

RECOMMENDED CONDITIONS

PART A - CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL

1.0 - Deferred Commencement

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

- (1) **Registration of Parent Subdivision** – A Subdivision Certificate is issued for Stage 1 of DA 16-2009-324-3, including Lot 106 and Lot 107 (the subject site) as approved under DA 16-2009-324-3 and 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. Ausgrid letter, Reference no. 1900118874, dated 15/01/2023 and second letter Reference no. 1900118874 _1, dated 19/06/2023.

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

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

Plan Reference/ Drawing No.	Name of Plan	Prepared by	Date
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A-DA-1002 Revision C	Site Plan	COX Architecture	5/25/2023
A-DA-2001 Revision D	Floor Plan – Ground Floor	COX Architecture	5/25/2023
A-DA-2002 Revision B	Floor Plan – Level 01	COX Architecture	2/09/2022
A-DA-2003 Revision B	Floor Plan – Level 02	COX Architecture	9/06/2022
A-DA-2004 Revision B	Floor Plans – Typical Level	COX Architecture	2/09/2022
A-DA-2005 Revision B	Roof Terrace	COX Architecture	8/12/2022
A-DA-2006 Revision B	Roof Plan	COX Architecture	7/21/2022
A-DA-3001 Revision C	North Elevation	COX Architecture	12/08/2022
A-DA-3002 Revision D	South Elevation	COX Architecture	5/25/2023
A-DA-3003 Revision D	East Elevation	COX Architecture	5/25/2023
A-DA-3004 Revision C	West Elevation	COX Architecture	7/21/2022
A-DA-4001 Revision B	Section 01	COX Architecture	7/21/2022
A-DA-4002 Revision B	Section 02	COX Architecture	12/08/2022
L1001	Overall Landscape Plan	Context Landscape Architecture	20/09/2022
L1002	Planting Schedule	Context Landscape Architecture	20/09/2022
L1003	Planting Palette	Context Landscape Architecture	20/09/2022
L1004	Materials Palette	Context Landscape Architecture	20/09/2022
L1005	Typical Details	Context Landscape Architecture	20/09/2022
DA-01-C01.01 Revision A	Cover Sheet, Locality Plan and Drawing Schedule	Northrop	15/09/2022
DA-01-C02.01 Revision B	Concept Erosion and Sediment Control Plan	Northrop	29/09/2022
DA-01-C02.02 Revision A	Concept Erosion and Sediment Details	Northrop	15/09/2022
DA-01-C03.01 Revision B	Concept Stormwater Management Plan	Northrop	29/09/2022

Document Title	Version No.	Prepared by	Date
Astra Development – Lot 106 Stormwater Management	NL213640 Revision B	Northrop	29/09/2022
Engineers Advice – External Lighting Compliance	NL213640	Northrop	13/01/2023
Lot 106 Newcastle Airport Wind Shear Assessment	Revision 2	Arup Australia Pty Ltd	7/03/2023
Acoustic Assessment for DA	TM612-03F02 Revision 5	Renzo Tonin & Associates	10/03/2023
Development Application Accessibility Report	10469DA Revision 4	Purely Access	3/02/2023
Acid Sulfate Soils Management Plan	39728.32 Revision 0	Douglas Partners	8/06/2023
Report on Preliminary Geotechnical Assessment	39728.27 Revision 0	Douglas Partners	16 /09/2022
Waste Management Plan	NL213640_EC01 Revision B	Northrop	23 /09/2022
Plan of Easement for Car Parking within Lot 115 (Unreg'd DP)	19202_DPE(Draft_R1_230206 Sheet 1 of 1	Thomas F Campbell	-
Draft 88B Instrument	19202_88B (Draft)_R1_230206 (4 sheets)	-	-
Astra Aerolab Precinct Public Art Plan	-	-	10 July 2023

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency

between the approved plans and a condition of this consent, the condition prevails.

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

- (3) **Approved Report Recommendations (CPTED)** - Construction of the development must comply with the Crime Prevention Through Environmental Design recommendations of Section 6.2.1 of the Statement of Environmental Effects, 22NEW00141, prepared by Barr Property and Planning dated October 2022 detailed as follows:
 - a) Passive surveillance maintained throughout the site via clear sightlines.
 - b) Restricted access to the car parking area provided through electronic key operated roller door and pedestrian access door.
 - c) Night-time lighting on level 1 to provide clear sight lines from the lift to parked vehicles and from street view into the parking area.
 - d) Landscaping comprising low height vegetation regularly maintained through lopping of tree branches to a height of 2m above ground and maintaining shrubs no taller than 30cm.
 - e) Technical surveillance including CCTV.
- (4) **Separate approval for fit out** – A separate development application for the fit out of the building/each tenancy must be provided to, and approved by either the Consent Authority prior to that use commencing or under the provisions of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 if applicable.
- (5) **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.
- (6) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.

The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

- (8) **Tree removal/pruning** – The trees/vegetation identified in the planted road verge identified for retention on DWG No. L-1001 of the approved landscape plans, prepared by Context Landscape Architecture, dated 20/09/2022 must be retained or in the event of damage during construction, replaced with trees/vegetation of the same species and general location.

Any required replacement planting must be installed prior to the issue of the Occupation Certificate.

Details demonstrating compliance must be provided to the Certifying Authority.

- (9) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads, 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.
- (10) **Reflectivity** – 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.
- (11) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
- (12) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.
- (13) **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 \$79,939.00 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.

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) **Flood Risk Management Plan** – A Flood Risk Management Plan prepared by a suitably qualified Flood Engineer must be provided to the Certifying Authority demonstrating compliance with the following:

- a) Certification that the proposed development is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).

- (4) **Stormwater system Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.

Details demonstrating compliance must be provided to the Certifying Authority.

- (5) **Retaining walls** – All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer or a system with a design certificate complying with the relevant Australian Standards.

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Heritage Trust).

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

- (7) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.
- (8) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:
- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
 - b) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room; and
 - c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (9) **Car parking details** – Before the issue of the relevant construction certificate, a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.
- (10) **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) PFAS Management controls listed under condition 2.0(15) of this consent.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

- (12) **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) Building work only - prior to issue of the Construction Certificate.

- (13) **Boundary Adjustment** – The boundary between proposed lot 106 and 107 must be adjusted and registered with NSW Land Registry Services, in accordance with the approved Site Plan, Drawing No. A-DA-1002, Revision C and dated 05/25/2023.

Details demonstrating compliance must be submitted to the Certifying Authority.

- (14) **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. TM612-03F02-01F02, Revision 5, prepared by Renzo Tonin and Associates dated 10 March 2023. Certification the design accords with the approved Acoustic Assessment Report by a suitably qualified acoustic engineer is to be provided to the Certifying Authority.

- (15) **PFAS Management** - A Construction Management Plan is to be prepared and include the following actions to manage interaction with PFAS contamination during construction:

- a) 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.
- b) 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.
- c) 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.

- (16) **Commencement of Common Car Park Works** - A Subdivision Works Certificate for site works, under Stage 2 of DA 16-2009-324, shall be issued for the part of the site that relates to the Communal Car Park approved under DA 16-2022-855-1.

- (17) **Easement for Car Parking** - An easement and right of carriageway over the communal car park (approved under DA 16-2022-855-1) and connecting road benefitting the subject lot (Lot 106) 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) _R1_230206). The easement is to provide a minimum of 117 spaces to cater for the off-site parking demand of the development.

Details demonstrating compliance must be provided to the Certifying Authority.

- (18) **Food Premises Fit-out** - The construction and fit-out of the food premises must be carried out in accordance with the following;

- a) The *Food Act 2003*;
- b) Food Regulation 2015; and
- c) Australian Standard 4674-2004 –Construction and Fit-out of Food Premises.

Details demonstrating compliance must be provided to the Certifying Authority.

- (19) **Dewatering Plan** - A Site Dewatering Plan must be prepared and submitted with the application to ensure that stormwater runoff and the disposal of groundwater from the excavation is drained in an appropriate manner and without detrimental impacts to neighboring properties and downstream water systems.

The Site Dewatering Plan is to comprise of detailed plans, documentation and certification of the system, prepared by a suitably qualified engineer and must comply with the following:

- a) Be in accordance with the recommendations of approved documents which concern the treatment and monitoring of groundwater; and
- b) Any details, approval or conditions concerning dewatering (e.g. Dewatering License) as required by the Water Act 1912 and any other relevant NSW legislation.
- c) Incorporate the PFAS management procedures listed in condition 2.0(15) of this consent.
- d) Depending on the water quality of groundwater pumped during dewatering, the water may need to be treated prior to re-use at the site or re-injection to the groundwater system. Please note the discharge of PFAS-contaminated groundwater to the wastewater system, including via tanker, is prohibited.

Details demonstrating compliance must be provided to the Certifying Authority.

- (20) **Hunter Water Consultation** - Any drilling techniques used in construction works must not contaminate groundwater. Prior to construction beginning, the developer

must provide Hunter Water with a description of the proposed drilling techniques, including drilling fluids to be used and potential risks to water quality.

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.

- (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.
- An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

- (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.

- (10) **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites'. No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

4.0 - During Works

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

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

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

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

- (2) **Hours of work** – The principal certifier must ensure that building work, demolition or

vegetation removal is only carried out between:

7.00am to 5.00pm on Monday to Saturday

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

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

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

- (3) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

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

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

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

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

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

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

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

- (6) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the

development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (7) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —
 - a) All footings/ foundations
 - b) At other stages of construction – any marks that are required by the principal certifier.

- (8) **Construction Site Management Plan implementation** - All construction site management procedures and systems identified in the approved Construction Site Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.

- (9) **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.

- (10) **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.

- (11) **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.

- (12) **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.

- (13) **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.
- (14) **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.
- (15) **Cut and fill** – 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.

- (16) **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.

- (17) **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 the approved Acoustic Assessment, Report No. TM612-03F02-01F02, Revision 5, prepared by Renzo Tonin and Associates dated 10 March 2023.
- (18) **Approved Report Recommendations (ASS)** – the application must be undertaken in accordance with the management procedures identified in the Acid Sulfate Soils Management Plan, prepared by Douglas Partners, dated 8 June 2023.

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) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (4) **Footpath 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.
- (5) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
 - a) Electricity;
 - b) Water; and
 - c) Sewer.

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

- (6) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.

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

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

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

- (9) **Flood Risk Management Plan** – A Certificate of Compliance prepared by a suitably qualified Flood engineer must be provided to the Principal Certifying Authority stating that all aspects of the Flood Risk Management Plan have been completed and/or implemented in accordance with the approved Plan.

- (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
- f) Determining the vehicular needs of the site to appropriately respond to the flood risk;
- g) A strategy for a night time 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) **Directional traffic flow signs** – All driveways must be suitably signposted and directional arrows painted on the internal driveways. All signs must be maintained in good repair at all times.
- (12) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.
- (13) **Completion of landscape and tree works** – Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape works, have been completed in accordance with the approved plans and any relevant conditions of this consent.
- (14) **Car parking requirements** – A minimum of 17 on site car parking spaces including 1 disabled car parking space is to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.
- (15) **Bicycle requirements** – Bicycle parking racks to accommodate 13 bicycles must be installed in accordance with the approved plans.

- (16) **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.
- (17) **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.
- (18) **Mechanical exhaust system** – A Certificate of Compliance prepared by a qualified Engineer confirming that the mechanical exhaust systems have been designed, constructed and installed in accordance with the relevant requirements of Clause F4.12 of the Building Code of Australia and AS1668 'The use and Ventilation and Air Conditioning in must be provided to the Certifying Authority.
- Certification must be provided that the air handling system as installed has been tested and complies with the approved plans and specifications, including ventilation requirements and fire precautions.
- (19) **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 approved Acoustic Assessment, Report No. TM612-03F02-01F02, Revision 5, prepared by Renzo Tonin and Associates dated 10 March 2023.
- (20) **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 (Manual of Standards-139) Aerodromes.

Details demonstrating compliance must be provided to the Certifying Authority.

- (21) **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 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);
 - c) The provision of electricity must comply with Table 7.4a of PBP 2019;
 - d) External surfaces of the building are to consist of non-combustible materials capable of withstanding ember attack;

- e) The area previously cleared in accordance with Stage 1 of DA 16-2009-324 is to be managed as an Asset Protection Zone per Section 3.2 of PBP 2019;
- f) A bushfire Emergency Evacuation Plan is to be prepared.

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

- (22) **Fire Safety Certificates** - A Fire Safety Certificate must be provided to the Principal Certifying Authority in accordance with the requirements of the Environmental Planning & Assessment Regulation 2021.

- (23) **Public Art Advisory Panel** – The appointment and establishment of the Public Art Advisory Panel, as outlined in Section 2 (pp18) of the Astra Aerolab Public Art Strategy dated Jul 2023, is to be completed.

Details demonstrating compliance are to be submitted to the certifying authority.

- (24) **Preliminary Stage 1 Art Curatorial** - Phases 1 to 4 of the Preliminary Curatorial Steps outlined in Section 2 (pp 46) of the Astra Aerolab Public Art Strategy dated July 2023, are to be completed for the Stage 1 public art, as identified on the Opportunities Map (pp 41).

Details demonstrating compliance are to be submitted to the certifying authority.

- (25) **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) **Display of goods on footpath** – No goods are to be displayed outside the confines of the building.
- (2) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (3) **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.

- (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) **Waste management and collection** – Ongoing waste is to be managed by a private contractor generally in accordance with the approved Waste Management Plan NL213640_EC01 Revision B, prepared by Northrop and dated 23 /09/2022.
- (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) **Use Limitation – Bird strike** - 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.
- (11) **Fire Safety Schedule** - At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the Environmental Planning & Assessment Regulations 2021.
- (12) **Public Art Installation** - Phases 5 to 7 - preliminary curatorial steps, as outlined in Section 2 (pp 46) of the Astra Aerolab Public Art Strategy dated July 2023 are to be

completed for the Stage 1 public art identified on the Opportunities Map (pp 41) as follows:

- a) Once 80% of the commercial developments with a CIV of more than \$2 million in the Stage 1 area have been issued an Occupation Certificate.

The Stage 1 public art concept is to be installed in a centralised and public domain space in the location identified in the Opportunities Map.

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) **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) **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.

- (6) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development. Any works

undertaken adjacent to electricity network assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables

- (7) **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.
- (8) **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.

REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Industry and Employment) 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).
- The proposed building entry and level variation to the PSDCP is considered to be acceptable in the particular circumstances of this case as the variation will not insert impacts the variation will not result in adverse urban design impacts.
- 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.