DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	12 July 2024
DATE OF PANEL DECISION	12 July 2024
DATE OF PANEL BRIEFING	9 July 2024
PANEL MEMBERS	Alison McCabe (Chair), Tony McNamara, Roberta Ryan
APOLOGIES	Christine Buckley
DECLARATIONS OF INTEREST	Jason Pauling declared a COI as this is a Council related project that he had previously been involved in.

Papers circulated electronically on 2 July 2024.

MATTER DETERMINED

PPSHCC-223 – Lake Macquarie – DA/1127/2023 at 38 Yorston Street, Warners Bay 2282 (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 briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel has had the benefit of a final briefing from Council and the applicant. All submitters were given the opportunity to address the Panel should they wish. No submitters addressed the Panel.

The application has been amended to address the streetscape and setback issues identified in the initial briefing of the Panel.

Council provided a supplementary memo dated 5 July 2024 and a revised set of conditions. A further memo recommending additional conditions relating to the Geotechnical Report, pre-clearance fauna surveys and removal of fauna habitat was received on the 8th of July 2024. The Panel bas considered both documents.

In the Panel's deliberation of the matter clarification was sought regarding how drop off / pick up arrangements would operate, allocation of car parking and extent of foot path along the sites frontage. The Panel noted that there was no direct at grade access from Holt Street to the front of the building. Given that there is some reliance on on-street parking, the Panel considered that the plans should be amended to require a more legible access point from Holt Street in addition to the one proposed from the car park.

Additional conditions have been included to address access from Holt Street, the extent of the footpath, street tree planting, and management allocation of drop off / pick up car spaces. In the Panels deliberation the Council provided a further set of consolidated conditions.

The site is an irregular shape. The proposed development as amended responds to the streetscape and surrounding context. The introduction of a formal footpath, kerb and gutter and landscape outcomes will contribute to the broader amenity. The use of the site as a childcare centre will meet ongoing demand for these types of facilities. The Panel is satisfied that the built form proposed responds to the site constraints.

The development provides sufficient carparking on site, and the surround street network can readily accommodate any minor overflow.

The proposed development has merit and could be approved.

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

The decision was unanimous.

REASONS FOR THE DECISION
The Panel determined to approve the application for the following reasons:

i. The proposed development responds to the constraints of the site.
ii. The impacts of the development can be appropriately managed and mitigated.
iii. The development will provide a social and community benefit to of the broader area.
iv. The landscape and street upgrades will provide improved amenity to the surrounding area.

CONDITIONS
The development application was approved subject to the conditions at Schedule 2. The conditions were changed from those in the Council report to:

- Increase footpath width – condition 17.
- Provide for front gate / main entry – at grade access off Holt Street and relocation of the water meter – condition 21
- Require details of management of drop off and pick up in POM – condition 59
- Specify car parking spaces required for staff and drop off / pick up – condition 62
- Specifically require street tree planting – conditions 44 and 55
- Additional fauna condition – conditions 27 and 28
- Compliance with the Geotechnical Report – condition 20

CONSIDERATION OF COMMUNITY VIEWS
In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern included:

- Visual impacts associated with the location of garbage and recycling facilities.
- Loss of trees / open space.
- Car Parking and traffic impacts
- Driveway widths.

PANEL MEMBERS	
Alison McCabe (Chair)	Tony McNamara
Roberta Ryan	

SCHEDULE 1		
1	**PANEL REF – LGA – DA NO.**	**PPSHCC-223 – Lake Macquarie – DA/1127/2023**
2	**PROPOSED DEVELOPMENT**	Childcare Facility
3	**STREET ADDRESS**	**38 Yorston Street, Warners Bay 2282**
4	**APPLICANT/OWNER**	Lake Macquarie City Council Lake Macquarie City Council
5	**TYPE OF REGIONAL DEVELOPMENT**	Council related development over $5 million

6	**RELEVANT MANDATORY CONSIDERATIONS**	• Environmental planning instruments:
		  ○ State Environmental Planning Policy (Resilience and Hazards) 2021
		  ○ State Environmental Planning Policy (Planning Systems) 2021
		  ○ State Environmental Planning Policy (Transport and Infrastructure) 2021
		  ○ State Environmental Planning Policy (Industry and Employment) 2021
		  ○ Lake Macquarie Local Environmental Plan 2014
		• Draft environmental planning instruments: Nil
		• Development control plans:
		  ○ Lake Macquarie Development Control Plan 2014
		• Planning agreements: Nil
		• Provisions of the *Environmental Planning and Assessment Regulation 2021:*
		• Coastal zone management plan: Nil
		• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality
		• The suitability of the site for the development
		• Any submissions made in accordance with the *Environmental Planning and Assessment Act 1979* or regulations
		• The public interest, including the principles of ecologically sustainable development

7	**MATERIAL CONSIDERED BY THE PANEL**	• Council assessment report: 2 July 2024 • Council memo: 5 July 2024 • Council memo received: 9 July 2024 • Written submissions during public exhibition: 6 • Total number of unique submissions received by way of objection: 6

8	**MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL**	• Preliminary Briefing: 31 August 2023
		  ○ Panel members: Alison McCabe (Chair), Tony McNamara
		  ○ Council assessment staff: Andrew Leese, Amy Regado, Jim Suters
		  ○ Applicant Representatives: Marina Budisavljevic, James Walters, Jess Salvador
		  ○ Department: Leanne Harris, Holly McCann
		
		• Site inspection Panel Members
		  ○ Alison McCabe (Chair): 1 July 2024
		  ○ Tony McNamara: 21 June 2024
		  ○ Roberta Ryan: 16 June 2024

		• Final briefing to discuss Council's recommendation**:** 2 July 2024 ○ Panel members: Alison McCabe (Chair), Roberta Ryan, Tony McNamara ○ Council assessment staff: Andrew Leese, Amy Regado, Glen Mathews and Jim Suters ○ Applicant representatives: James Walters, Marina Budisavljevic ○ Department: Leanne Harris, Holly McCann
9	**COUNCIL RECOMMENDATION**	Approval
10	**DRAFT CONDITIONS**	Attached to the Council assessment report

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	**Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989**
	1. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia. 2. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences. 3. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the Building Code of Australia. 4. In subsection (1), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made. 5. In subsection (3), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made. 6. This section does not apply— a. to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or b. to the erection of a temporary building, other than a temporary structure to which subsection (3) applies.
	Condition reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.
2	**Erection of signs**
	1. This section applies to a development consent for development involving building work, subdivision work or demolition work. 2. It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision 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 the building work and a telephone number on which the principal contractor may be contacted outside working hours, and

c. stating that unauthorised entry to the work site is prohibited.

3. The sign must be—

a. maintained while the building work, subdivision work or demolition work is being carried out, and

b. removed when the work has been completed.

4. This section does not apply in relation to—

a. building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or

b. Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

3 **Approved plans and supporting documentation**

Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Plan number	**Revision number**	**Plan title**	**Date of plan**
A00	Rev C	Drawing List and Site Location	31.01.2024
A03	Rev C	Proposed Site Plan	31.01.2024
A10	Rev C	Ground Floor & L1 Plan	31.01.2024
A11	Rev C	Roof Plan	31.01.2024
A12	Rev C	Car Park and Waste Plan	31.01.2024
A30	Rev C	Building Elevations	31.01.2024
A31	Rev C	Street Elevations	31.01.2024
A40	Rev C	Building Sections	31.01.2024
A70	Rev C	Material and Fence Selection	31.01.2024
A71	Rev C	Signage and Internal Concept	31.01.2024
A73	Rev B	External Perspectives	31.01.2024
L001	Rev E	Cover Sheet	21.12.2023

L003	Rev E	Overall Site Plan	21.12.2023
L004	Rev E	Detail Plan - Outdoor Courtyard / Play area	21.12.2023
L005	Rev E	Design Themes Play Space	21.12.2023
L006	Rev E	Planting Palette	21.12.2023

Approved documents

Document title	**Version number**	**Prepared by**	**Date of document**
Access Report	LP_23131	Lindsay Perry Access	26 June 2023
Acoustic Report	MAC231829-01RP1V1	Muller Acoustic Consulting	June 2023
Geotechnical Assessment Report -	24000483.001A	Kleinfelder	22 June 2023
Detailed Site Investigation	24000483.001A	Kleinfelder	31 October 2023
Remediation Action Plan	GR00146-GR1	Green Room	20 June 2024
Waste Management Plan	-	LMCC (Team Leader Building Design)	30 July 2023
Traffic Report - Traffic & Parking Assessment	-	Intersect Traffic	June 2023 and 1 December 2023

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

4 **Construction Certificate**

Prior to the commencement of building work a Construction Certificate shall be obtained.

Condition reason: To require a construction certificate prior to building work commencing.

5 **Disability Access Requirements**

	Access for people with disabilities shall be provided from the buildings to kerb ramps and footpaths along the street frontage, by means of a continuous path of travel in accordance with *Australian Standard AS 1428.1.* Note: Additional legislation exists to promote the provision of services, which enable people with a disability to maximise their potential, further their integration in the community and achieve positive outcomes. The following legislation may be relevant: a) *The NSW Disability Services Act 1993,* *b) The Commonwealth Disability Discrimination Act 1992,* *c) NSW Anti-Discrimination Act 1977.* For further information please consult: a) Human Rights and Equal Opportunity Commission, b) NSW Anti-Discrimination Board.
	Condition reason: To ensure that disability access requirements are met
6	**Erosion and sediment controls in place**
	Before any site work commences, the Certifier, must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with 'Managing Urban Stormwater: Soils and construction' prepared by Landcom (the Blue Book) (as amended from time to time).
	Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.
7	**Occupation Certificate**
	The development shall not be occupied or used prior to the issue of a Whole Occupation Certificate or a Part Occupation Certificate by the Principal Certifier.
	Condition reason: To ensure an Occupation Certificate is obtained at the completion of work and prior to occupancy or use.
8	**Public Domain Works**
	The landscape consultant that prepared the Public Works Certificate landscape construction plans (or a consultant with equivalent qualifications) shall submit Landscape Maintenance Reports to LMCC Senior Project Officer (Civil) at 52 weeks and 104 weeks after practical completion certifying the public domain works are being satisfactorily maintained.
	Condition reason: To ensure all assets have received the required maintenance over the extent of the establishment period.

9	**Crime Prevention**
	Closed-Circuit Television System (CCTV) to comply with Australian Standard – Closed Circuit Television System (CCTV) AS 4806.1/2/3/4 shall be installed. The system shall receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to conform with Federal and State Privacy and Surveillance Legislation. Digital or analogue technology shall be used to receive, store and process data. Lighting shall be designed in accordance with AS 1158.3.1 to provide appropriate lamps and lighting levels to mitigate pedestrian crime risk and fear, facilitating a safe, comfortable visual environment for pedestrian and wheeled transport movement at night. Where damaged or broken, lighting shall be repaired within 48 hours. Robust and vandal-proof finishes and fixtures including fencing, seating and signage including graffiti resistant building materials and fixtures shall be used in the construction of the development. Graffiti shall be removed within 24 hours of its appearance
	Condition reason: To strengthen mitigation of crime that may impact on the proposed development:

Building Work

Before issue of a construction certificate

10	**Equal access to the premises**
	Before the issue of a construction certificate, plans which demonstrate that adequate access to the premises will be provided for persons with disabilities in accordance with the Commonwealth Disability (Access to Premises – Buildings) Standards 2010. These plans must be submitted to the certifier.
	Condition reason: To ensure safe and easy access to the premises for people with a disability
11	**Erosion and sediment control plan**
	Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Certifier: 1. Council's relevant development control plan, 2. the guidelines set out in 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time), and 3. 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) (as amended from time to time).
	Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

12	**Preparation of construction and fit out plans for food and drink premises**
	Before the issue of a construction certificate, detailed plans of all food and beverage preparation, serving and storage areas (including for perishable stock, waste, chemicals and personal belongings) must be prepared by a suitably qualified person. The detailed plans must be prepared in accordance with the following editions in force on the date of determination and provided to **the certifier:** 1. Food Standards Code (Australia and Food Safety Standard 3.2.3 – Food Premises and Equipment 2. Food Act 2003 and Food Regulation 2015 3. Australian Standard 4674:2004 :Design, Construction and Fit-out of Food Premises 4. Plumbing Code of Australia and Australian Standard/New Zealand Standard AS/NZS 3500 series on Plumbing and Drainage 5. **Hunter Water** commercial trade wastewater requirements for food premises, and 6. any relevant Water Services Association of Australia codes of practice, guidelines, policies and requirements.
	Condition reason: To ensure detailed construction and fit out plans are submitted which comply with the relevant standards
13	**Car parking details**
	Before the issue of a Construction Certificate, written evidence prepared by a suitably qualified engineer must be obtained that demonstrates, to the certifier's satisfaction, the plans for parking facilities comply with the relevant parts of AS 2890 Parking Facilities set and the relevant section of Council's development control plan (in force as at the date of determination of this consent). The proposed motor bike space shall be removed.
	Condition reason: To ensure parking facilities are designed in accordance with the Australian Standard and Council's DCP.
14	**Contributions Plan – Glendale Contributions Catchment – 2015**
	In accordance with the provisions of the *Environmental Planning and Assessment Act 1979 - Sect 7.11* and the *Lake Macquarie City Council Development Contributions Plan Glendale Contributions Catchment - 2015,* the monetary contributions in the attached Contributions Schedule shall be paid to Council for the purposes identified in that Schedule. From the date this determination is made until payment, the amounts of the contributions payable under the preceding clause shall be indexed and adjusted on: a. 14 August, b. 14 November, c. 14 February, and d. 14 May;

	in each year in accordance with indexation provisions within the Contributions Plan and Directions issued under the *Environmental Planning and Assessment Act 1979 - Sect 7.17.* The first date for indexation shall occur on the first abovementioned date after the notice of determination becomes effective. The contributions payable shall be the amounts last indexed and adjusted in accordance with the above. However, if no amount has been indexed and adjusted because the first date for indexation and adjustment has not arrived, the contributions payable shall be those as set out in the table below. The contributions shall be paid to Council as follows: 1. Development applications involving subdivision – prior to the release of the Subdivision Certificate. 2. Development applications involving building work – prior to the release of the first Construction Certificate. 3. Development applications involving both subdivision and building work – prior to the release of the Subdivision Certificate or first Construction Certificate, whichever occurs first. 4. Development applications where no Construction Certificate or Subdivision Certificate is required – prior to the release of the development consent or prior to issue of the first Certificate of Occupancy, whichever occurs first. 5. Complying Development Certificates - prior to any work authorised by the application or certificate commencing. Please note that should payment be made by cheque or electronic transfer the release of any documentation shall be subject to the clearing of those funds. It is the professional responsibility of the Certifying Authority to ensure the monetary contributions have been paid to Council in accordance with the above provisions. Please note that should payment be made by cheque or electronic transfer the release of any documentation shall be subject to the clearing of those funds. Indexation details are available from Council's Development Contribution Section. A copy of the *Lake Macquarie City Council Development Contributions Plan Glendale Contributions Catchment - 2015* is available on Council's website, or a copy is available at the Council's Administrative Building during Council's opening hours.
	Condition reason: To enable application of relevant contribution levies and ensure adequate community infrastructure is provided to meet demands generated by new development.
15	**Development Street Addressing**
	Application shall be made to Council to obtain addressing for the development in accordance with the guidelines in the NSW Address Policy and User Manual. Application is made by emailing an approved site plan, floor plan(s) and contact details to Data and Knowledge Management at enar@lakemac.nsw.gov.au.
	Condition reason: To ensure street addresses are allocated to new developments

16	**Acoustic Certification – Internal Comfort Noise Levels**
	The proposed development is to be designed and constructed to comply with AS2107.2000 Acoustics – Recommended design sounds levels and reverberation times for building interiors. A suitably qualified acoustic consultant shall be engaged to assist with the preparation of the final building plans and specifications to ensure the proposed development will comply with AS2107.2000.
	Condition reason: To protect amenity.
17	**Concrete Footpath**
	A design plan for concrete footpaths 1.5 metres wide along the full length of the street frontage shall be submitted. Concrete foot paving shall be constructed in accordance with Lake Macquarie City Council standard drawing *EGSD-301* which is available from Councils website. No works shall commence prior to the issue of a Public Works Certificate in accordance with s138 of the *Roads Act 1993*. Any works on a public road shall be approved by Council.
	Condition reason: To provide required infrastructure.
18	**Show Lots Clear of 100 Year Flood Level**
	Stormwater designs and calculations shall be submitted to show that all lots are clear of the 1:100 year flood level. This condition shall also apply to lots which would be affected by substantial overland flow, which may necessitate the carrying out of works to ensure properly drained and flood free conditions. Note: Lots that are not 500mm clear of the 1:100 year flood level shall be subject to floor height control and shall be identified as Flood Control Lots.
	Condition reason: To prevent flooding of the building.
19	**Stormwater Disposal - Detention and Harvesting**
	A Stormwater Detention and Harvesting Plan shall be submitted. The plan shall be generally in accordance with the plans approved by the Development Consent prepared by Northrop Newcastle, Civil Engineering Package, Ref: Job No. NL230571 – Revisions and Sheets as noted, last Issue E dated 25/01/2024. The stormwater plans approved by this development consent are not approved for construction. The stormwater plans shall comply with the following: 1. Stormwater shall be disposed of through a piped system designed in accordance with Australian Standard AS 3500 by a suitably qualified professional. The design shall be undertaken by a practicing Civil Engineer deemed to be suitably experienced by Council and qualified so as to be accepted as a Member of the Institution of Engineers Australia or a Registered Surveyor deemed to be suitably experienced by Council shall be accepted as qualified to prepare plans for drainage works (excluding flood control structures and bridges). Qualifications demonstrating the above may be requested by Council. Stormwater detention measures shall be designed to ensure the development does not increase

	upstream or downstream flood levels for all recurrence intervals up to and including the 1% Annual Exceedance Probability. 2. Detention storage shall be calculated and designed in accordance with Australian Rainfall and Runoff 2019 and the Lake Macquarie City Council guideline – Handbook for Drainage Design Criteria and shall conform to the specifications and standards contained in Development Control Plan 2014 Engineering Guidelines. 3. Stormwater harvesting measures shall be designed in accordance with the Development Control Plan 2014 Water Cycle Management Guideline. Stormwater drainage plans shall include details of the harvesting system, including rainwater tank details, pump details and reticulation diagrams. 4. The location of a permanent metal sign (minimum dimensions 150mm x 220mm) shall be detailed on the plans in a visible location near the detention orifice plate or onsite detention entry with the following wording: THIS IS AN ONSITE STORMWATER DETENTION SYSTEM REQUIRED BY LAKE MACQUARIE CITY COUNCIL. It is an offence to reduce the volume of the tank or basin or to interfere with the orifice plate that controls the outflow. The base of the outlet control pit and the debris screen shall be cleaned of debris and sediment on a regular basis. This plate shall not be removed.
	Condition reason: To protect the amenity and environment of the local area.
20	**Compliance with the Geotechnical report**
	All recommendations contained in the Geotechnical Report No. 24000483.001A Ref:NCA23R154136 prepared by Kleinfelder Australia P/L dated 22/06/2023 shall be incorporated into the engineering design for the development. All works proposed to be undertaken shall embody the relevant recommendations of the Geotechnical Report. 1. All engineering plans shall be endorsed by a suitably qualified Geotechnical Consultant. The endorsement shall state that the proposed works are in accordance with the recommendations of the aforementioned Geotechnical Report.
	Condition reason: To ensure the development complies with the geotechnical assessment undertaken for the development.
21	**Revised pedestrian entrance into the development**
	Revised plans for pedestrian entry into the development from Holt Street shall be submitted to Council for approval. The plans shall include, but not be limited to, at-grade gated access to be provided from Holt Street to the main pedestrian entrance into the building.
	Condition reason: To ensure pedestrian entry for the development is clear to users.

Before building work commences

22	**Dilapidation report**
	Before any site work commences, a dilapidation report must be prepared by a suitably qualified engineer detailing the structural condition of adjoining buildings, structures or works and public land, to the satisfaction of the Certifier. Where access has not been granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the satisfaction of the Certifier, that all reasonable steps were taken to obtain access to the adjoining properties. No less than seven (7) days before any site work commences, adjoining building owner(s) must be provided with a copy of the dilapidation report for their property(ies) and a copy of the report(s) must be provided to Council (where Council is not the principal certifier) at the same time.
	Condition reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and Council are provided with the dilapidation report.
23	**Erosion and sediment controls in place**
	Before any site work commences, the **certifier**, must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).
	Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.
24	**Works Within a Public Road Reserve**
	Approval is granted to open a grassed or natural surface within the road reserve for the installation of all water services, cables, or mains. Upon completion of the work, the road reserve shall be restored to its original state and no hazards shall remain that may impact on the public. For any other works within the road reserve, an approval under Section 138 of the *Roads Act 1993* shall be obtained from Council. The road shall not be opened until the approval has been issued.
	Condition reason: To ensure impacts to the road reserve are minimised
25	**Contaminated Land Remediation Action Plan**
	Prior to construction commencing, a revised Remediation Action Plan (RAP) shall be prepared, and a copy of the RAP provided to Council for approval. The RAP shall be prepared by a suitably qualified and experienced contaminated land consultant, to the satisfaction of Council and in accordance with:

	1. *Guidelines for Consultants Reporting on Contaminated Sites (NSW Environment Protection Authority 2020, or as amended).* 2. Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land (Department of Urban Affairs and Planning and NSW EPA 1998, or as amended).
	Condition reason: To ensure suitable remediation measures for the development.
26	**Construction Site Management Plan**
	Before the construction commences, a construction site management plan must be prepared, and provided to **the certifier**. The plan must include the following matters: a. The location and materials for protective fencing and hoardings on the perimeter of 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: i. Proposed truck movements to and from the site; ii. Estimated frequency of truck movements; and iii. Measures to ensure pedestrian safety near the site; e. Details of bulk earthworks to be carried out; f. The location of site storage areas and sheds; g. The equipment used to carry out works; h. The location of a garbage container with a tight-fitting lid; i. Dust, noise and vibration control measures; j. The location of temporary toilets; k. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: i. AS 4970 – Protection of trees on development sites; ii. An applicable Development Control Plan; iii. An arborist's report approved as part of this consent A copy of the construction site management plan must be kept on-site at all times while work is being carried out.
	Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
27	**Pre-clearance fauna surveys**

	Immediately prior to clearing, a suitably qualified Ecologist or wildlife carer shall undertake pre-clearing surveys to identify fauna habitats present on site that will require attention during clearing works. Pre-clearing surveys are to include (but not limit to): • Inspection of hollow bearing trees. • Inspection of vegetation for nests / dreys. • Inspection of debris piles, including coarse woody debris. • Identification of any hollow bearing trees / nest trees to be retained.
	Condition reason: To ensure pre-clearance fauna surveys are completed prior to clearing works being undertaken.
28	**Removal of fauna habitat**
	A suitable qualified ecologist or wildlife carer shall supervise removal of any fauna habitat to ensure mitigation against any native animal welfare issues. Removal of trees with habitat hollows and / or nests shall be undertaken at a time that minimises impact to fauna, particularly threatened fauna that could breed and or hibernate within hollows /nests on site (i.e., preferably March, April, September, or October). Where possible, trees with habitat hollows and / or nests shall be removed at least 24 hours after other vegetation approved for removal to encourage any residing fauna to relocate. Any hollow-bearing trees shall be felled in one to two metre sections, beginning at the top of the crown. Lengths cut from the trees shall be in a manner that shall preserve the hollows with each section inspected and appropriately treated to minimise impact to fauna. Clearing shall be staged, where possible, from areas of most impact to areas of least impact to help guide fauna into areas of bushland that are to be retained.
	Condition reason: To ensure clearing works do not have adverse impacts upon fauna habitat.

During building work

29	**Hours of work**
	Site work must only be carried out between the following times – 7:00am to 6:00pm Monday to Friday 7:00am to 5:00pm Saturday Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.
	Condition reason: To protect the amenity of the surrounding area.

30	**Soil management**
	While site work is being carried out, the **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.** b. All fill material imported to the site must be: a. Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*; or b. a material identified as being subject to a resource recovery exemption by the NSW EPA; or c. a combination of Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* and a material identified as being subject to a resource recovery exemption by the NSW EPA.
	Condition reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.
31	**Waste management**
	While site work is being carried out: 1. all waste management must be undertaken in accordance with the waste management plan; and 2. upon disposal of waste, records of the disposal must be compiled and provided to the principal certifier, detailing the following: a. The contact details of the person(s) who removed the waste; b. The waste carrier vehicle registration; c. The date and time of waste collection; d. A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill; e. The address of the disposal location(s) where the waste was taken; f. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste. If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and Council.
	Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.

32	**Noise and Vibration requirements**
	While site work is being carried out, noise generated from the site must not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at a lot boundary of the site.
	Condition reason: To protect the amenity of the neighbourhood during construction.
33	**Site Amenities**
	Toilet facilities shall be available or provided at the work site before works begin and shall be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. 1. Each toilet shall: be a standard flushing toilet connected to a public sewer, or 2. have an approved on-site effluent disposal system under the *Local Government Act 1993*, or 3. be a temporary chemical closet.
	Condition reason: To ensure that adequate site amenities are provided.
34	**Unobstructed Footpath Access**
	The person having the benefit of the consent shall maintain unobstructed footpath access within the public road reserve at all times. Building materials shall not be placed or stored within the road reserve. In the case of sites where it is not possible to keep the footpath or road reserve clear during construction works approval from Council shall be obtained prior to any closing of the road reserve or footpath area. An application for temporary structure or occupation of road reserve should be submitted via Council's website.
	Condition reason: To ensure safe access through a public space is maintained until the completion of works.

Before issue of an occupation certificate

35	**Completion of landscape and tree works**
	Before the issue of an Occupation Certificate, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.
	Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).
36	**Completion of public utility services**
	Before the issue of the relevant occupation certificate, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services

	including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to the principal certifier.
	Condition reason: To ensure required changes to public utility services are completed, in accordance with the relevant agency requirements, before occupation.
37	**Food Premises Final Inspection**
	Before the issue of an occupation certificate, the food premises shall be inspected by an Authorised Officer of LMCC under the Food Act 2003, to determine compliance with the Food Act 2003, Food Safety Standards and Australian Standard 4674:2004: Design, Construction and Fit-out of Food Premises.
	Condition reason: To enable council to ensure compliance with the Food Act 2003 before the business commences
38	**Post-construction dilapidation report**
	Before the issue of an Occupation Certificate a post-construction dilapidation report must be prepared by a suitably qualified engineer, to the satisfaction of the **certifier**, detailing whether: a. after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and b. where there has been structural damage to any adjoining buildings, that it is a result of the work approved under this development consent; and c. a copy of the post-construction dilapidation report must be provided to Council (where Council is not the principal certifier, or a principal certifier is not required) and to the relevant adjoining property owner(s).
	Condition reason: To identify any damage to adjoining properties resulting from site work on the development site.
39	**Removal of waste upon completion**
	Before the issue of an Occupation Certificate: a. all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved waste management plan; and b. written evidence of the waste removal must be provided to the satisfaction of the **principal certifier**.
	Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.
40	**Repair of infrastructure**
	Before the issue of an Occupation Certificate:

	1. any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of Council, and at no cost to Council; or 2. if the works in (a) are not carried out to Council's satisfaction, Council may carry out the works required and the costs of any such works must be paid as directed by Council and in the first instance will be paid using the security deposit required to be paid under this consent.
	Condition reason: To ensure any damage to public infrastructure is rectified.
41	**Consolidation of Lots**
	Prior to the issue of any Occupation Certificate, whichever occurs first, Lots Lot 1 DP157444, Lot 380 DP1133165 and Lot 2 DP730502 shall be consolidated and registered at the NSW Land Registry Services and a copy of the registered plan shall be provided to Council.
	Condition reason: To ensure the orderly development of land
42	**Driveway Construction**
	Prior to the issue of the whole occupation certificate, the driveway to the garage or car parking area of the development shall be constructed in accordance with the approved construction certificate plan.
	Condition reason: To ensure the driveway is constructed priory to occupation of the building
43	**Positive covenant for water quality device maintenance**
	A maintenance schedule for the water quality device(s) detention and harvesting tank as shown on the stormwater plans by Northrop shall be completed by a suitably qualified engineer. The maintenance schedule shall outline the required maintenance and timing intervals (e.g. monthly, quarterly etc.). A positive covenant shall be placed on title requiring the owner of the land to undertake periodic maintenance for the water quality device(s) in accordance with the above maintenance plan. Note: If during detailed design stage the water quality devices are substituted for a similar product the maintenance plan shall reference the adopted devices.
	Condition reason: To ensure water quality treatment devices are maintained in good working order
44	**Public Domain Works**
	At the practical completion of works and prior to the issue of the Final Occupation Certificate, the landscape consultant that prepared the Public Works Certificate landscape construction plans shall submit a Landscape Compliance Report to the LMCC Senior

	Project Officer (Civil) certifying all public domain landscape works have received the relevant witness and hold point inspections, implemented and maintained in accordance with this Public Works Certificate. This compliance report is required prior to LMCC issuing a compliance certificate for the works. For clarity, this condition includes all street tree planting shown on the approved landscaping plans.
	Condition reason: To ensure all streetscape works have been completed as per landscape plans and to ensure both softscape and hardscape are ready to be transferred to Council Assets
45	**Provision of Council Easement (Public)**
	An easement to drain water, (minimum three metres wide or the width of the 100-year flow path, whichever is greater) shall be created at no cost to Council in favour of Council in accordance with the approved Stormwater Drainage Plan by Northrop Newcastle , Civil Engineering Package , Ref: Job No. NL230571 – Revisions and Sheets as noted, last Issue E dated 25/01/2024. The easement shall be registered on the title of the lot under Section 88B of the *Conveyancing Act 1919* as amended. A copy of the registered Section 88B Instrument shall be provided to Council prior to the issue of any occupation certificate. Council shall be the authority with the power to release, vary or modify the terms of the easement.
	Condition reason: To protect local amenity.
46	**Acoustic Certification**
	Plans shall be certified as being designed in accordance with the approved Acoustic Report reference Ref MAC231829-01RP1V1 prepared by Mueller Acoustic Consulting dated June 2023. Including construction and operational compliance with “Section 6.2 Noise Attenuation Controls and Section 8 Construction Recommendations of the MAC Acoustic Report Ref MAC231829-01RP1V1 dated June 2023.
	Condition reason: To protect local amenity.
47	**Stormwater Disposal - Stormwater Detention and Harvesting**
	All drainage works shall be carried out in accordance with the approved Construction Certificate plans. Prior to the issue of any Occupation Certificate, a Works As Executed Plan shall be prepared by a surveyor and submitted to the Certifying Authority that demonstrates compliance with the approved Construction Certificate. If there are any changes from the Construction Certificate these shall be highlighted in a different colour on the plan and certification shall be provided from the design engineer, the changes do not affect the stormwater design outcomes.
	Condition reason: To ensure any changes to the stormwater design are certified by the design engineer.

48	**Contaminated Land Remediation and Validation**
	A suitably qualified and experienced Contaminated Land Consultant shall validate the site has been remediated. Validation shall be provided in accordance with the *Guidelines for Consultants Reporting on Contaminated Sites (NSW Environment Protection Authority 2020, or as amended).* The validation report shall include a clear statement the consultant considers the site to be suitable for the approved use. Note: Certification from the person who carried out remediation works shall be provided to Council in accordance with the requirements of *Clause 4.15 of Environmental Planning Policy (Resilience and Hazards 2021) - Chapter 4 Remediation of land.*
	Condition reason: To ensure site is remediated and rendered suitable for the proposed use.

Occupation and ongoing use

49	**External lighting during ongoing use**
	During ongoing use of the premises, all lighting must be operated and maintained in accordance with the approved plans and the requirements of this consent.
	Condition reason: To ensure the safe operation of the premises and protect the amenity of the local area
50	**Graffiti removal**
	During ongoing use of the premises, ensure graffiti is removed from the exterior of the building or associated structures, including any fences, site services and retaining/planter bed walls.
	Condition reason: To protect and preserve the visual amenity of the surrounding public domain
51	**Storage and disposal of waste materials during ongoing use**
	During ongoing use of the premises: 1. bins must be put on the premises for the storage of any waste that is generated (including for recycling), 2. all garbage and recyclable materials generated from the premises must be stored wholly within any approved storage area and must not be stored outside the premises (including any public place) at any time 3. arrangements must be implemented for the separation of recyclable materials from garbage 4. any approved waste storage area must be appropriately maintained to prevent litter and the entry of pests 5. where council does not provide commercial garbage and recyclable materials collection services:

	a. a contract must be entered into with a licensed contractor to provide these services for the premises; and b. a copy of the contract must be kept on premises and provided to relevant authorities including council officers on request. 6. where the collection of garbage and recyclable materials from the premises is undertaken by a licensed contractor, it must only occur between daylight hours Monday to Saturday 7. all liquid trade waste discharged to sewerage system must comply with the trade waste approval issued by the relevant water authority 8. all liquid trade waste pre-treatment devices must be regularly maintained to remain effective in accordance with the conditions of the liquid trade waste approval issued by the relevant water authority.
	Condition reason: To ensure proper handling of waste, garbage and recyclable materials generated during operation of the premises
52	**Emissions**
	There shall be no interference with the amenity of the neighbourhood by reason of the emission of any "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the development.
	Condition reason: To restrict offensive emissions from the development
53	**External Storage of Products**
	The external storage or display of any products on the development site is not permitted.
	Condition reason: To prevent products from becoming a safety hazard or crime risk
54	**Hours of Operation**
	Following commencement of occupation, the premises shall operate or trade only between the times stated as follows: Mondays to Fridays - 6:30am to 6:30pm Saturdays, Sundays and Public Holidays - Nil Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.
	Condition reason: To minimise disturbance and to maintain the amenity of the surrounding uses
55	**Landscape Works**
	All landscape works required under this consent shall undergo an establishment maintenance period of a minimum of 52 weeks.

	All landscaping shall then be permanently maintained in good condition in accordance with the approved landscape plan and the adopted *Development Control Plan 2014 Guidelines – Landscape Design Guidelines.* For clarity, this condition includes all street tree planting shown on the approved landscaping plans.
	Condition reason: Compliance of landscape maintenance protocols on private lands
56	**Lighting**
	Any lighting shall be installed to comply with Australian Standard AS/NZS4282-2019.
	Condition reason: To control the obtrusive effects of outdoor lighting
57	**Noise – Ongoing Operation of Machinery, Plant and Equipment**
	The Laeq (15 minute) operating noise level of machinery, plant, equipment, or any other operational noise source, when measured at the boundary of another premises, shall comply with either the amenity or intrusiveness criteria calculated in accordance with the *NSW Environment Protection Authority Noise Policy for Industry 2017.* For assessing amenity criteria, the area shall be categorised in accordance with the guidelines outlined in Chapter 2 of that Policy.
	Condition reason: To ensure the development meets relevant noise criteria and maintain the amenity of the area
58	**Acoustic Certification**
	At 90 days of operation a suitably qualified acoustic consultant shall test, measure and certify the development is operating, at that time, in accordance with the approved Acoustic Report.
	Condition reason: To protect local amenity.
59	**Plan of Management**
	An Operational Plan of Management shall be prepared and kept on premises. The Operational Plan of Management must include, but is not limited to, the following details: • Capacity and Hours of Operation • Staff and Administration Management • Measures for drop off and pick up arrangements • Arrivals and Departures for Staff • Car Parking • Education and Activities • A Procedure for Noise and Complaint Management

	• Evacuation Plan and Management, including procedures for people with a disability.
	Condition reason: To protect local amenity.
60	**Waste Management Plan**
	An ongoing Operational waste management plan for the development, as per Section 4 (commercial use) of the 2019 Lake Macquarie Waste Management Guidelines, shall be provided to and approved by Council Waste Services. The plan must include the following additional matters: a. Waste types and estimated volumes, use and destination, in accordance with the 2019 Lake Macquarie Waste Management Guidelines sub-section 4.1 to include the following information; i. the details of the businesses likely to be removing waste, ii. an estimate of the type and quantity of waste, iii. whether waste is expected to be reused, recycled or sent to landfill, and iv. the address and EPA NSW licence numbers of the disposal locations for compostables, recyclables and waste. b. That Council could provide a waste collection service from kerbside (optional); and c. Show storage space for a bin cart and installation of a recharge power point within the waste storage room, if necessary. d. a service agreement must be in place with either Lake Macquarie City Council or a privately-owned licensed waste collection services provider that will allow for waste services to commence upon occupation of the development – this needs to be arranged at least six (6) weeks prior to completion of the build or occupation to allow time for delivery of bins.
	Condition reason: To protect local amenity.
61	**Children and Staff Numbers**
	The facility shall comply with the indoor and outdoor space requirements in the *Education and Care Services National Regulations* (the Regulations). The maximum number of child care places shall comply with the numbers specified in the service licence. Should there be any reduction in the outdoor or indoor spaces, then the number of children must be reduced accordingly to comply with the Regulations. The staff to children ratios at the facility shall be in accordance with relevant legislation/regulations.
	Condition reason: To comply with the relevant childcare regulations.
62	**Car parking allocation**

	Car parking shall be allocated and signposted or line marked in accordance with the following: • 10 carparking spaces allocated to staff • 6 car parking spaces allocated to 15 minutes drop off and collection
	Condition reason: To comply with the relevant childcare regulations.