

**DETERMINATION AND STATEMENT OF REASONS**  
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	19 July 2023
<b>DATE OF PANEL DECISION</b>	18 July 2023
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Tony McNamara and Roberta Ryan
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Ryan Palmer declared a conflict of interest as a Councillor of Port Stephens Council, as Council has a pecuniary interest in the development application.</p> <p>Giacomo Arnott declared a conflict of interest as a Councillor of Port Stephens Council, as Council has a pecuniary interest in the development application.</p> <p>Leah Anderson declared a conflict of interest as a Councillor of Port Stephens Council, as Council has a pecuniary interest in the development application.</p> <p>John Maretich declared a perceived conflict of interest due to his involvement with the whole of the Williamstown drainage masterplan, engineering works and maintenance planning, and his involvement with the Williamstown Special Activation Precinct.</p> <p>Brock Lamont has a conflict of interest as an employee of Port Stephens Council, as Council has a pecuniary interest in the development application.</p> <p>Steve Tucker declared a conflict of interest as a Councillor of Port Stephens Council, as Council has a pecuniary interest in the development application.</p>

Papers circulated electronically on 5 July 2023.

**MATTER DETERMINED**

PPSHCC-141 – Port Stephens Council – 16-2022-663-1 at 38 Cabbage Tree Road, Williamstown – industrial development (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 the Council and the applicant. The proposal was reliant on a separate approval for a communal carpark under DA (16-2022-855-1) which was required to be determined before this application. The communal carpark DA has been approved.

Arising from the Panel consideration, the Panel requested further details from Council regarding the categorisation of the use and the deferred commencement conditions. The applicant also requested that deferred commencement conditions 2 and 3 be relocated to a requirement to be met before release of any Occupation Certificate. A supplementary memo and revised set of conditions dated 12 July 2023 were provided and have been considered by the Panel.

The Panel is satisfied that the use is properly described as general industry with office premises and site works.

The carparking required for the use is split between 33 spaces on site and a further 12 spaces in an offsite communal carpark yet to be built approximately 200m from Building 1. The site is in Stage 1 of the Astra Aerolab subdivision

currently under construction. The communal carpark is in Stage 2 of this subdivision approval and earthworks for the carpark are approved under this DA. Registration of the subdivision for Stage 1 is imminent.

Subject to appropriate easements for access to 12 designated spaces being registered on the communal carpark site and the carpark being available when Building 1 is ready to be occupied, the Panel is satisfied that carparking to meet the needs of the development can be provided. A condition has been drafted to require the easement prior to the issue of a Construction Certificate. Conditions have also been drafted requiring a Subdivision Works Certificate for the carpark earthworks to be issued prior to the release of a Construction Certificate for Building 1, and that the proposed building cannot be occupied until the carpark is available for use.

The site is located within the Williamstown Special Activation Precinct. A draft masterplan has been exhibited for the area but is yet to be finalised. The proposal is consistent with the draft masterplan.

The proposed development is consistent with the form of development anticipated for the broader Astra Aerolab Business Park.

The Panel is satisfied that the proposed development will not result in unreasonable impacts on surrounding development and that the proposal is consistent with the existing and evolving strategic policy framework.

#### **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 following reasons:

1. The proposed development is consistent with the statutory and evolving strategic framework applying to the site and surrounds.
2. The site is suitable for the development and the proposed use will provide employment opportunities and economic benefit to the broader community.

#### **CONDITIONS**




The development application was approved subject to the conditions in Schedule 2.

The conditions were amended from those in the Council assessment report as follows:

1. Deferred commencement condition 2 deleted and drafted to be complied with prior to the issue of a Construction Certificate (now condition 2.10).
2. Deferred commencement condition 3 deleted and drafted to be complied with prior to the issue of an Occupation Certificate (now condition 5.16).
3. Number of carparking spaces required added to condition 2.10.
4. Addition of condition 2.11 to ensure a Subdivision Works Certificate for the earthworks associated with the communal carpark DA is issued prior to release of a Construction Certificate.

#### **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)	 Roberta Ryan
 Tony McNamara	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-141 – Port Stephens Council – 16-2022-663-1
2	PROPOSED DEVELOPMENT	Industrial development – general industrial warehouse with ancillary offices and site works
3	STREET ADDRESS	Lot: 11 DP: 1036501 38 Cabbage Tree Road WILLIAMTOWN
4	APPLICANT OWNER	Barr Property and Planning Pty Ltd Greater Newcastle Aerotropolis Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Precincts – Regional) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>Port Stephens Local Environmental Plan 2013</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Port Stephens Development Control Plan 2014</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 13 June 2023</li> <li>Council memo: 12 July 2023</li> <li>Written submissions during public exhibition: nil</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Kick off briefing: 5 October 2022 <ul style="list-style-type: none"> <li><u>Panel members</u>: Juliet Grant</li> <li><u>Council assessment staff</u>: Courtney Sargent and Ryan Falkenmire</li> <li><u>Applicant representatives</u>: Rebecca Johnston, Robert Green, Shane Murry and Matthew Fisher</li> <li><u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> </li> <li>Briefing: 24 November 2022 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton</li> <li><u>Council assessment staff</u>: Courtney Sargent, Dylan Mitchell and Ryan Falkenmire</li> <li><u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Site inspections: <ul style="list-style-type: none"> <li>○ <u>Alison McCabe (Chair)</u>: 15 November 2022</li> <li>○ <u>Roberta Ryan</u>: 3 July 2023</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 11 July 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Tony McNamara and Roberta Ryan</li> <li>○ <u>Council assessment staff</u>: Dylan Mitchell and Ryan Falkenmire</li> <li><u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> </li> <li>• Applicant Briefing: 11 July 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Tony McNamara and Roberta Ryan</li> <li>○ <u>Council assessment staff</u>: Dylan Mitchell and Ryan Falkenmire</li> <li>○ <u>Department staff</u>: Leanne Harris and Lisa Foley</li> <li>○ <u>Applicant representatives</u>: Rebecca Johnston, Shane Murray, Rob Green, Mark Snowdon and Amy McMullen</li> </ul> <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council assessment report

**CONDITIONS OF CONSENT – DA 16-2022-663-1 – 38 CABBAGE TREE ROAD WILLIMTOWN (LOT 109)**

**PART A - CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL**

**DEFERRED COMMENCEMENT**

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

- (1) **Registration of Parent Subdivision** – A Subdivision Certificate is issued for Stage 1 of DA 16-2009-324-3 and Lot 109 (the subject site) as approved under DA 16-2009-324-3 is registered with NSW Land and Registry Services.

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

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

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

**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. Hunter Water Corporation, Reference: HW2022-1671/1, dated 17 November 2022.
2. Transport for NSW, Reference: NTH22/00615/02, dated 26 October 2022.
3. Department of Defence, Reference: ID-EP-DLP&R/OUT/2022/BS33944578, dated 7 September 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.

<b>Plan No.</b>	<b>Revision No.</b>	<b>Plan Title.</b>	<b>Drawn By.</b>	<b>Dated.</b>
A-0-001	G	Lot 109 – Site Plan	Eje Architecture	04/11/2022
A-1-000	J	Lot 109/1 – Overall Plan	Eje Architecture	04/11/2022
A-1-100	H	Ground Floor Plan – Zone A (Office)	Eje Architecture	04/11/2022
A-1-101	H	Ground Floor Plan – Zone B (workshop)	Eje Architecture	04/11/2022
A-1-102	H	Level 1 – Zone A (Office)	Eje Architecture	04/11/2022
A-1-103	G	Roof Plan	Eje Architecture	04/11/2022
A-1-200	G	Elevations	Eje Architecture	04/11/2022
A-1-300	J	Sections	Eje Architecture	04/11/2022
L001	F	Lot 109 Site Plan	Terras Landscape Architects	14/12/2022
L003	F	Landscape Plan	Terras Landscape Architects	14/12/2022
L004	D	Street Detail Plan	Terras Landscape Architects	3/11/2022
L005	C	Finishes Palette	Terras Landscape Architects	16/9/2022
C103-001 Project No. NS220935	B	Overall Site Plan	Acor Consultants	16/09/2022
C103-101 Project No. NS220935	B	Site Grading Plan	Acor Consultants	16/09/2022
C104-001 Project No. NS220935	B	Stormwater Management Plan	Acor Consultants	16/09/2022
C105-001 Project No. NS220935	B	Soil Erosion and Sediment Control	Acor Consultants	16/09/2022
C105-101 Project No. NS220935	B	Erosion and Sediment Control Notes and Details	Acor Consultants	16/09/2022

Document Title.	Version No.	Prepared By.	Dated.
Acoustic Assessment for DA (reference: TM778-01F02 Acoustic Assessment for DA (r3))	2	Renzo Tonin & Associates	2/11/2022
Civil Engineering Report Development Application (reference: NS220935)	A	Acor Consultants	08/09/2022
Construction Waste Management Plan	B	Elephants Foot Consulting Pty Ltd	16/09/2022
Operational Waste Management Plan	C	Elephants Foot Consulting Pty Ltd	16/09/2022
Access Report	2	Lindsay Perry Access Pty Ltd	14/09/2022

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) **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) **Payment of building and construction industry long service levy** - Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy of \$21,870.00 as calculated at the date of this consent to the Long Service Corporation or Council under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* and provides proof of this payment to the certifier.

**Note.** Condition only applies to developments with a cost of works over \$250,000.

- (7) **Building Materials** – Building materials used for construction are to be non-reflective. If it is later found that glare endangers the safety of aircraft operations, the Department of Defence may require material and design modifications at full cost to the proponent.
- (8) **Fencing** – Any fencing forward of the building line must not exceed a height of 1.2m above existing ground level.

## 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) **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.

- (2) **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.

- (3) **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:

- 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.

- (4) **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.
- (5) **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.



- (6) **Construction site management plan** - Before the issue of a construction 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) location and materials for protective fencing and hoardings to the perimeter on the site
  - b) provisions for public safety
  - c) pedestrian and vehicular site access points and construction activity zones
  - d) 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
  - e) 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)
  - f) details of any bulk earthworks to be carried out
  - g) location of site storage areas and sheds
  - h) equipment used to carry out all works
  - i) a garbage container with a tight-fitting lid
  - j) dust, noise and vibration control measures
  - k) location of temporary toilets.
  - l) Waste management procedures identified in the approved construction waste management plan listed in Condition 1.0(1).

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.

- (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 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) Prior to issue of the Construction Certificate.

- (8) **Detailed Design in accordance with Acoustic Report** – Detailed design of the development is to be in accordance with the recommendations of Acoustic Assessment Report No. TM778-01F02, prepared by Renzo Tonin and Associates dated 2 November 2022. Certification the design accords with the Acoustic Assessment Report No. TM778-01F02 by a suitably qualified acoustic engineer is to be provided to the Certifying Authority.
- (9) **PFAS Management** - Prior to the commencement of works, a Construction Management Plan is to be prepared and include the following actions to manage interaction with PFAS contamination during construction:
1. There is the potential for Per/Poly-Fluoroalkyl Substances (PFAS) contamination in soil, groundwater or surface water at the development site. The applicant must identify whether any construction activities could disturb or interact with any PFAS contaminated soil, groundwater or surface water.
  2. If construction activities could disturb or interact with any PFAS contaminated soil, groundwater or surface water, the applicant must:
    - a. prevent, or limit as far as possible, offsite migration of PFAS contamination;
    - b. prevent, or limit as far as possible, contact and exposure to PFAS;
    - c. manage potentially PFAS impacted groundwater that may accumulate in any footings or excavations to ensure this does not run-off the site;
    - d. manage any PFAS-impacted soils, by controlling erosion and covering stockpiles of PFAS impacted soils to protect from rainfall egress and runoff; and
    - e. ensure that any PFAS contaminated material transported from the site to a site that is lawfully able to receive it.
  3. Where PFAS contaminated material is to be removed from the site, the applicant must sample the soil for PFAS and classify the soil in accordance with the EPA's Addendum to the Waste Classification Guidelines (2014) – Part 1: classifying waste to identify lawful management and disposal options.
- (10) **Easement for Car Parking** - An easement and right of carriageway over the communal car park (approved under DA16-2022-855-1) and connecting road Aerospace Avenue benefitting the subject lot (Lot 109) is to be registered over part Lot 115 of DP 129 5775 as per the draft 88B Instrument (reference: 19202\_88B (Draft) R1\_230206) and deposited plan (reference: 19202\_DPE (Draft) \_R2\_230221). The easement is to provide 12 spaces to cater for the off-site parking demand for Building 1 approved under this consent.
- (11) **Construction commencement of communal carpark** – A Subdivision Works Certificate for site works, under Stage 2 of DA16-2009-324, shall be issued for the part of the site that relates to the communal carpark approved under DA16-2022-855-1.

### 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) **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).
- (8) **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.
- (9) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.
- No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

## 4.0 - During Works

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

- (1) **Hours of work** – The principal certifier must ensure that building work and demolition 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.
- (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) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.

- (5) **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) **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.

- (7) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Site Management Plan must be introduced and maintained during construction of the development.

- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.

- (9) **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.

- (10) **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.
- (11) **Construction noise** – While building work is being carried out, the applicant must ensure that any noise generated from the site is controlled in accordance with Acoustic Assessment (reference: TM778-01F02 Acoustic Assessment for DA (r3)).
- (12) **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.

## 5.0 - Prior to Issue of an Occupation Certificate

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

- (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) **Car parking requirements** – A minimum of 33 car parking spaces including 2 accessible car parking spaces are to be provided on site in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.
- (4) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
- (5) **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.

- (6) **Footpath crossing construction** – A footpath crossing and driveway 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 (Driveway) approval must be obtained prior to the commencement of such works.

- (7) **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.

- (8) **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.

- (9) **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.

- (10) **Flood Emergency Response Plan** - A Flood Emergency Response Plan (FERP) for the proposed development must be provided to the Principal Certifying Authority. The FERP must include the following as a minimum:

- a) A map of the proposed evacuation route to a suitable location above the Probable Maximum Flood (PMF) that provides adequate shelter from the storm, including the route direction and description and identification of the depth of floodwater along the evacuation route in the 1% Annual Exceedance Probability flood and PMF events;
- b) Specific trigger heights linked to the nearest river and tidal gauges used for flood warnings and the specific evacuation route cut-off times linked to the gauge height;
- c) Description of the specific flood inundation at the site and the relevant surrounding area, including flood depths, direction of flow, velocities, hazard and specific relevant vulnerabilities;
- d) Consideration of and strategies for, the needs of the elderly, disabled and vulnerable who may be on site;
- e) A realistic time period for evacuation preparations linked to the trigger heights and evacuation route cut-off times, which includes:
  - Locating important papers, valuables etc., that will be evacuated
  - Locating and stacking possessions that are to be left behind, well above the predicted flood level
  - Dealing with all utilities such as electricity, gas, water, fuel, toilets, showers, wastewater system (including removal fuses) and moving pumps and machinery above the predicted flood level
  - Time to gather, identify and load animals (pets, livestock and other animals), including the possible need for additional assistance in handling your animals in an emergency.

- f) Determining the vehicular needs of the site to appropriately respond to the flood risk;
- g) A strategy for a nighttime flood emergency; and
- h) A strategy for effective flood risk management when the electricity, internet, telecommunications etc., are unavailable.

**Note:** Digital elevation data is available from Geosciences Australia, current flood studies are available on Council's website and river gauge/ tidal gauge data is available from the Bureau of Meteorology website.

- (11) **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.
- (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) **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 Acoustic Assessment Report No. TM778-01F02, prepared by Renzo Tonin and Associates dated 2 November 2022.
- (14) **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' and the lighting controls detailed in the Civil Aviation Safety Authority (CASA) Manual of Standards (MOS-139) Aerodromes.

Details demonstrating compliance must be provided to the Certifying Authority.

- (15) **Bush Fire Safety** – The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019" (PBP2019). In this regard the following is required:
  - a) The development is to be constructed in accordance with the access provisions of Chapter 8 of PBP 2019;
  - b) The area of the site identified as Lot 109/1, as indicated in the approved 'Lot 109 – Site Plan', Drawing No. A-0-001, Revision G prepared by EJE Architecture and dated 04/11/2022 is to be managed as an inner protection area.
  - c) The development is to be connected to a reliable water supply network and suitable fire hydrants are to be clearly marked and provided for the purposes of bushfire protection. Fire hydrant spacing, fixing and pressure shall comply with AS2419.1 – 2005 and PBP 2019 (Table 7.4a);
  - d) The provision of electricity must comply the following in accordance with Table 7.4a of PBP 2019;
  - e) An Emergency Evacuation Plan is to be prepared.

Details demonstrating compliance must be prepared by a qualified Bushfire Consultant provided to the Certifying Authority by an NSW suitably qualified BPAD Bushfire Consultant.



- (16) **Completion of Communal carpark** - Prior to the issue of any Occupation Certificate under this consent, the communal carpark approved under DA 16-2022-855-1 shall be constructed and operational.

## 6.0 – Ongoing Use

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

- (1) **Manoeuvring of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) **Industrial uses** – All industrial activity in connection with the use of the subject property is to be wholly confined within the building.
- Any approved office space is to be used solely in conjunction with the industrial use of the premises to which it is attached. The separate use or occupation of the approved office space is not permitted by this consent.
- The use of the factory unit for retail activities is prohibited.
- (4) **Loading to occur on site** – All loading and unloading operations are to be carried out wholly within the building/site and in accordance with the approved plans.
- The loading dock (if provided) must be used for loading and unloading operations in connection with the approved use.
- (5) **Parking – Signage (loading docks)** – 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.
- (6) **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.
- (7) **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.
- (8) **Storage of goods** – The storage of goods and materials must be confined within the building. At no time must goods, materials or advertising signs be displayed or placed within the designated car parking spaces, landscaped areas or road reserve.
- (9) **Amenity** – The business 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.
- (10) **Offensive noise** – The use and occupation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the Protection of the Environment Operation Act 1997 and must comply with the NSW Noise Policy for Industry 2017 (as amended).

- (11) **Waste Storage** – As the subject site is located in an area mapped by the Department of Defence as “Birdstrike Group C”, organic waste and/or the storage of bins associated with any future development must be covered and/or enclosed and limited on-site.
- (12) **Waste Management** – Operational waste management must be managed in accordance with the approved operational waste management plan referenced in Condition 1.0(1).

**Advice Note(s):**

- (1) **'Dial Before you Dig Australia'** – Before any excavation work starts, contractors and others should phone the “Dial Before You Dig Australia” service to access plans/information for underground pipes and cables.
- (2) **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.
- (3) **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/applicant's responsibility to ensure compliance with the requirements of this Act.
- (4) **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.
- (5) **Flood Evacuation Plan** – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.