satisfaction of the Principal Certifying Authority.
- (18) **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.
- (19) **Food Premises** - Council must be notified that the premises is being used for the preparation, manufacture or storage of food for sale and an inspection of the completed fit out is to be conducted.

A 'Food Business Registration form can be found on Council's website.

- (20) **Fire Safety Upgrades** - Pursuant to Sections 62 and 64 of the Environmental Planning and Assessment Regulation 2021, the existing buildings subject of the proposed works must be upgraded so as to bring the building into partial conformity with the Building Code of Australia. The following works should be completed prior to the issue of an occupation certificate for the works proposed by this application.
- a) Emergency lighting and exit signs will need to be provided in Blocks A and B to achieve consistency with Part E4 of the Building Code of Australia.
 - b) Exit doors and doors in the path of egress to exits within Blocks A and B shall have latching hardware installed complying with D2.21 of the Building Code of Australia. All existing non-compliant hardware shall be removed.
 - c) The distance from the property boundary to the closest window opening in Block E shall be confirmed by a registered land surveyor to ensure that this opening does not need to be protected as per Part C3 of the Building Code of Australia. Where the distance is less than 3 metres to this fire source feature, this opening shall be protected in accordance with C3.4 of the Building Code of Australia or other appropriate method permitted by the Building Code of Australia.
 - d) The hydrant block plan located adjacent to the Hydrant Booster Assembly near Wahgunyah Road identifies a number of attack hydrants on the site, which were not physically identified during the site inspection. The principal certifying authority shall confirm that all existing buildings are within coverage of the fire hydrant system on site, and where deficiencies are found, remedied to achieve compliance with E1.3 of the Building Code of Australia. The hydrant block plan shall also be amended to achieve consistency with both correct site conditions and AS 2419.1
 - e) The fire hose reel located on the ground floor level of Block A (south-eastern corner) shall have the instructions disc replaced, as the current instructions disc is faded and difficult to read. Consideration shall also be made to utilise a cover for this fire hose reel.
 - f) The location of the existing twin pillar attack hydrant adjacent to the topmost carpark shall be established with respect to the proposed boundary of the

Torrens subdivision and whether it is located on the parcel of land to be utilised by the school or the proposed early childhood centre. Where the location exists on the land to be utilised by early childhood centre, the hydrant shall be relocated off this parcel of land, and be orientated so that the outlets are positioned so as to be not obstructed by the adjoining security fencing.

8.0 – Ongoing Use

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

- (1) **Hours of operation** – The school is permitted to operate only within the following hours:

Day	Hours of Operation
Monday to Friday	7:00am – 5:00pm
Saturday	No operation
Sunday and Public Holidays	No operation

Other operations such as cleaning, preparation, office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

- (2) **Hours of operation** – The Childcare centre and out of school hours school care is permitted to operate only within the following hours:

Day	Hours of Operation
Monday to Friday	6.30am - 6.00pm
Saturday	No operation
Sunday and Public Holidays	No operation

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

- (3) **Approved signage maintenance** – The approved signs must be maintained in a presentable and satisfactory state of repair.
- (4) **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.
- (5) **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.

- (6) **Amenity** – The school and childcare uses must be conducted, and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises.
- (7) **Deliveries** – Deliveries and waste collection associated with the childcare centre and out of hours school care are to be during off peak times between 10:00am and 3:00pm only.
- (8) **Childcare Facility Occupancy** - The childcare centre is approved for a maximum capacity of 84 child care places. Any increase in this number shall be subject to separate approval from Council.
- (9) **Out of hours School Care Occupancy** - The out of hours school is approved for a maximum capacity of 105 child care places. Any increase in this number shall be subject to separate approval from Council.
- (10) **Maintenance of Acoustic Fence** – The acoustic fence must be maintained throughout the life of the development.
- (11) **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.
- (12) **Traffic Management Plan** – Ongoing management of traffic and car parking is to be in accordance with the approved Traffic Management Plan, Revision 1, prepared by the Catholic Diocese of Maitland-Newcastle and dated August 2022.
- (13) **Church Funerals** - The church is only permitted to hold weekday funerals during off peak parking times for the childcare centre between 10:00am and 2:00pm Monday to Friday only.
- (14) **Internal Traffic Circulation** - Vehicles are not permitted to move around St Michael's Primary School during the following time periods of peak pedestrian traffic including between 8:20am and 3:30pm weekdays.
- (15) **No School Access from Sproule Street** – Access to the school via Sproule Street is not permitted for children attending school. The Sproule Street car park must be gated to prevent access and reinforce the Wahgunyah Street entry as the main entrance to the school.
- (16) **School Occupancy** - The school is approved for a maximum capacity of 399 children. Any increase in this number shall be subject to separate approval from Council or other relevant approval authority.

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) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development in Sproule Street and Wahgunyah Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables.
- (5) **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.
- (6) **Street Numbering** - Prior to the issue of a Subdivision Certificate, the approved lots are to be identified as follows:

- a) Residual Lot – 12 Sproule Street, NELSON BAY
- b) Proposed New Lot – 11 Sproule Street, NELSON BAY

Council's Spatial Services Team should be contacted via email at: addressing@portstephens.nsw.gov.au to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering.

REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

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; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy (Precincts—Regional) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy (Industry and Employment) 2021.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- 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, 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.
- Council has given due consideration to community views when making the decision to determine the application.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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