

# Draft Conditions of Consent – DA 16-2023-386-1 – PPSHCC-243

## General Conditions

1.	<b>Approved plans and supporting documentation</b>			
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.			
	<b>Approved plans</b>			
	<b>Plan number</b>	<b>Rev</b>	<b>Plan title</b>	<b>Drawn by</b>
				<b>Date of plan</b>
	22158(CD)RevC-0-2	F	Site Plan	HDB
				20/03/2024
	22158(CD)RevF-0-3	F	Compound Pad with Existing Features	HDB
				20/03/2024
	22158(CD)RevF-0-4	F	Compound Pad with Proposed Structures	HDB
				20/03/2024
	22158(CD)RevF-0-40	F	Detail	HDB
				20/03/2024
	22158(SD)-1	C	Compound – Site Detail – Layout Plan	HDB
				23/11/2023
	22158(SD)-2	C	Elevations	HDB
				8/11/2023
	AN-25149 (Sheet 1 of 11)	-	Construction Plan	Northrop
				27/11/2023
	AN-25149 (Sheet 7 of 11)	-	Existing Underbore Profile - X3	Northrop
				27/11/2023
	LDA02	A	Landscape Plan (5 x BESS)	Conus Landscape Architect
				22/12/2023
	LDA03	A	Plant Schedule & Detail	Conus Landscape Architecture
				22/12/2023
	LDA15	A	Maintenance Specification	Conus Landscape Architecture
				22/12/2023
<b>Approved Documents</b>				
<b>Document title</b>		<b>Version No.</b>	<b>Prepared by</b>	<b>Dated</b>
Decommissioning Strategy		-	Hive Battery Developments Pty Ltd	Not dated
Fire Incident Management Plan Doc Ref: RCE-23310		3	Riskcon Engineering Pty Ltd	3/06/2024

	Noise and Vibration Impact Assessment	3	Mott MacDonald	28/11/2023
In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.				
<b>Condition reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development				
2.	<b>Approved Report Recommendations – Acoustic Report</b>			
Construction of the development must comply with the recommendations of Acoustic Report prepared by Mott MacDonald, dated 28/11/2023. The development must undergo acoustic attenuation accordance with the recommendations to ensure the noise level does not exceed the adopted amenity noise levels as specified in the acoustic report.				
An approved acoustic consultant is required to verify that the adopted amenity criteria is being achieved within the first three months of operation.				
<b>Condition reason:</b> To ensure that development is carried out in accordance with specific recommendations of a report.				
3.	<b>Approved Report Recommendations – Fire Incident Management</b>			
Construction and ongoing use of the development must comply with the recommendations of Fire Incident Management Plan (FIMP) was prepared by Riskcon Engineering Pty Ltd, dated 3/06/2024				
<b>Condition reason:</b> To ensure that development is carried out in accordance with specific recommendations of a report.				
4.	<b>Ecological Requirement</b>			
Construction of the development must comply with the recommendations of the 'Ecological Assessment Report for the proposed installation of a Battery Energy Storage System (BESS) at Lot 1 DP 1265736 No. 1154 Clarence Town Road, SEAHAM NSW', Report No. 12785, prepared by Wildthing Environmental Consultants dated 21 March 2024 detailed as follows:				
<u>Trees / Native Vegetation:</u>				
<ul style="list-style-type: none"><li>• The clearance boundary is to be clearly marked with flagging tape;</li><li>• Trees to be removed or trimmed are to be clearly marked to prevent any unintentional impact on trees that are to be retained;</li><li>• The clearing or trimming of any trees is to be undertaken in a manner that avoids damaging adjacent vegetation;</li><li>• All material stockpiles, vehicle parking and machinery storage will be located within cleared areas proposed for clearing, and not in areas of native vegetation that are to be retained;</li><li>• The removal of hollow-bearing trees must be supervised by a suitably qualified ecologist to reduce the impact on any fauna which may be present.</li></ul>				
<u>Phascolarctos cinereus (Koala):</u>				
<ul style="list-style-type: none"><li>• Pre-clearance searches are to be undertaken prior to the removal of vegetation to look for Koalas and any other fauna that may be present. If a Koala is located then works are to stop until the koala vacates the impact areas by at least 100m on its own accord prior to works recommencing;</li><li>• The proposal includes the construction of an access road. Speed limit of this road should be restricted to 20km/h in order to minimise the risk of injury or fatality to any koalas as a result of motor vehicles.</li></ul>				
<u>Koala Food Tree replacement:</u>				

	<ul style="list-style-type: none"> <li>140 replacement Koala Feed Tree plantings are required on the subject land. Replacement food trees must be: <ul style="list-style-type: none"> <li>a) of the same species: (i.e. <i>Eucalyptus tereticornis</i>);</li> <li>b) sourced from local provenance seed stock;</li> <li>c) planted in a cluster and, where feasible, in the vicinity of any retained food trees;</li> <li>d) protected, nurtured and maintained until the trees have reached a mature height of 5 metres;</li> <li>e) Any replacement trees that die before maturity must be replaced.</li> </ul> </li> </ul> <p><u>Access Road Construction</u></p> <ul style="list-style-type: none"> <li>The excavation works associated with the construction of the access road must be supervised by a suitably qualified ecologist to reduce the impact on tree roots. This includes minor realignment of the access road to limit impacts on tree root zones.</li> </ul> <p><b>Condition reason:</b> To ensure that development limits impacts on the local environment.</p>
5.	<p><b>External Agency Approvals</b></p> <p>The requirements from the following agencies must be complied with prior to, during, and at the completion of the development.</p> <p>The requirements are:</p> <ol style="list-style-type: none"> <li>Ausgrid – Ref: 1900124070, dated 21/09/2023</li> </ol> <p>A copy of the Requirements is attached to this determination notice.</p> <p><b>Condition reason:</b> To ensure that development is carried out in accordance with conditions are required by other external agencies</p>
6.	<p><b>General Terms of Approval</b></p> <p>The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development.</p> <p>The General Terms of Approval are:</p> <ol style="list-style-type: none"> <li>Department of Planning and Environment – Water, Reference: IDAS-2023-10563, dated 19 October 2023.</li> </ol> <p>A copy of the General Terms of Approval is attached to this determination notice.</p> <p><b>Condition reason:</b> To ensure General Terms of Approval are complied with.</p>
7.	<p><b>Surrender of Development Consent</b></p> <p>The applicant must surrender the consent relating to DA No. 16-2021-369-1 for a Solar Farm by submitting an application for 'Surrender of a Consent' to Port Stephens council in accordance with Section 68 of the environmental Planning and Assessment Regulation 2021.</p> <p><b>Condition Reason:</b> To ensure any conflicts with previous approval are avoided.</p>
8.	<p><b>Decommissioning</b></p> <p>Within 12 months of the development ceasing operation it must be decommissioned as per the decommissioning strategy prepared by Hive Battery Developments Pty Ltd. The decommissioning plan must be updated on a 5-yearly basis.</p> <p><b>Condition Reason:</b> To ensure decommissioning is undertaken as per the approved strategy.</p>
9.	<p><b>BESS Capacity</b></p>

	The battery energy storage system must have a delivery capacity under 30 megawatts of electrical power.
	<b>Condition Reason:</b> To ensure the proposal remains under the designated development threshold.

### Building Work Before issue of a construction certificate

10.	<b>Erosion and sediment controls plan</b>	
	<p>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:</p> <ol style="list-style-type: none"> <li>1. Council's relevant development control plan,</li> <li>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</li> <li>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).</li> </ol>	
	<b>Condition reason:</b> To ensure no substance other than rainwater enters the stormwater system and waterways.	
11.	<b>Waste Management Plan requirements</b>	
	<p>Before the issue of a Construction Certificate, a waste management plan for the development must be prepared and provided to the certifier. The plan must be prepared:</p> <ol style="list-style-type: none"> <li>a. in accordance with <ol style="list-style-type: none"> <li>i. the Environment Protection Authority's Waste Classification Guidelines as in force from time to time; and</li> <li>ii. a development control plan that provides for waste management that applies to the land on which the work or the clearing of vegetation is carried out; and</li> </ol> </li> <li>b. include the following information— <ol style="list-style-type: none"> <li>i. the contact details of the person removing waste;</li> <li>ii. an estimate of the type and quantity of waste;</li> <li>iii. whether waste is expected to be reused, recycled or sent to landfill;</li> <li>iv. the address of the disposal location for waste.</li> </ol> </li> </ol> <p>A copy of the waste management plan must be kept on-site at all times while work approved under the development consent is being carried out.</p>	
	<b>Condition reason:</b> To ensure resource recovery is promoted and local amenity protected during construction.	
12.	<b>Section 7.12 development contributions</b>	
	<p>A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning &amp; Assessment Act 1979 and the Port Stephens Local Infrastructure Contribution Plan 2020. The total amount payable will be adjusted at the time 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:</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;"><b>Capital Investment Value</b></td> <td style="width: 50%;"><b>Levy Rate (% of CIV)</b></td> </tr> </table>	<b>Capital Investment Value</b>
<b>Capital Investment Value</b>	<b>Levy Rate (% of CIV)</b>	

	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%
	<p>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 Council's website at <a href="https://www.portstephens.nsw.gov.au/">https://www.portstephens.nsw.gov.au/</a>, alternatively contact Council on 02 9228 055. Where the estimated cost of carrying out on 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 Australia Institute of Quantity Surveyors.</p> <p>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.</p> <p>Payment of the above amount must apply to Development Applications as follows:</p> <p>a) Building work only – prior to issue of the Construction Certificate.</p>	
	<p><b>Condition reason:</b> To ensure that a monetary contribution as specified is paid to Council in accordance with Section 7.12 of the EP&amp;A Act 1979, and the Port Stephens Council Local Infrastructure Contributions Plan 2020.</p>	
13.	<p><b>Long Service Levy</b></p> <p>Before the issue of a Construction Certificate, the long service levy, as calculated at the date of this consent, must be paid to the Long Service Corporation under the <i>Building and Construction industry Long Service Payments Act 1986</i>, section 34, and evidence of the payment is to be provided to the principal certifier.</p>	
	<p><b>Condition reason:</b> To ensure the Long Service Levy is paid.</p>	
14.	<p><b>Civil engineering plans</b></p> <p>Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, accessways, 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.</p> <p>The plans must be updated to show a maximum excavation depth of 200mm along the length of the approved access road to limit impacts on the tree root zones. 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.</p>	
	<p><b>Condition reason:</b> To ensure that civil engineering plans have been prepared by a qualified engineers prior to the issue of the Construction Certificate.</p>	
15.	<p><b>Roads Act Approval</b></p> <p>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 <i>Roads Act 1993</i>.</p>	
	<p><b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the <i>Roads Act 1993</i>.</p>	

16.	<p><b>Construction Site Management Plan</b></p> <p>Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the principal certifier. The plan must include the following matters:</p> <ul style="list-style-type: none"> <li>a. The location and materials for protective fencing and hoardings on the perimeter of the site;</li> <li>b. Provisions for public safety;</li> <li>c. Pedestrian and vehicular site access points and construction activity zones;</li> <li>d. Details of construction traffic management including: <ul style="list-style-type: none"> <li>i. Proposed truck movements to and from the site;</li> <li>ii. Estimated frequency of truck movements; and</li> <li>iii. Measures to ensure pedestrian safety near the site;</li> </ul> </li> <li>e. Details of bulk earthworks to be carried out;</li> <li>f. The location of site storage areas and sheds;</li> <li>g. The equipment used to carry out works;</li> <li>h. The location of a garbage container with a tight-fitting lid;</li> <li>i. Dust, noise and vibration control measures;</li> <li>j. The location of temporary toilets;</li> <li>k. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ul style="list-style-type: none"> <li>i. AS 4970 – Protection of trees on development sites;</li> <li>ii. An applicable Development Control Plan;</li> <li>iii. An arborist’s report approved as part of this consent</li> </ul> </li> </ul> <p>A copy of the construction site management plan must be kept on site at all times while work is being carried out.</p> <p><b>Condition reason:</b> To require details of measures to be undertaken that will protect the public, and the surrounding environment, during site works and construction.</p>
17.	<p><b>Liquid Cooling System</b></p> <p>If the liquid cooling system meets the criteria to be considered a regulated system, it must be designed and installed in accordance with the relevant provisions of:</p> <ul style="list-style-type: none"> <li>a) Public Health Act 2010.</li> <li>b) Public Health Regulation 2012.</li> </ul> <p>Plans and Specifications for the design, installation, operation and maintenance of the Regulated system(s), including details on the locations of all plant and equipment, must be provided to the Certifying Authority</p> <p><b>Condition Reason:</b> To ensure that the proposal is designed in accordance with the Public Health Act and Regulation.</p>
18.	<p><b>Tree Retention Plan</b></p> <p>Before the issue of a construction certificate, plans and a report detailing the retention of existing trees onsite must be prepared by a suitably qualified person. The plans must be submitted to Council for review and approval.</p> <p><b>Condition Reason:</b> To ensure that the proposal is designed to ensure the required trees are retained onsite.</p>
19.	<p><b>External Lighting</b></p> <p>Before the issue of a construction certificate, plans and a report detailing external lighting must be prepared by a suitably qualified person.</p> <p>The lighting plan must be consistent with the approved plans and the lighting</p>

	<p>requirements document prepared by Power Lyt dated 13 December 2023, and the following requirements:</p> <ol style="list-style-type: none"> <li>The lighting is to be designed and installed in accordance with the Civil Aviation Safety Authority's Civil Aviation Regulations "Manual of Standards Part 139".</li> <li>comply with AS 4282: Control of Obtrusive Effects of Outdoor Lighting</li> <li>lighting must be placed at all entrances to, and exits from the premises</li> <li>lighting must not interfere with traffic safety;</li> <li>lighting must not give rise to obtrusive light or have adverse impacts on the amenity of surrounding properties; and</li> <li>external lighting must not flash or intermittently illuminate unless required for safe ingress/egress of vehicles crossing a pedestrian footway or approved vehicle entrance.</li> </ol> <p>The lighting plan must be submitted to the certifier.</p> <p><b>Condition Reason:</b> To ensure external lighting is provided for safety reasons and to protect the amenity of the local area.</p>
	<p><b>Stormwater/drainage Plans</b></p> <p>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).</p> <p>20. The plans must demonstrate that post development flow match pre-development flows for all storm events up to and includes the 1% AEP event.</p> <p>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.</p> <p><b>Condition Reason:</b> To ensure detailed stormwater plans are prepared for the proposal.</p>

### Before building work commences

21.	<p><b>Erosion and sediment controls in place</b></p> <p>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 re-stabilized in accordance with 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).</p> <p><b>Condition reason:</b> To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
22.	<p><b>All Weather Access</b></p> <p>A 4m wide all-weather vehicle access is to be provided from the Clarence Town Road frontage to the BESS compound 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.</p> <p><b>Condition reason:</b> To ensure that adequate vehicular access is provided to and from the site, prior to the commencement of works.</p>

23.	<p><b>Construction Certificate Required</b></p> <p>In accordance with the provisions of Section 6.7 of the Environmental Planning &amp; Assessment Act 1979 (EP&amp;A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:</p> <ul style="list-style-type: none"> <li>a) A Construction Certificate has been issued by a Consent Authority;</li> <li>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&amp;A Act 1979; and</li> <li>c) The PCA is notified in writing of the name and contractor license number of the owner/building intending to carry out the approved work.</li> </ul> <p><b>Condition reason:</b> To ensure that a Construction Certificate has been issued for the building works prior to the commencement of work.</p>
24.	<p><b>Notice Commencement of Work</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>a) The name and address of the person;</li> <li>b) A description of the work to be carried out;</li> <li>c) The address of the land on which the work is to be carried out;</li> <li>d) The Registered numbers and date of issue of the development consent and construction certificate;</li> <li>e) A statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before work commences have been satisfied; and</li> <li>f) The date on which the work is intended to commence.</li> </ul> <p>The notice must be lodged on the NSW Planning Portal.</p> <p><b>Condition reason:</b> To ensure that the Principal Certifier has given notice to the Consent Authority and Council at least two days prior to subdivision and/or building works commencing in accordance with S6.6(2)(a) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certificate and Fire Safety) Regulation 2021.</p>
25.	<p><b>Notice of Principal Certifying Authority Appointment</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>a) A description of the work to be carried out;</li> <li>b) The address of the land on which the work is to be carried out;</li> <li>c) The Registered number and date of issue of the relevant development consent;</li> <li>d) The name and address of the Principal Certifier and the person who appointed the principal certifier;</li> <li>e) If the principal certifier is a registered certifier <ul style="list-style-type: none"> <li>i) The certifier's registration number, and</li> </ul> </li> </ul>



	<div><div><div>ii) A statement signed by the registered certifier to the effect that the certifier consents to be appointed as principal certifier, and</div><div>iii) A telephone number on which the certifier may be contacted for business purposes.</div></div><div>The notice must be lodged on the NSW Planning Portal.</div><div><b>Condition reason:</b> To ensure that the Principal Certifier has given notice that they will be the Principal Certifier to the Consent Authority and Council at least two days prior to subdivision and/or building works commencing in accordance with S6.6(2)(a) of the Environmental Planning and Assessment Act 1979</div></div>																								
26.	<div><div><b>Rubbish Generated from the Development</b></div><div>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.</div><div><b>Condition reason:</b> To ensure that construction waste is appropriately stockpiled and removed from the site.</div></div>																								
27.	<div><div><b>Site is to be secured</b></div><div>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.</div><div><b>Condition reason:</b> To restrict access to the site by the public and ensure that the site is adequately secured prior to the commencement of works.</div></div>																								
28.	<div><div><b>Nest Boxes</b></div><div>Prior to the removal of vegetation, the following nest boxes must be installed on retained trees within LOT: 1 DP: 1265736. The nest boxes shall be constructed to a standard consistent with Council’s ‘Technical Specification - Nest Boxes’ and positioned at a suitable height off the ground as per the individual species habitat preferences. The nest boxes are to be installed by a suitably qualified and experienced consultant and maintained for a period of 5 years.</div><table><tr><th>Nest box type / size</th><th>Species suitability</th><th>Number required</th><th>Installation height above ground (minimum)</th></tr><tr><td>Small / Microbat</td><td>Microbat</td><td>4</td><td>4 meters</td></tr><tr><td>Medium</td><td>Squirrel Glider</td><td>2</td><td>4 meters</td></tr><tr><td>Medium</td><td>Brush-tailed Phascogale</td><td>4</td><td>4 meters</td></tr><tr><td>Medium</td><td>Small Parrot</td><td>2</td><td>4 meters</td></tr><tr><td>Large</td><td>Large Parrot / Brush-tail Possum</td><td>2</td><td>4 meters</td></tr></table><div>Documentary evidence of nest box installation must be provided to and approved by Council's Natural Systems Section prior to vegetation clearing works commencing.</div></div>	Nest box type / size	Species suitability	Number required	Installation height above ground (minimum)	Small / Microbat	Microbat	4	4 meters	Medium	Squirrel Glider	2	4 meters	Medium	Brush-tailed Phascogale	4	4 meters	Medium	Small Parrot	2	4 meters	Large	Large Parrot / Brush-tail Possum	2	4 meters
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	<b>Condition Reason:</b> To ensure trees identified for retention are protected during the construction phase.
29.	<b>Tree protection measures</b> Before the commencement of any site or building work, the principal certifier must ensure the measures for tree protection detailed in this consent are in place. The protection of trees to be retained must be in accordance with AS 4970-2009 'Protection of Trees on Development Sites' and / or the recommendations of the 'Ecological Assessment' prepared by Wildthing Environmental Consultants, dated 21 March 2024. <b>Condition Reason:</b> To ensure trees identified for retention are protected during the construction phase.
30.	<b>Weed Management</b> The site has been identified as being affected by Biosecurity Matter – Giant Parramatta Grass ( <i>Sporobolus fertilis</i> ). Any soil or waste being transported offsite must be disposed of at an appropriately licenced waste facility. Failure to do so may constitute an offence under Section 23 of the NSW Biosecurity Act 2015. A Biosecurity Permit issued by Council in accordance with Section 333 of the NSW Biosecurity Act 2015 is required prior to removal from the site. <b>Condition Reason:</b> To ensure that weeds are appropriately contained and removed from the site.
31.	<b>Weed Management</b> Weed removal and suppression must be undertaken using approved bush regeneration techniques under the supervision of a suitably qualified and approved bush regenerator and in accordance with the requirements for the NSW Biosecurity Act 2015, associated Regulations and NSW Weed Control Handbook. The site is to be inspected by a representative of Council's Invasive Species team one week prior to works commencing. <b>Condition Reason:</b> To ensure that weeds are appropriately contained and removed from the site where a Flora and Fauna/ Vegetation/ Biodiversity Management Plan has not been provided.

### During building work

32.	<b>Discovery of relics and Aboriginal objects</b> While site works is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered: <ol style="list-style-type: none"> <li>The work in the area of the discovery must cease immediately;</li> <li>The following must be notified – <ol style="list-style-type: none"> <li>For a relic – the Heritage Council; or</li> <li>For an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, Section 85.</li> </ol> </li> </ol> Site works may recommence at a time conformed in writing by: <ol style="list-style-type: none"> <li>For a relic – the Heritage Council; or</li> <li>For an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85</li> </ol>
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	<b>Condition reason:</b> To ensure the protection of objects of potential significance during works.
33.	<b>Responsibility for changes to public infrastructure</b> While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including road infrastructure, light poles, stormwater inlet pits, service provider pits or any other infrastructure in the road reserve) must be paid as directed by the consent authority. <b>Condition reason:</b> To ensure payment of approved changes to public infrastructure
34.	<b>Bushfire Management</b> 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) A Fire Management Plan (FMP) shall be prepared for the Battery Energy Storage System BESS development. The FMP shall be prepared in consultation with NSW RFS Hunter Valley Fire Control Centre. The FMP shall include: <ul style="list-style-type: none"> <li>• 24 hour emergency contact details including alternative telephone contact;</li> <li>• Site infrastructure plan; and</li> <li>• Fire fighting operations plan including: <ul style="list-style-type: none"> <li>○ methods and resources to manage and extinguish Battery Fires.</li> </ul> </li> </ul> b) The BESS development footprint is to be managed as an Asset Protection Zone in accordance with Appendix 4 of 'Planning for Bush Fire Protection 2019'. c) To allow for emergency service personnel to undertake property protection activities, a 10 metre defendable space (APZ) that permits unobstructed vehicle access is to be provided around the perimeter of the BESS development (individual compound or cluster) including associated infrastructure. d) Property access roads to the BESS shall comply with the following requirements of Table 7.4a of 'Planning for Bush Fire Protection 2019': <ul style="list-style-type: none"> <li>• property access roads are two-wheel drive, all-weather roads;</li> <li>• the capacity of road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges and causeways clearly, indicate load rating.</li> <li>• there is suitable access for a Category 1 fire appliance to within 4m of the static water supply where no reticulated supply is available;</li> <li>• minimum 4m carriageway width;</li> <li>• e. property access must provide a suitable turning area in accordance with Appendix 3;</li> <li>• curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress; and</li> <li>• the minimum distance between inner and outer curves is 6m; and h. the cross fall is not more than 10 degrees.</li> </ul> e) A 20,000 litre water supply (tank) fitted with a 65mm storz fitting shall be located adjoining the internal property access road (BESS) within the required APZ. Access to the storz connection point shall not be impeded. <b>Condition reason:</b> To ensure that the proposed development complies with Section 4.14 of the EP&A Act.

35.	<p><b>Waste management</b></p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> <li>1. all waste management must be undertaken in accordance with the waste management plan; and</li> <li>2. upon disposal of waste, records of the disposal must be compiled and provided to the certifying authority, detailing the following: <ol style="list-style-type: none"> <li>a. The contact details of the person(s) who removed the waste;</li> <li>b. The waste carrier vehicle registration;</li> <li>c. The date and time of waste collection;</li> <li>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;</li> <li>e. The address of the disposal location(s) where the waste was taken;</li> <li>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.</li> </ol> </li> </ol> <p>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.</p> <p><b>Condition reason:</b> To require records to be provided, during site work, documenting the lawful disposal of waste</p>
36.	<p><b>Construction Noise</b></p> <p>While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.</p> <p><b>Condition reason:</b> To ensure that developments do not give rise to offensive noise impacts during works.</p>
37.	<p><b>Hours of work</b></p> <p>Site work must only be carried out between the following times – 7:00am to 5:00pm on Monday to 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.</p> <p><b>Condition reason:</b> To protect the amenity of the surrounding area</p>
38.	<p><b>Unexpected Finds Contingency (General)</b></p> <p>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.</p> <p>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.</p> <p>Where remediation work is required, the applicant will be required to obtain consent for the remediation works.</p> <p><b>Condition reason:</b> To ensure that works relating to a development are to cease if any suspect materials are identified and remediated in accordance with Council requirements</p>

39.	<b>Offensive noise, dust, odour, and vibration</b>
	No work must not give rise to offensive noise, odour, or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.
	<b>Condition reason:</b> To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.
40.	<b>Establishment of asset protection zone (APZ)</b>
	While site work is being carried out, modifying vegetation to establish the APZ must be confined within the marked APZ boundary in accordance with the supporting documentation approved under this consent, to the satisfaction of the principal certifier.
	<b>Condition Reason:</b> To ensure vegetation clearance or modification during construction is confined within the APZ
41.	<b>Construction Management Plan</b>
	All construction traffic management procedures and systems identified in the approved Construction Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
	<b>Condition Reason:</b> Where a CMP is deemed required
42.	<b>Cut and Fill</b>
	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.
	<b>Condition Reason:</b> To ensure that all imported and/or exported fill is Virgin Excavated Natural Material.
43.	<b>Delivery Register</b>
	The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered. This register must be made available to Council officers on request and be provided to the Council at the completion of the development.
	<b>Condition Reason:</b> To ensure that all deliveries of fill are appropriately recorded.
44.	<b>Disposal of Stormwater</b>
	Water seeping into any site excavations is not to be pumped into the stormwater system unless it complies with relevant Environmental Protection Agency and Australian and New Zealand Environment and Conservation Council standards for water quality discharge.
	<b>Condition Reason:</b> To ensure that stormwater disposal from a development is managed in accordance with Council requirements.

45.	<b>Location of Stockpiles</b>
	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.
	<b>Condition Reason:</b> To ensure that stock piles required for a development are managed in accordance with Council requirements.
46.	<b>Implementation of site management plans</b>
	While site work is being carried out: <ul style="list-style-type: none"> <li>a. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and</li> <li>b. a copy of these plans must be kept on site at all times and made available to council officers upon request.</li> </ul>
	<b>Condition Reason:</b> To ensure site management measures are implemented during the carrying out of site work
47.	<b>Toilet facilities</b>
	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.
	<b>Condition Reason:</b> To ensure adequate amenity facilities are provided to the site during construction.
48.	<b>Weed Management</b>
	All machinery that has operated in affected areas shall be cleaned thoroughly prior to leaving the site. A wash down area shall be established, and monitored for priority weeds as defined by the NSW Biosecurity Act 2015. Cleaning must include the removal of all mud and plant matter, followed by washing with high pressure water.
	An area for storage of contaminated spoil that is separate from clean material shall be provided during construction.
	<b>Condition Reason:</b> To ensure that all machinery that has operated in affected areas shall be cleaned prior to leaving the site and wash down areas are maintained in accordance with the NSW Biosecurity Act 2015.

### **Before issue of an occupation certificate**

49.	<b>Occupation Certificate Required</b>
	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.
	<b>Condition reason:</b> To ensure that an Occupation Certificate relating to the development is obtained from the Principal Certifying Authority prior to occupation or use.

50.	<b>Completion of required infrastructure</b>
	Before the issue of an occupation certificate, the principal certifier must be satisfied that all infrastructure required for the operation of the BESS has been completed. This includes: <ul style="list-style-type: none"> <li>• Access from BESS footprint to Clarence Town Road</li> <li>• Stormwater management infrastructure</li> <li>• Landscaping</li> <li>• Acoustic measures</li> <li>• Grid connections</li> <li>• Compensatory planting</li> </ul>
	<b>Condition reason:</b> To ensure that an Occupation Certificate relating to the development is obtained from the Principal Certifying Authority prior to occupation or use.
51.	<b>Koala Protection</b>
	The applicant must install one (1) fauna escape pole internal to the compound to allow for any trapped animals to exit the compound.
	<b>Condition reason:</b> To safeguard any trapped fauna within the compound.
52.	<b>Completion of landscape and tree works</b>
	Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape, compensatory planting and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.
	<b>Condition reason:</b> To ensure that landscape and tree works have been completed in accordance with the approved plans prior to the issue of an Occupation Certificate.
53.	<b>Completion of Roads Act Approval works</b>
	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.
	<b>Condition reason:</b> To ensure that approved works within the road reserve have been completed to the satisfaction of the Council.
54.	<b>Removal of waste upon completion</b>
	Before the issue of an occupation certificate, the principal certifier must ensure all refuse, spoil and material unsuitable for use on-site is removed from the site and disposed of in accordance with the approved waste management plan. Written evidence of the removal must be supplied to the satisfaction of the principal certifier. Before the issue of a partial occupation certificate, the applicant must ensure the temporary storage of any waste is carried out in accordance with the approved waste management plan to the principal certifier's satisfaction.
	<b>Condition reason:</b> To ensure that all waste is appropriately removed from the subject site prior to the issue of an Occupation Certificate.
55.	<b>Construction to be in accordance with Acoustic Report</b>
	Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the development complies with the recommendations of the Acoustic Report prepared by Mott MacDonald, dated 28/11/2023.
	<b>Condition Reason:</b> To ensure that construction has been undertaken in accordance with an approved development application and Acoustic Report.

## Occupation and ongoing use

56.	<b>Driveways to be maintained</b>
	All access crossings and driveways must be maintained in good order for the life of the development
	<b>Condition reason:</b> To ensure that access and driveways are maintained for the life of the development.
57.	<b>Impact to adjoining properties</b>
	The development must not undertake activities which may restrict, obstruct or inconvenience the use of the land by other users, outside of the approved development location.
	<b>Condition reason:</b> To ensure that the development does not undertake activities which may restrict, obstruct or inconvenience the use of the land by other users, outside of the approved development location.
58.	<b>Maintenance of Landscaping</b>
	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.
	<b>Condition reason:</b> To ensure that landscaping is maintained in accordance with the approved landscape plan and the relevant development consent.
59.	<b>Monitoring of trees along access road</b>
	A qualified arborist must undertake annual inspections of the site to review the health of trees along the approved access road. 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.
	<b>Condition reason:</b> To ensure the impacts on the local environment is managed.
60.	<b>Maintenance of Replacement Plantings</b>
	Replacement trees are to be maintained (e.g. through the use of mulch and watering) until maturity, or for a period of 5 years from planting. If any tree dies or is removed, it is to be replaced with a tree of the same species and similar maturity as the tree which has died or was removed.
	<b>Condition reason:</b> To ensure that landscaping is maintained in accordance with the approved landscape plan and the relevant development consent.
61.	<b>Offensive Noise</b>
	The use and occupation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the <i>Protection of the Environment Operation Act 1997</i> and must comply with the <i>NSW Noise Policy for Industry 2017</i> (as amended).
	<b>Condition reason:</b> To control noise in order to ensure it is not offensive.
62.	<b>Amenity</b>
	The business must be conducted so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises.



	<b>Condition Reason:</b> To ensure that no interference occurs to the amenity of the area.
63.	<b>External lighting during ongoing use</b> The approved lighting must remain switched off outside of maintenance periods and any emergencies. <b>Condition Reason:</b> To ensure the safe operation of the premises and protect the amenity of the local area
64.	<b>Landscaping Maintenance Establishment Period</b> Commencing from the date of practical completion, a 12-month maintenance establishment period applies. The date of Practical Completion is taken to mean completion of all civil works, soil preparation and treatment and initial weed control, and completion of all planting. <b>Condition Reason:</b> To ensure that the approved landscape works are completed within a 12 month period.
65.	<b>Monitoring of BESS</b> A management system must be put in place to ensure that the batteries on site are monitored 24 hours a day. <b>Condition Reason:</b> To ensure batteries are monitored 24-hours days to enable the management of emergency events.
66.	<b>Managing Noise</b> During ongoing use of the premises, the premises must be operated in accordance with the acoustic report approved under this consent. Any acoustic treatment must be maintained for the life of the development. <b>Condition Reason:</b> To protect the amenity of the local area
67.	<b>Maneuvering of vehicles</b> All vehicles must enter and exit the site in a forward direction. <b>Condition Reason:</b> To ensure that vehicles enter and leave the site in a forward direction.
68.	<b>Storage of Hazardous Materials</b> Hazardous substances and/or dangerous goods are to be stored, labelled and handled in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority. <b>Condition Reason:</b> To ensure hazardous materials and/or dangerous goods are appropriately stored.

### General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf): <https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf>. The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

### **Council advisory notes**

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. **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 applicant’s agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.
3. **Bird strike advice** – 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.
4. **Approved Plans to be on-site** – A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Site at all times and shall be readily available for perusal by any officer of Council or the Principal Certifying Authority.
5. **Council as PCA, PCA sign** – It is the responsibility of the applicant to erect a PCA sign. Where Council is the PCA, the sign is available free of charge, from Council’s Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay. The applicant is to ensure the PCA sign remains in position for the duration of works.
6. **Regulated premises inspections** – The premises will be incorporated in Council’s Surveillance Program and will be subject to ongoing annual inspections should it be considered a regulated systems.
7. **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.
8. **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.



## Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

**Approved plans and documents** means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

**AS** means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

**Building work** means any physical activity involved in the erection of a building.

**Certifier** means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

**Construction certificate** means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

**Council** means Port Stephens Council.

**Court** means the Land and Environment Court of NSW.

**EPA** means the NSW Environment Protection Authority.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979*.

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Independent Planning Commission** means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

**Local planning panel** means Hunter Central Coast Regional Planning Panel.

**Occupation certificate** means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

**Principal certifier** means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

**Site work** means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

**Stormwater drainage system** means all works and facilities relating to:  
the collection of stormwater,  
the reuse of stormwater,  
the detention of stormwater,  
the controlled release of stormwater, and  
connections to easements and public stormwater systems.

**Strata certificate** means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

**Subdivision certificate** means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

**Subdivision works certificate** means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.