

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	16 September 2022
DATE OF PANEL DECISION	16 September 2022
PANEL MEMBERS	Alison McCabe (Chair), Sandra Hutton and Juliet Grant
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Ryan Palmer declared a conflict of interest as he is a Board Member of Newcastle Airport.</p> <p>Giacomo Arnott declared a conflict of interest as, over his years as an elected Councillor, he has voted on many matters in relation to the Newcastle Airport site.</p> <p>To avoid any perception of conflict, Leah Anderson did not take part in the consideration or determination of this development application, as she is an elected Councillor of Port Stephens Council.</p>

Papers circulated electronically on 8 September 2022.

MATTER DETERMINED

PPSHCC-135 – Port Stephens – DA 16-2022-428-1 at 1 Williamtown Drive, Williamtown - reconfigure the existing short stay 1 Car Park at the Newcastle Airport (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 has had the benefit of a number of briefings from Council and the Applicant.

Arising from the final briefing, the Panel sought additional information relating to car parking numbers across the site.

DA No. 16-2008-940-4 is the substantive approval for the Terminal Expansion and required 1,676 car parking spaces on site. The Panel notes that while the application being considered will result in 72 less car parking spaces, the Panel is satisfied that the development will not result in a lesser number of spaces than required by DA No. 16-2008-940-4 as there have been a number of separate approvals for additional car parking that result in a carparking provision in excess of 1,676 spaces.

The Panel has queried the consistency between approvals issued on the site – and has proposed amendment to condition 5(5) to require modification of relevant consents to be lodged and determined before the car park is operational.

In the Panel's deliberation, the applicant requested that construction hours be extended to 6am to 6pm Monday to Sunday. Given the context of the site and the 24 hour operation of the current use, the Panel is satisfied that this change would not result in unreasonable impacts.

The proposed car parking upgrade is consistent with the medium to long term vision for the airport and is a function of the current use of the site.

The proposed development has merit and any impacts arising from the development can be managed and mitigated.

Accordingly, the Panel supports approval of the application subject to conditions.

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 at Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the following reasons:

1. The proposed development is an essential element of the predominant use of the site.
2. The development will result in improved amenity to users of the site.
3. The impacts arising from the development are minimal and can be appropriately managed.

CONDITIONS




The Development Application was approved subject to the conditions at Schedule 2. The following amendments have arisen from the deliberation of the matter:

- Amend condition 2 in section 1 to read – 26 September 2022.
- Replace condition 2 in section 2 to read “*Prior to the issue of a construction certificate for stormwater drainage works, a detailed stormwater management plan is to be prepared by a Chartered Professional (hydraulic) Engineer, detailing water quality controls that comply with the Port Stephens Development Control Plan 2014. The stormwater management plan should address hydrocarbon management.*”.
- Amend condition (1) in section 4 to allow work between 6am and 6pm Monday to Sunday.
- Amend condition 5 in section 5 to include the words “and approved by” after the word ‘lodge’ and delete the reference to surrender of consent.
- Minor typographical changes.

The amendments are included in the Schedule 2 conditions.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Sandra Hutton	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-135 – Port Stephens – DA 16-2022-428-1
2	PROPOSED DEVELOPMENT	Alterations and additions to existing short stay car park and associated road network at Newcastle Airport – including demolition of existing car park, staged construction of new car park including 161 spaces and associated roof structures, road network and pedestrian paths, installation of electric vehicle charging, landscaping and storm water infrastructure
3	STREET ADDRESS	LOT: 43 DP: 1045602 55 Slades Road WILLIAMTOWN
4	APPLICANT OWNER	Barr Property and Planning Pty Ltd Commonwealth Government – Department of Defence/ Newcastle Airport Pty Limited
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million and 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 (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Precincts – Regional) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ Port Stephens Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • 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: 8 September 2022 • Council addendum assessment memorandum: 12 September 2022 • Written submissions during public exhibition: nil
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 13 July 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton ○ <u>Applicant</u>: Rebecca Johnston, Shane Murray, Josh Fullerton and Ben Kochanski ○ <u>Council assessment staff</u>: Ryan Falkenmire ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt, Lisa Foley and Naila Tabssum

		<ul style="list-style-type: none"> • Site inspections: <ul style="list-style-type: none"> ○ <u>Alison McCabe (Chair)</u>: 29 July 2022 ○ <u>Sandra Hutton</u>: 29 July 2022 • Final briefing to discuss Council's recommendation: 15 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and Juliet Grant ○ <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire and Courtney Sargent ○ <u>Department representatives</u>: Carolyn Hunt and Lisa Foley • Applicant Briefing: 15 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and Juliet Grant ○ <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire and Courtney Sargent ○ <u>Department representatives</u>: Carolyn Hunt and Lisa Foley ○ <u>Applicant representatives</u>: Shane Murray, Josh Fullerton and Rebecca Johnston <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council addendum assessment memorandum dated 12 September 2022

SCHEDULE 2

1.0 - General Conditions of Consent

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

- (1) **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.
DA-00-2	B	Existing Site Plan	COX Architecture	23.05.2022
DA-00-3	B	Demolition Plan	COX Architecture	23.05.2022
DA-00-4	B	Site Plan	COX Architecture	23.05.2022
DA-00-5	C	Floor Plan	COX Architecture	5.08.2022
DA-00-6	B	Stage 1	COX Architecture	23.05.2022
DA-00-07	C	Stage 2	COX Architecture	5.08.2022
DA-00-08	B	Elevations	COX Architecture	23.05.2022
DA-00-09	B	Sections	COX Architecture	23.05.2022
1A	-	Proposed Staging Plan	Applicant	9.06.2022
05-00-09-01	B	Landscape Plan – Site Plan,	COX Architecture	06.05.2022
05-00-09-02	B	Landscape Plan – Tree Assessment Plan	COX Architecture	06.05.2022
98-00-00-04	B	Landscape Plan – Planting Schedule	COX Architecture	06.05.2022
10-00-24-01 10-00-25-01 10-00-26-01	B	Landscape Plan – Softworks Plans	COX Architecture	06.05.2022

96-00-99-01	B	Landscape Plan – Site Sections	COX Architecture	06.05.2022
96-00-99-02	B	Landscape Plan – Softworks Details	COX Architecture	06.05.2022
17284-H-DR-DA-0000	P05	Stormwater Drainage Plan - General Arrangement Plan	HATCH	06.05.2022
17284-H-DR-DA-0001, 0002 & 0003	P05	Erosion & Sediment Control Plan – Sheet 1, 2 & Details	HATCH	8.04.2022
17284-H-DR-DA-0011 & 0012	P05	Stormwater Management Plan Sheet 1 & 2	HATCH	8.04.2022
17284-H-DR-DA-0013 & 0014	P05	Stormwater Management Details Sheet 1	HATCH	8.04.2022
17284-H-DR-DA-0014	P05	Stormwater Management Details Sheet 2	HATCH	6.05.2022

Document Title.	Version No.	Prepared By.	Dated.
Summary of Site Conditions – Contamination 7 ASS	-	Douglas Partners	6 May 2022
Acid Sulfate Soils Update	-	Douglas Partners	2 September 2022
Arborist Report	V3		25 May 2022
Waste Management Plan	-	COX Architecture	06 May 2022
Construction Management Plan	1.0	Construction Control	20 July 2022
Accessibility Report	4	Purely Access	19 May 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.

- (2) **Approved report recommendations** – Construction of the development must comply with the recommendations of the Summary of Site Conditions – Contamination and Acid Sulfate Soils, 211445.00, prepared by Douglas Partners, dated 6 May 2022 and as superseded by the recommendations in the Acid Sulfate Soil Update, prepared by Douglas Partners, dated 26 September 2022.
- (3) **Separate approval for signs** – A separate development application for any proposed signage, 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.
- (4) **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.
- (5) **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.
- (6) **Tree removal/pruning** – The trees/vegetation identified on the Tree Assessment Plan, Plan no. 05-00-09-02, Revision B and prepared by COX Architecture 06.05.2022 are approved for removal/pruning.
Replacement trees must be planted in accordance with the Landscape Plan Planting Schedule and Softworks Plan prepared by Cox Architecture dated 6/05/2022
- (7) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces', AS 4282 'Control of Obtrusive Effects of Outdoor Lighting' and the National Airports Safeguarding Framework (NASF) Guideline E: 'Managing the Risk of Distractions to Pilots from Lighting in the Vicinity of Airports' guidelines for extraneous lighting near its airfields.
- (8) **Reflectivity** – Building materials are to comprise no reflective building materials. If it is later found that lights or glare endangers the safety of aircraft operations, Defence may require the lighting to be extinguished or suitably modified.

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 Plan, reference 1A, dated 9.06.2022 and prepared by the applicant.

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

- (2) **Storm water Management Plan (water quality)** - Prior to the issue of a construction certificate for stormwater drainage works, a detailed stormwater management plan is to be prepared by a Chartered Professional (hydraulic) Engineer, detailing water quality controls that comply with the Port Stephens Development Control Plan 2014. The stormwater management plan should address hydrocarbon management.
- (3) **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, prior to the issue of a construction certificate for stormwater drainage works.

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, prior to the issue of a construction certificate for stormwater drainage works.

- (5) **Erosion and sediment control plan**– Before the issue of a construction certificate or commencement of works, 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:

- Council's development control plan,
- 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.

- (6) **Car parking details (if applicable)** – 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.
- (7) **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 Local Infrastructure Contribution Plan 2020. The total

amount payable will be adjusted at the time the payment is made, in accordance with the provisions of that Plan.

Section 7.12 contributions will be calculated with reference to the capital investment value (CIV) of the development, determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2021, and the levies specified in the Port Stephens Local Infrastructure Contributions Plan 2020 as outlined 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 Local Infrastructure Contribution 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 Local Infrastructure Contributions Plan. A copy of the Plan and Cost Summary Report Forms are available on Council's website at <https://www.portstephens.nsw.gov.au/>, alternatively contact Council on 02 9228 055.

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 apply to Development Applications as follows:

- a) **Prior to issue of any Construction Certificate.**
- (8) **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.
- (9) **PFAS Management** - Prior to the issue of any Construction Certificate, a Construction Management Plan is to be prepared and include the following actions to manage interaction with PFAS contamination during construction:
 - a) An investigation must be undertaken to characterise the potential for PFAS contamination, taking into account the EPA's Williamstown Management Area Maps and identify any potential contact with PFAS affected substances and exposure pathways which will need to be managed during construction activities. PFAS sampling is to be undertaken with the PFAS National Environmental Management Plant.
 - b) Where potential for PFAS contamination exists, it must be identified whether any construction activities will disturb soils above or below the groundwater table or interact/intercept groundwater. Where construction activities have the potential to disturb soils above or below the groundwater table or interact/intercept groundwater, soil sampling for PFAS must be undertaken to identify its presence and concentration (or otherwise), classify the soil in accordance with the EPA's

Addendum to the Waste Classification Guidelines (2014) – Part 1: classifying waste (<https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste>) and identify lawful reuse, treatment and/or disposal options. The discharge of PFAS contaminated ground water to the environment is not permitted.

- c) Any soils and groundwater that is to be excavated or removed from the premises must be fully quantified in tonnes (soil) and litres (groundwater).
- d) Where potential for PFAS contamination exists, suitable mitigation measures must be identified to prevent or limit, as far as possible, PFAS contact and exposure (for both human and environmental health) including appropriate measures to prevent unlawful offsite releases.
- e) Where potential for PFAS contamination exists, an erosion and sediment control plan must be developed in accordance with the EPA endorsed publication “Managing Urban Stormwater – Soils and Construction, 4th Edition” (Landcom, 2004) (or any revision) and any relevant EPA produced addendum publications.

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) **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 ground on 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'.

4.0 - During Works

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

- (1) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:
- 6.00am to 6.00pm on Monday to Sunday
- 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.
- (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.

- (3) **Compliance with the Building Code of Australia** – Building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **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.

- (5) **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.
- (6) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Management Plan, prepared by Construction Control, Revision 1.0 and dated 20 July 2022 must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (7) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
 - a) Connected to a stormwater quality improvement device.
- (8) **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.

- (9) **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.
- (10) **Tree protection** – While site or building work is being carried out, the applicant must maintain all required tree protection measures in good condition in accordance with the construction site management plan required under this consent, the relevant requirements of *AS 4970-2009 Protection of trees on development sites* and any arborist's report approved under this consent. This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.
- (11) **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.
- (12) **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.
- (13) **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.
- (14) **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.
- (15) **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.

- (16) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development. Any works undertaken adjacent to Ausgrid underground assets / Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables.

5.0 - Prior to Commencement of Use

The following conditions of consent shall be complied with prior to the commencement of use for the carpark.

- (1) **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.

- (2) **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.

- (3) **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.

- (4) **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.

- (5) **Modification to Existing Consent** – An application to modify the road and car parking network approved under DA 16-2008-940-4 is to be lodged and approved by the relevant consent authority under Section 4.55 of the EP&A Act 1979 to correspond with the layout approved under this consent.

6.0 – Ongoing Use

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

- (1) **Parking** – Proposed parking areas, service bays, truck docks, driveways and turning areas must be maintained clear of obstructions and be used exclusively for purposes of car parking, loading/ unloading, and vehicle access respectively for the life of the development. Under no circumstances are such areas to be used for the storage of goods or waste materials.
- (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) **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 water treatment devices** – All wastewater treatment devices (including drainage systems, sumps, traps and pumps) must be regularly maintained in good working order to ensure that they remain effective.

A maintenance schedule must be developed and incorporated into a Plan of Management (PoM) and kept on-site at all times for staff to comply with. All liquid and solid wastes collected from the treatment device must be disposed of in accordance with relevant environmental protection and waste control Legislation.

- (5) **Bird Strike** - Organic waste and/or storage of commercial bins associated with the proposed development may be attractive to vermin and/or birds and will potentially increase the risk of bird strike operating from Newcastle Airport and RAAF Base Williamtown. All waste bins must be covered/enclosed to reduce the risk of bird strike.

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) **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) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.

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 (Resilience and Hazards) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Precincts - Regional) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy (Planning Systems) 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.

RIGHT OF APPEAL AND REVIEW

RIGHT OF APPEAL

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated

development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

RIGHT OF REVIEW

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. (**See exclusions note below**).

Exclusions: A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.

APPROVAL(S) UNDER SECTION 4.12(3)

N/A

APPROVALS UNDER SECTION 4.46

N/A