

27 November 2023

Dylan Mitchell
Principal Development Planner
Port Stephens Council

Submitted via NSW Planning Portal

Response to Draft Conditions of Consent
DA 16-2023-259-1 – 36, 38 and 40 Elkin Avenue, Heatherbrae
Alterations and Additions to Hunter River High School

Dear Dylan,

I refer to the draft conditions of consent issued on Tuesday 21 November 2023, for the above Development Application for Alterations and Additions to Hunter River High School.

In accordance with Section 4.33 (1)(b) a consent authority must not impose a condition on its consent to a Crown Development application, except with the approval of the applicant or the minister. The applicant, being Schools Infrastructure NSW, has reviewed the draft conditions and provides the attached response.

The response requests a number of amendments to the draft conditions or removal of conditions. All other conditions are to be considered as acceptable.

If you have any questions regarding this letter, please don't hesitate to contact me on 0420 660 085 or rjohnston@barrplanning.com.au.

Yours sincerely,



Rebecca Johnston
Director – Planning Manager

HUNTER RIVER HS - DA DRAFT CONDITIONS REVIEW

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Cond. #	Condition	Final Decision	Final Comments
1 (00)	General Conditions of Consent		
1 (01)	General terms of approval – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development. The General Terms of Approval are: 1.NSW Rural Fire Service, Reference no. DA20230621002679-Original-1 and dated 17 October 2023. 2.Heritage NSW, Reference no. DOC23/613108-35 and dated 29 September 2023. A copy of the General Terms of Approval is attached to this determination notice.	Amend Condition	Amend wording as show below in red: General terms of approval – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development to the extent of the scope covered by this development consent. The General Terms of Approval are: 1.NSW Rural Fire Service, Reference no. DA20230621002679-Original-1 and dated 17 October 2023. 2.Heritage NSW, Reference no. DOC23/613108-35 and dated 29 September 2023. A copy of the General Terms of Approval is attached to this determination notice.
1 (03)	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.	Amend Condition	Amend conditions to resolve discrepancies. <u>List:</u> L207_D_DA-Mass Planing Planting Carpark_Terras Landscape Architects_8/9/2023 DR-C-100001_F_Bulk Earthworks Plans_Stantec_1/9/2023 Preliminary Construction Environmental Management Plan_Revision 01_The APP Group_ 2/5/2023 3/5/2023 Arboriculture Impact Assessment_ - 5.1_Assurance Trees_12/5/2023. Waste Management Plan_-_The APP Group_ 24 May 2023 -.
2 (00)	Prior to Commencement of Works		

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Cond. #	Condition	Final Decision	Final Comments
2 (04)	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 Crown Certifier.	Amend Condition	Move to section 04 (Prior to the Commencement of Use).
2 (07)	Car parking details (if applicable) – Before the certification of Crown Building Work, a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the Crown Certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.	Amend Condition	Amend wording as show below in red : Car parking details (if applicable) – Prior to the commencement of any carpark related works Before the certification of Crown Building Work , a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the Crown Certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking.
2 (09)	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. Capital Investment Value - Levy Rate (% of CIV) Up to and including \$100,000Nil More than \$100,000 and up to and including \$200,0000.5% More than \$200,0001%	Remove Condition	The Department does not agree to a condition of consent requiring it to pay developer contributions under section 7.12 of the Environmental Planning and Assessment Act 1979. Planning Circular D6 represents the consistently held view that the Department of Education, as a Crown authority, provides critical community infrastructure and that to levy any developer contribution on provision of public education facilities increases the cost of such infrastructure for all taxpayers in the State.

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Cond. #	Condition	Final Decision	Final Comments
2 (15)	Demolition work – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility. Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility. Evidence is to be provided to the Crown Certifier demonstrating that asbestos waste has been disposed of in accordance with this condition.	Amend Condition	Amend wording as show below in red : Demolition work – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility. Any asbestos containing material encountered during demolition or works within buildings / structures , is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility. Evidence is to be provided to the Crown Certifier demonstrating that asbestos waste generated from buildings / structures has been disposed of in accordance with this condition.
2 (20)	Operational Traffic and Pedestrian Management Plan – an Operational Traffic and Pedestrian Management Plan is to be prepared, including the following information:	Amend Condition	Move to section 04 (Prior to the Commencement of Use).
3 (00)	During Works		
3 (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 be contacted and conducted a thorough assessment.	Amend Condition	Amend wording as show below in red : 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 follow an unexpected find protocol prepared by a qualified environmental specialist. In the event that contamination is identified as a result of this assessment and if remediation is required, Council must be notified immediately and remediation works are to be carried out in accordance with a remedial action plan prepared a qualified environmental specialist .

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Cond. #	Condition	Final Decision	Final Comments
3 (16)	<p>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:</p> <ul style="list-style-type: none"> •“relic” means any deposit, artefact, object or material evidence that: <ul style="list-style-type: none"> (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. 	Amend Condition	<p>Amend wording as show below in red (noting conditions for Aboriginal objects covered under condition 22):</p> <p>Uncovering relics or Aboriginal objects– While ground excavation, 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.</p> <p>In this condition:</p> <ul style="list-style-type: none"> •“relic” means any deposit, artefact, object or material evidence that: <ul style="list-style-type: none"> (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. •“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.
3 (18)	<p>Sewer Connection – Connection to sewer is to be undertaken generally in accordance with the approved Services Strategy, Revision 01, prepared by The APP Group and dated 3 May 2023.</p>	Amend Condition	<p>Amend wording as show below in red:</p> <p>Sewer Connection – Connection to sewer is to be undertaken generally in accordance with the approved Services Strategy, Revision 01, prepared by The APP Group and dated 3 May 2023 or as approved by Council Engineering Department.</p>

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Cond. #	Condition	Final Decision	Final Comments
3 (20)	<p>Site Audit Statement - All remediation works and the Validation Report must be reviewed by a NSW EPA Accredited Site Auditor (Site Auditor) as defined under the Contaminated Land Management Act 1997 at the conclusion of the remediation works.</p> <p>The Site Auditor must provide a Site Audit Statement (SAS) in accordance with the contaminated lands planning guidelines, Contaminated Lands Management Act 1997, State Environmental Planning Policy 55 and Council's Contaminated Lands Policy, confirming the land is suitable for the intended use.</p> <p>The SAS must be provided to the Crown Certifier within 30 days following the completion of the remediation works and submission of the Validation Report.</p> <p>No construction work is to occur until the SAS is issued by the Site Auditor.</p>	Amend Condition	<p>Amend wording as show below in red:</p> <p>Site Audit Statement - All remediation works and the Validation Report must be reviewed by a NSW EPA Accredited Site Auditor (Site Auditor) as defined under the Contaminated Land Management Act 1997 at the conclusion of the remediation works.</p> <p>The Site Auditor must provide a Site Audit Statement (SAS) in accordance with the contaminated lands planning guidelines, Contaminated Lands Management Act 1997, State Environmental Planning Policy 55 and Council's Contaminated Lands Policy, confirming the area subject to remediation is suitable for the intended use.</p> <p>The SAS must be provided to the Crown Certifier within 30 days following the completion of the remediation works and submission of the Validation Report.</p> <p>No construction work is to occur until the SAS is issued by the Site Auditor.</p>
3 (22)	<p>Aboriginal Cultural Heritage - Works must be carried out in accordance with the recommendations on Page 58-59 of the Aboriginal Cultural Heritage Assessment Report, prepared by Kayandel Archaeological Services, dated June 2023 and the Heritage NSW General Terms of Approval, Reference no. DOC23/613108-35, dated 29 September 2023.</p>	Amend Condition	<p>Amend wording as show below in red:</p> <p>Aboriginal Cultural Heritage - Works must be carried out in accordance with the recommendations on Page 58-59 of the Aboriginal Cultural Heritage Assessment Report, prepared by Kayandel Archaeological Services, dated June 2023 and the Heritage NSW General Terms of Approval, Reference no. DOC23/613108-35, dated 29 September 2023.</p> <p>Aboriginal objects identified within the boundaries of an Aboriginal Heritage Impact Permit issued by Heritage NSW must be treated in accordance with the conditions of that permit. An Unexpected Finds Protocol for Aboriginal objects must be in place for Aboriginal objects which are uncovered outside the boundaries of an existing permit.</p>
4 (00)	Prior to the Commencement of Use		

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Cond. #	Condition	Final Decision	Final Comments
4 (03)	<p>Services – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:</p> <p>a)Electricity; b)Water; c)Sewer; and</p> <p>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.</p>	Amend Condition	<p>Amend wording as show below in red:</p> <p>Services – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot any building subject to this application:</p> <p>a)Electricity; b)Water; c)Sewer; and</p> <p>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.</p>
5 (00)	Ongoing Use		
AN (00)	Advice Note(s):		