

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	5 December 2024
DATE OF PANEL DECISION	5 December 2024
DATE OF PANEL MEETING	3 December 2024
PANEL MEMBERS	Tony McNamara (Acting Chair), Amanda Wetzel, Susan Budd
APOLOGIES	None
DECLARATIONS OF INTEREST	Alison McCabe – Commissioner on the IPC decision on the Eagleton Quarry SSD. Ryan Palmer, Giacomo Arnott, Leah Anderson - Previously involved in decision making for this matter, supporting an urgency motion.

Public meeting held by teleconference on 3 December 2024, opened at 1:30pm and closed at 2.35pm.

MATTER DETERMINED

PPSHCC-279 – Port Stephens – DA 16-2023-477-1 at 139 Italia Road, Balickera 2324 – Road Infrastructure – upgrades to Italia Road and Pacific Highway Intersection (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the council assessment report and for the following reasons:

The proposal is for road infrastructure works being upgrades to the intersection of Italia Road and the Pacific Highway. While the proposal seeks to support the future expansion of three quarries in the vicinity of the intersection, the Panel has considered the merits of the DA for the roadworks regardless of any future quarry plans. Applications (current or proposed) for intensification of approved quarry uses, or for new quarries will be assessed and determined through separate processes and are not part of the application before the Panel.

The Panel acknowledges the concerns expressed by the community in the public meeting and through their submissions, including a preference for the development of a long-term transport strategy for this part of the Pacific Highway between Raymond Terrace and Karuah. Wider initiatives, including corridor planning led by TfNSW, were identified by TfNSW and Council as continuing regardless of the roadworks proposed by the DA.

On balance the Panel considers that the works will lead to improved traffic safety for the intersection and are in the broader public interest. The Panel is satisfied that the proposal provides for infrastructure improvements that are of benefit to the road network and that the environmental impacts can be adequately mitigated and managed subject to the conditions in Schedule 2.

CONDITIONS

The development application was approved subject to the conditions in Schedule 2 which were amended from those in the assessment report as follows:

- **Condition 8 – Tree/Vegetation Removal** – condition updated to consolidate timing and limits of vegetation removal (as required by former condition 9) within the one condition.
- **Former Condition 9 – Protection of existing vegetation and natural landscape features** – condition deleted and consolidated within condition 8.
- **Condition 10 – Deed of Agreement (Hunter Water)** - updated to replace Works Authorisation Deed (WAD) reference with Deed of Agreement.
- **Condition 11 – Works Authorisation Deed (TfNSW)** – condition title updated to replace Deed of Agreement with Works Authorisation Deed reference.
- **Condition 18 – Biodiversity Management Plan** – condition updated to include a Koala Management Protocol for the management of koalas identified onsite or in proximity of site during any stage of the works.
- **Condition 23 – Discovery of relics and Aboriginal objects** - condition updated to consolidate requirements of condition 42 ‘Uncovering relics or Aboriginal objects’.
- **Condition 26 – Construction Environmental Management Plan** – condition updated to remove ‘building work’ reference to ‘construction work’.
- **Condition 28 – Hours of Work** – condition updated to align hours of work referenced in the Planners Assessment Report and Statement of Environmental Effects.
- **Former Condition 42 - Uncovering relics or Aboriginal objects** - condition deleted and consolidated within condition 24.

Condition numbering in Schedule 2 was updated to reflect the above changes.

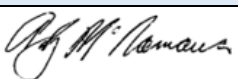
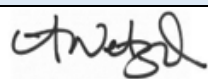

The Panel notes that the 7.12 contributions condition is in accordance with the Council’s adopted Contributions Plan and no changes were made to this condition as requested by the applicant.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Traffic safety impacts.
- Strategic and cumulative impacts and relationship to other existing at grade intersections.
- Need for a whole-of-area solution for Italia Rd, Medowie Rd, and Bucketts Way (e.g., grade separated intersection).
- Environmental impacts, including compliance with water quality targets (NorBE) and impacts on koalas in particular.
- Cumulative impacts of quarry operations
- Compliance with trucks only turning left.
- Concerns about the ‘decoupling’ of the works from extractive industries.
- Lack of consultation
- Noise impacts

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and the conditions of consent and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Tony McNamara (Acting Chair)	 Amanda Wetzel
 Susan Budd	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-279 – Port Stephens – DA 16-2023-477-1
2	PROPOSED DEVELOPMENT	Road Infrastructure - upgrades to Italia Road and Pacific Highway Intersection (land owned by Transport for NSW)
3	STREET ADDRESS	139 Italia Road, Balickera 2324
4	APPLICANT/OWNER	John Arnold – Arnold Planning Boral Resources (NSW) Pty Ltd & Transport for NSW
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resources and Energy) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Port Stephens Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Port Stephens Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil 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 <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 26 November 2024 Written submissions during public exhibition:13 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Megan Benson On behalf of Gloucester Environment Group Charlee Connor On behalf of Italia Road Action Taskforce Anna Kerr on behalf of Save Balickera Incorporated Carmel Northwood on behalf of Koala Coalition EcoNetwork Port Stephens (KKEPS)" On behalf of the applicant – Roland Wong, Rod Wallace, Adam Sneddon, John Arnold Total number of unique submissions received by way of objection: 13
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 17 April 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire <u>Applicant representatives</u>: John Arnold, Adam Sneddon, Grant Wood, Roland Wong

		<ul style="list-style-type: none">○ <u>Department:</u> Leanne Harris• Site inspection:<ul style="list-style-type: none">○ Tony McNamara (Acting Chair):○ Amanda Wetzel:○ Susan Budd:• Final briefing to discuss council’s recommendation: 3 December 2024<ul style="list-style-type: none">○ <u>Panel members:</u> Tony McNamara (Acting Chair), Amanda Wetzel, Susan Budd○ <u>Council assessment staff:</u> Isacc Lancaster, Emily Allen, Ryan Falkenmire○ <u>Department:</u> Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report

SCHEDULE 2 - CONDITIONS OF CONSENT

General Conditions

1	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.				
	Approved plans				
	Plan number	Revision number	Plan title	Drawn by	Date of plan
	12599191 / 01001	E	Coversheet, Locality and Drawings Index	GHD	18.06.2024
	12599191 / 01031	E	Typical Sections	GHD	29.10.2024
	12599191 / 01051	D	Overview Plan and General Notes	GHD	27.07.2023
	12599191 / 01101	F	Detail Plan – Sheet 1 of 3	GHD	18.06.2024
	12599191 / 01102	G	Detail Plan – Sheet 2 of 3	GHD	4.11.2024
	12599191 / 01103	G	Detail Plan - Sheet 3 of 3	GHD	4.11.2024
	12599191 / 01111	D	Longitudinal Sections - Sheet 1 of 4	GHD	27.07.2023
	12599191 / 01112	D	Longitudinal Sections - Sheet 2 of 4	GHD	27.07.2023
	12599191 / 01113	D	Longitudinal Sections - Sheet 3 of 4	GHD	27.07.2023
	12599191 / 01114	D	Longitudinal Sections - Sheet 4 of 4	GHD	27.07.2023
	12599191 / 01301	D	Roadside Furniture and Pavement Plan – Sheet 1 of 3	GHD	27.07.2023
	12599191 / 01302	D	Roadside Furniture and Pavement Plan – Sheet 2 of 3	GHD	27.07.2023
	12599191 / 01303	D	Roadside Furniture and Pavement Plan – Sheet 3 of 3	GHD	27.07.2023
	12599191 / 01401	D	Turning Paths	GHD	27.07.2023
	12599191 / 01501	F	Erosion and Sediment Control Plan – Sheet 1 of 3	GHD	18.06.2024

12599191 / 01502	G	Erosion and Sediment Control Plan – Sheet 2 of 3	GHD	4.11.2024
12599191 / 01503	G	Erosion and Sediment Control Plan – Sheet 3 of 3	GHD	4.11.2024
12599191 / 01511	D	Erosion and Sediment Control – Notes and Details	GHD	27.07.2023
12599191 / 01601	D	Cross Sections – Sheet 1 of 6	GHD	27.07.2023
12599191 / 01602	D	Cross Sections – Sheet 2 of 6	GHD	27.07.2023
12599191 / 01603	D	Cross Sections – Sheet 3 of 6	GHD	27.07.2023
12599191 / 01604	E	Cross Sections – Sheet 4 of 6	GHD	29.10.2024
12599191 / 01605	E	Cross Sections – Sheet 5 of 6	GHD	29.10.2024
12599191 / 01606	D	Cross Sections – Sheet 6 of 6	GHD	27.07.2023
12599191 / 01701	A	Retaining Wall Locations and Profiles	GHD	18.06.2024
12599191 / 00100	C	Bridge Widening – General Arrangement	GHD	29.10.2024
12599191 / 00110	B	Bridge Widening – Section and Details	GHD	23.06.2023
12599191 / 00200	C	Culvert Extension – General Arrangement Sheet A	GHD	29.10.2024
12599191 / 00201	B	Culvert Extension – General Arrangement Sheet B	GHD	23.06.2023

Approved Documents

Document title	Version No.	Prepared by	Dated
Strategic Design Report	3	GHD	6/11/2024
Archaeological Due Diligence Assessment	-	McCardle Cultural Heritage Pty Ltd	27.07.2023
Preliminary Site Investigation	1	GHD	9.08.2024
Geotechnical Desktop Assessment Report	1	GHD	9.08.2024

	Transport Impact Assessment	2	GHD	2.08.2024
	Biodiversity Development Assessment Report	3	Wedgetail Project Consulting	2.08.2024
	Construction Noise and Vibration Impact Assessment	2	GHD	2.08.2024
	Estimated Cost of Development Report	-	Vasey Consulting	24.07.2023
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				
2	Approved Report Recommendations - Biodiversity Development Assessment Report			
	Construction of the development must comply with the recommendations of the 'Biodiversity Development Assessment Report (BDAR) – Italia Road and Pacific Highway Intersection, Rev 3.0, prepared by Wedgetail Project Consulting, dated 2 August 2024, detailed as follows:			
	a) Construction of the development must comply with the recommendations of Table 11 of the <i>Biodiversity Development Assessment Report</i> , prepared by Wedgetail dated 02/08/2024.			
	Condition reason: To ensure that development is carried out in accordance with specific recommendations of a report are required to be complied with, but not the full report.			
3	Approved Report Recommendations - Preliminary Site Investigation			
	Construction of the development must comply with the recommendations of Section 5.2 of the Preliminary Site Investigation (prepared by GHD, Revision 1, dated 9.08.2024).			
	Condition reason: To ensure that development is carried out in accordance with specific recommendations of a report are required to be complied with, but not the full report.			
4	Approved Report Recommendations - Archaeological Due Diligence Assessment			
	The development must comply with the recommendations listed in Section 6 of the Archaeological Due Diligence Assessment (dated 27 July 2023, Project No. J202295).			
	Condition reason: To ensure the development is carried out in accordance with the recommendations of the Archaeological Due Diligence Assessment.			
5	Approved Report Recommendations - Construction Noise and Vibration Impact Assessment			
	Construction of the development must comply with the recommendations of Section 6 of the Construction Noise and Vibration Impact Assessment (prepared by GHD, Revision 2, dated 2.08.2024).			
	Condition reason: To ensure the development is carried out in accordance with the recommendations of the Construction Noise and Vibration Impact Assessment.			
6	External Agency Approvals			
	The requirements from the following agencies must be complied with prior to, during, and at the completion of the development.			

	<p>The Requirements are:</p> <ol style="list-style-type: none"> 1. Ausgrid, Reference: 1900126739, Dated 14 February 2024. 2. Hunter Water Corporation, Reference: HW2024-137, Dated 21 November 2024. <p>A copy of the Requirements is attached to this determination notice.</p> <p>Condition reason: To ensure that development is carried out in accordance with conditions are required by other external agencies (i.e. Ausgrid and Hunter Water).</p>
7	<p>General Terms of Approval</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"> 1. Transport for NSW, Reference: NTH24/00067/003, Dated 16 September 2024. 2. Department of Primary Industries – Fisheries, Reference: IDA24/14, Dated 6 March 2024. 3. Department of Planning and Environment – Water, Reference: IDAS-2024-10087, Dated 1 July 2024. <p>A copy of the General Terms of Approval is attached to this determination notice.</p> <p>Condition reason: To ensure that the development is carried out in accordance with the General Terms of Approval issues by Integrated Development / Concurrence Agencies.</p>
8	<p>Tree/Vegetation Removal</p> <p>The vegetation within the <i>Subject Land</i> as identified on Figure 4 of the <i>Biodiversity Development Assessment Report</i>, prepared by Wedgetail, dated 02/08/2024 is approved for removal.</p> <p>No vegetation or natural landscape features other than that authorised for removal, pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.</p> <p>Approval to remove existing vegetation for removal is not to occur until the issue of a Works Authorisation Deed (WAD) from TfNSW.</p> <p>Condition reason: To identify vegetation approved for removal.</p>
9	<p>Sign on Building</p> <p>Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.</p> <p>The sign must be maintained while the work is being carried out and is to be removed when the work is completed.</p> <p>Condition reason: To require signage that details the relevant contacts of a development during construction</p>

Building Work

Prior to the Commencement of Works

10	<p>Deed of Agreement – Hunter Water</p> <p>The applicant is required to enter into a Deed of Agreement with Hunter Water Corporation prior to any investigation works within Hunter Water land, Hunter Water easements, Balickera Canal, within the road corridor that may impact water quality within the drinking water catchment and before commencement of the WAD Concept Design.</p> <p>The Deed of Agreement will cover – but not limited to – the following:</p> <ul style="list-style-type: none"> • Inclusion of Hunter Water as a stakeholder during the WAD Concept Design phase. • Acceptance by Hunter Water of the WAD Concept Design, and in particular the alignment of piers and abutments, construction methodology and construction timing within the Balickera Canal. • Acceptance by Hunter Water of the Construction Environmental Management Plan (CEMP), and specifically environmental controls implemented to protect water quality within the drinking water catchment. • Access to Hunter Water land, easements and Balickera Canal during investigation and construction works, including notice requirements. • Protection and/or shutdown of Hunter Water’s high voltage power lines in the vicinity of the works, including notice requirements. • Continued “safe use” of Hunter Water’s existing northern access to the Balickera Canal off the Pacific Hwy during construction. <p>Condition reason: To ensure all works proposed on Hunter Water land are designed and undertaken in accordance with the relevant design standards.</p>
11	<p>Works Authorisation Deed – TfNSW</p> <p>The applicant is required to enter into a Works Authorisation Deed (WAD) with TfNSW for all works proposed on the classified (State) road. All works under the WAD shall be designed and constructed in accordance with Austroads Guidelines, Australian Standards and TfNSW Supplements. All works shall be completed by the applicant at no cost to TNSW.</p> <p>Condition reason: To ensure all works proposed on the classified road are designed and undertaken in accordance with the relevant design standards.</p>
12	<p>Roads Act Approval</p> <p>Before issue of a Roads Act Approval for works proposed on the local road, an application must be made for a Roadworks Permit under Section 138 of the <i>Roads Act 1993</i>. The Roads Act Approval must include detail for the following:</p> <p>Civil engineering plans and documentation prepared by a qualified Engineer, indicating drainage, roads, accessways, earthworks, pavement design, street lighting, details of line-marking, traffic management, regulatory signage, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans, Council’s Infrastructure Specifications and the following:</p> <ul style="list-style-type: none"> - Flood level impact criteria adopted is to be consistent with the criteria used for the M1 Pacific Motorway Extension to Raymond Terrace. - The flood level impact to an existing flood affected dwelling is not to exceed 10mm.

	<ul style="list-style-type: none"> - Design, modelling and mitigation methods are to be used to ensure flooding criteria is addressed throughout the detailed design. - Regulatory signage at the approach of the intersection of Italia Road and Pacific Highway prohibiting the right-hand turn of quarry trucks from Italia Road onto the Pacific Highway. The regulatory signage is to apply to quarry trucks only, through a means endorsed by the Local Traffic Committee. The sign is to specify any exceptions to which the signage does not apply, such as light vehicles, buses and the like. - The Roads Act Approval Application, inclusive of regulatory signage is to be referred to the Local Traffic Committee for endorsement. - The approval or recommendation of the Local Traffic Committee is to be implemented under the Roads Act Approval. <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Note. Under the <i>Roads Act 1993</i>, only the Roads Authority can approve commencement of works within an existing road reserve.</p> <p>Condition reason: To ensure that works within the road reserve are approved by a Section 138 Approval of the <i>Roads Act 1993</i>.</p>
13	<p>Construction Environmental Management Plan</p> <p>Prior to the commencement of work, a Construction Environmental Management Plan (CEMP) is to be prepared for all works on the site, such to be kept on site and made available to authorised Council officers upon request. The CEMP is to describe safeguards and management measures to address environmental risks associated with the activity. The plan must include but need not be limited to the following matters and sub-plans:</p> <ul style="list-style-type: none"> a) Aboriginal Heritage Management Plan; b) Biodiversity Management Plan (as required by this consent); c) Community Communication Plan; d) Construction Noise and Vibration Management Plan; e) Construction Soils and Water Management Plan; f) Construction Surface Water Management Plan; g) Contaminated Land Management Plan; i) Erosion and Sediment Control Plan; j) Flood Management Plan; k) Hazard and Risk Management Plan; m) Traffic Management Plan; n) Waste Management Plan; <p>All provisions of this CEMP to be implemented during the development activity on site.</p> <p>Condition reason: To require details of measures to be undertaken that will protect the public, and the surrounding environment, during site works and construction.</p>
14	<p>Section 7.12 development contributions</p> <p>A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning & Assessment Act 1979 and the Port Stephens Local Infrastructure Contribution Plan 2020.</p>

	<p>The total amount payable will be adjusted at the time payment is made, in accordance with the provisions of that Plan.</p> <p>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 2020as outlined below:</p> <table border="1"> <thead> <tr> <th>Capital Investment Value</th><th>Levy Rate (% of CIV)</th></tr> </thead> <tbody> <tr> <td>Up to and including \$100,000</td><td>Nil</td></tr> <tr> <td>More than \$100,000 and up to and including \$200,000</td><td>0.5%</td></tr> <tr> <td>More than \$200,000</td><td>1%</td></tr> </tbody> </table> <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 https://www.portstephens.nsw.gov.au/, alternatively contact Council on 02 9228 055.</p> <p>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 commencement of building works.</p> <p>Condition reason: To ensure that a monetary contribution as specified is paid to Council in accordance with Section 7.12 of the EP&A Act 1979, and the Port Stephens Council Local Infrastructure Contributions Plan 2020.</p>	Capital Investment Value	Levy Rate (% of CIV)	Up to and including \$100,000	Nil	More than \$100,000 and up to and including \$200,000	0.5%	More than \$200,000	1%
Capital Investment Value	Levy Rate (% of CIV)								
Up to and including \$100,000	Nil								
More than \$100,000 and up to and including \$200,000	0.5%								
More than \$200,000	1%								
15	<p>Long Service Levy</p> <p>Before the issue of a Construction Certificate, the long service levy 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>Condition reason: To ensure the Long Service Levy is paid.</p>								
16	<p>Stormwater Design</p> <p>The detailed design for all stormwater outlets and structures must take into consideration safe, efficient and effective maintenance methods, techniques and vehicular and personnel access.</p> <p>Condition reason: To ensure stormwater systems are appropriately designed and maintained in perpetuity.</p>								
17	<p>Retaining Walls</p>								

	<p>Before the commencement of works, all retaining walls must be designed and certified by a suitably qualified Structural Engineer or a system with a design certificate complying with the relevant Australian Standards.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Condition reason: To ensure that retaining walls are designed and certified by a suitably qualified engineer.</p>
18	<p>Biodiversity Management Plan</p> <p>A Biodiversity Management Plan must be prepared to the satisfaction of Port Stephens Council that includes the mitigation measures included in Table 11 of the Biodiversity Development Assessment Report, prepared by Wedgetail, dated 02/08/2024, and the following:</p> <ul style="list-style-type: none"> a) Identification of the development site as per the Biodiversity Development Assessment Report (BDAR) and approved plans. b) Identification of the areas of land that are to be retained as outlined in the BDAR. c) Details confirming the type and location of fauna exclusion fencing to be installed along the edge of the Subject Site to minimise the risk of fauna entering the roadway. d) Details confirming the number, type and location of fauna crossing structures that will be installed to replace the existing fauna crossing which will be impacted as part of the proposed development. This includes crossing structures over the Balickera Canal and within the under-road culverts. e) Detail on compensatory koala feed tree plantings which will be undertaken to compensate for the removal of preferred koala feed trees as part of the proposed development. This is to include details confirming the number, species and location of compensatory plantings, in accordance with Table 3 of Council's Biodiversity Technical Specification. f) A Microbat Management Plan in accordance with the <i>Transport for NSW Microbat Management Guidelines 2023</i>, to minimise the risk of harm to microbats as a result of the proposed works to potential roosting/breeding habitat on site. g) A Koala Management Protocol must be prepared for the project. Where koalas are identified during works, all works must be temporarily suspended within a range of 25 m from any tree that is occupied by a Koala and must not resume until the Koala has moved from the tree of its own volition. <p>Construction impacts must be restricted to the development site and must not encroach into areas of retained native vegetation and habitat. All materials stockpiles, vehicle parking, machinery storage and other temporary facilities must be located within the areas for which biodiversity impacts were assessed in the BDAR.</p> <p>Condition reason: To ensure a BMP is prepared for the site.</p>
19	<p>Biodiversity Offset Scheme – Ecosystem Credit Retirement</p> <p>The class and number of ecosystem credits in the following table must be retired to offset the residual biodiversity impacts of the development prior to the commencement of works.</p>

The requirement to retire credits may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Impact plant community type	No. of ecosystem credits	IBRA sub-region	Plant community type(s) that can be used to offset impacts of development
3433-Hunter Coast Foothills Spotted Gum-Ironbark Grassy Forest	2	Karuah Manning, Hunter, Macleay Hastings, Mummel Escarpment and Upper Hunter. OR Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions This includes PCT's: 3433, 3442, 3443, 3444, 4158
4042-Lower North Riverflat Eucalypt-Paperbark Forest	9	Karuah Manning, Hunter, Macleay Hastings, Mummel Escarpment and Upper Hunter. OR Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Coastal Floodplain Wetlands This includes PCT's: 4015, 4023, 4024, 4025, 4026, 4027, 4029, 4034, 4035, 4036, 4037, 4041, 4042, 4044, 4046, 4049, 4050, 4051, 4055, 4059

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund detailed in the above table must be provided to the consent authority prior to the issue of a construction certificate.

Condition reason: To ensure the required ecosystem credits are retired prior to the issue of a construction certificate.

20 Biodiversity Offset Scheme – Species credit retirement

The class and number of species credits in the following table must be retired to offset the residual biodiversity impacts of the development prior to the issue of a construction certificate.

The requirement to retire credits may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator.

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Myotis macropus</i> / Southern Myotis	9	Any in NSW
<i>Petaurus norfolcensis</i> / Squirrel Glider	11	Any in NSW

	<i>Phascogale tapoatafa</i> / Brush-tailed Phascogale	11	Any in NSW
	<i>Phascolarctos cinereus</i> / Koala	11	Any in NSW
	<i>Vespadelus troughtoni</i> / Eastern Cave Bat	15	Any in NSW
	Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund detailed in the above table must be provided to the consent authority prior to the issue of a construction certificate.		
	Condition reason: To ensure the required species credits are retired prior to the issue of a construction certificate.		
21	Notice Commencement of Work		
	<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 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"> a) The name and address of the person; b) A description of the work to be carried out; c) The address of the land on which the work is to be carried out; d) The Registered numbers and date of issue of the development consent and WAD / Roads Act Approval; 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 f) The date on which the work is intended to commence. <p>The notice must be lodged on the NSW Planning Portal.</p>		
	Condition reason: To ensure that the Principal Certifier has given notice to the Consent Authority and Council at least two days prior to 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.		
22	Public liability insurance		
	<p>The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.</p> <p>Evidence of this Policy must be provided to Council and the Certifying Authority.</p>		
	Condition reason: To verify that the owner or contractor has a Public Liability Insurance Policy where there are works over public property.		

During work

23	Discovery of relics and Aboriginal objects
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	<p>While site works is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered:</p> <ol style="list-style-type: none"> The work in the area of the discovery must cease immediately; The following must be notified – <ol style="list-style-type: none"> For a relic – the Heritage Council; or 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. <p>Site works may recommence at a time confirmed in writing by:</p> <ol style="list-style-type: none"> For a relic – the Heritage Council; or 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. <p>Condition reason: To ensure the protection of objects of potential significance during works.</p>
24	<p>Responsibility for changes to public infrastructure</p> <p>While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.</p> <p>Condition reason: To ensure payment of approved changes to public infrastructure</p>
25	<p>Tree protection during work</p> <p>While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:</p> <ol style="list-style-type: none"> The construction environmental management plan approved under this consent, the relevant requirements of AS 4970 Protection of trees on development sites; Section B1 of Council’s relevant development control plan (in force as at the date of determination of this consent); and Any BDAR approved under this consent. <p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones</p> <p>Condition reason: To protect trees during the carrying out of site work</p>
26	<p>Construction Environmental Management Plan</p> <p>While vegetation removal, demolition and/or construction work is being carried out, the applicant must ensure the measures required by the approved construction environmental management plan and the erosion and sediment control plan are implemented at all times.</p> <p>The applicant must ensure a copy of these approved plans is kept on site at all times and made available to Council officers upon request.</p> <p>Condition reason: To development is undertaken in accordance with approved CEMP.</p>
27	<p>Construction Noise</p> <p>While building work is being carried out, the development is to be undertaken in accordance with the Noise and Vibration Management Plan; required by Condition 14.</p>

	<p>Note. The Construction Noise and Vibration Management Plan is to be prepared in accordance with any recommendations of the Construction Noise and Vibration Impact Assessment prepared by GHD, dated 2 August 2024.</p>
	<p>Condition reason: To ensure that developments do not give rise to offensive noise impacts during works.</p>
28	<p>Hours of work</p> <p>Site work must only be carried out between the following times –</p> <p>7:00am to 6:00pm on Monday to Friday;</p> <p>Saturday: 8am to 1pm; and</p> <p>Sundays and public holidays: no work.</p> <p>Out of standard hours construction works may only be conducted where justification, as outlined in the Interim Construction Noise Guidelines (by Environment NSW), has been demonstrated.</p> <p>Condition reason: To protect the amenity of the surrounding area</p>
29	<p>Unexpected Finds Contingency (General)</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>Condition reason: 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>
30	<p>Excavations and Backfilling</p> <p>All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.</p> <p>If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:</p> <ol style="list-style-type: none"> preserve and protect the building from damage; and if necessary, underpin and support the building in an approved manner; and give at least seven days' notice to the adjoining owners before excavating, or of the intention to excavate. <p>The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.</p>

	<p>This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.</p> <p>Condition reason: To ensure excavation and backfilling is executed safely.</p>
31	<p>Offensive noise, dust, odour, and vibration</p> <p>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.</p> <p>Condition reason: To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.</p>
32	<p>Toilet facilities</p> <p>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.</p> <p>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.</p> <p>Condition reason: To ensure adequate amenity facilities are provided to the site during construction.</p>
33	<p>Placement of fill</p> <p>Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.</p> <p>Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.</p> <p>Condition reason: To ensure that fill required for a development is managed in accordance with Council requirements.</p>
34	<p>Location of stockpiles</p> <p>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.</p> <p>Condition reason: To ensure that stock piles required for a development are managed in accordance with Council requirements.</p>
35	<p>Machinery wash down area</p> <p>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 <i>NSW Biosecurity Act 2015</i>. Cleaning must include the removal of all mud and plant matter, followed by washing with high pressure water.</p> <p>An area for storage of contaminated soil that is separate from clean material shall be provided during construction.</p>

	<p>Condition reason: To ensure that where machinery is required to be washed down, it is done in a suitably contained and designated area.</p>
36	<p>Biodiversity Management Plan</p> <p>All biodiversity management works must be undertaken in accordance with the approved Biodiversity Management Plan. The plan must be commenced prior to, or at the commencement of works.</p> <p>Condition reason: To ensure works are undertaken in accordance with the BMP.</p>
37	<p>Soil, erosion, sediment and water management</p> <p>All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.</p> <p>Condition reason: To ensure Erosion and Sediment Control Plan is in place until the site has been stabilised</p>
38	<p>Cut and fill</p> <p>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:</p> <ul style="list-style-type: none"> (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 Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> or a material identified as being subject to a resource recovery exemption by the NSW EPA. <p>Condition reason: To ensure that all imported and/or exported fill is Virgin Excavated Natural Material.</p>
39	<p>Delivery Register</p> <p>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.</p> <p>This register must be made available to Council officers on request and be provided to the Council at the completion of the development.</p> <p>Condition reason: To ensure that all deliveries of fill are appropriately recorded.</p>
40	<p>Weed Management</p> <p>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.</p> <p>An area for storage of contaminated soil that is separate from clean material shall be provided during construction.</p>

Condition reason: 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.

Practical Completion of Works

41	Works-as-executed (WAE) plans
	Works-as-executed (WAE) plans are to be provided to Council following Practical Completion of the upgrades to Italia Road and Pacific Highway Intersection Project.
	Condition reason: To ensure that approved works within the State road reserve have been completed to the satisfaction of TfNSW.
42	Repair of infrastructure
	On practical completion of works: <ul style="list-style-type: none"> 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 that approved works within the road reserve have been completed to the satisfaction of the Council.
43	Removal of waste upon completion
	On practical completion of works, 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.
	Condition reason: To ensure that all waste is appropriately removed from the subject site following completion of works.
44	Stormwater/drainage works
	On practical completion of works, all stormwater and drainage works required to be undertaken in accordance with this consent must be completed.
	The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
	Condition reason: To ensure stormwater and drainage works have been undertaken in accordance with the approved plans.
45	Temporary Compound Structure

	<p>On practical completion of works, use of the temporary construction compound approved under this development consent must cease, with all materials associated with its use removed. Written evidence of the cessation of this temporary use must be supplied to the satisfaction of the principal certifier.</p> <p>Condition reason: To ensure the temporary use of the compound structure ceases following practical completion of works.</p>
46	<p>Survey Certificate</p> <p>On practical completion of works, a Registered Surveyor must prepare a Survey Certificate to certify that the location of the road infrastructure complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.</p> <p>Condition reason: To ensure that the works are located in accordance with the approved plans and evidence from a Registered Surveyor is provided to the Principal Certifying Authority.</p>
47	<p>Completion of Roads Act Approval Works</p> <p>On practical completion of works, all approved road, regulatory signage, footpath and/or drainage works, including vehicle crossings, must be completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.</p> <p>Condition reason: To ensure completion of Roads Act Approval Works to Council satisfaction.</p>

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. **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.
4. **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.
5. **Weed Management** - The site has been identified as being affected by Biosecurity Matters – Fireweed and Crofton Weed. 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.