

DATE OF DETERMINATION	18 May 2020
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant and Tim Fletcher
APOLOGIES	Paul LeMottee and Ryan Palmer
DECLARATIONS OF INTEREST	Sandra Hutton declared a conflict of interest as her employer has had other staff involved with the site. Ms Hutton did not have any involvement with the project, and has not participated in any Panel discussion on this application. Chris Doohan, Giacomo Arnott and John Maretich also declared a conflict of interest.

Papers circulated electronically between 27 April 2020 and 14 May 2020.

MATTER DETERMINED

PPSHCC-4 – Port Stephens Council – DA 16-2019-445 at 795 Medowie Road, Medowie – commercial development (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* subject to the conditions in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

- The proposed development as amended is consistent with the policy framework and will provide additional facilities to the emerging commercial centre
- The proposal will result in employment opportunities and increase in services available to the community
- The proposal will have minimal impacts
- The Panel is satisfied that the design of the roof that results in a minor breach of the height of building standard is an architectural roof feature




CONDITIONS

The conditions were amended from those attached in the supplementary report to:

- Reflect the correct amended plan references
- Require amendments to ensure engineering plans and landscape plans were consistent with architectural plans
- Identify that no approval is granted to buildings on proposed Lot 1
- Reference correct Planning for Bushfire Protection document

- (v) Ensure appropriate approvals and operation of the childcare facility and management to minimise potential impacts

The development application was approved subject to the conditions in Schedule 2 which comprises conditions attached to the supplementary assessment report amended as outlined above.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Tim Fletcher	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-4 – Port Stephens Council – DA 16-2019-445
2	PROPOSED DEVELOPMENT	Commercial premises (multiple tenancies), medical centre, retail premises (pharmacy), Centre-based childcare facility (126 place), site works, civil works, signage, landscaping and one into four lot Torrens title subdivision
3	STREET ADDRESS	795 Medowie Road, Medowie
4	APPLICANT OWNER	Medowie Retail Unit Trust Port Stephens Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development 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 No 55 – Remediation of Land ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy No 44 – Koala Habitat Protection ○ State Environmental Planning Policy (Educational Establishment and Child Care Facilities) 2017 ○ State Environmental Planning Policy No 64 – Advertising and Signage ○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ○ 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 2000</i> • 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: 4 March 2020 • Written submissions during public exhibition: nil • Verbal submissions at the public meeting on 18 March 2020: <ul style="list-style-type: none"> ○ Council assessment officer – Dylan Mitchell and Rean Lourens ○ On behalf of the applicant – Peter Childs, Chris Speek, Steve O'Connor • Addendum Council assessment report: 24 April 2020

		<ul style="list-style-type: none"> Amended drawings dated 12 May 2020: DA-1103, issue 16; DA-1106, issue 16
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 25 September 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Stuart McDonald (Chair), Mark Grayson and Chris Doohan <u>Council assessment staff</u>: Ryan Palmer and Rean Lourens Site inspection: 18 March 2020 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Tim Fletcher <u>Council assessment staff</u>: Dylan Mitchell Final briefing to discuss council's recommendation, 18 March 2020, 3pm. Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Tim Fletcher <u>Council assessment staff</u>: Dylan Mitchell Papers circulated electronically between 27 April 2020 and 14 May 2020.
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to addendum council assessment report (24 April 2020)

CONDITIONS OF CONSENT – AS AMENDED

Details of Conditions:

1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **General terms of approval** – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development. The General Terms of Approval are:

1. NSW Rural Fire Service, Ref no. D19/2675 and dated 30 August 2019.

A copy of the General Terms of Approval is attached to this determination notice.

- (2) **External agency advice** – The requirements from the following agencies must be complied with prior to, during, and at the completion of the development. The Requirements are:

1. AUSGRID, reference number 2017/33/171 and dated 12 August 2019.

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

- (3) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing no.	Name of plan	Prepared by	Date
Project no. 19007, Sheet DA 0003, Issue 10	Signage Schedule	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1002, Issue 17	Site Plan	CKDS Architecture	19/04/2020
Project no. 19007, Sheet DA-1003, Issue 15	Site Elevations	CKDS Architecture	19/04/2020
Project no. 19007, Sheet DA-1004, Issue 01	Site Elevations	CKDS Architecture	8/04/2020
Project no. 19007 Sheet DA-1005, Issue 13	Site Sections	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1101, Issue 15	Gym/Commercial Lower Floor Plan	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1102, Issue 15	Pharmacy Ground Floor Plan	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1104-1105, Issue 15	Pharmacy Elevations 1 and 2	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1106, Issue 15	Pharmacy Sections	CKDS Architecture	8/04/2020

Project no. 19007, Sheet DA-1107, Issue 10	Pharmacy Materiality	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1201, Issue 13	Childcare Floor Plan	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1203, Issue 13	Childcare Elevations	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1204, Issue 12	Childcare Sections	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-1205, Issue 08	Childcare Materiality	CKDS Architecture	6/11/2019
Project no. 19007, Sheet DA-3001, Issue 13	Commercial Ground Floor Plan	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-3004, Issue 13	Commercial Elevations 1	CKDS Architecture	8/04/2020
Project no. 19007, Sheet DA-3005, Issue 02	Commercial Elevations 2	CKDS Architecture	6/11/2019
Project no. 19007, Sheet DA-3006, Issue 11	Commercial Sections	CKDS Architecture	19/04/2020
Project no. 19007, Sheet DA-3007, Issue 09	Commercial Materiality	CKDS Architecture	6/11/2019
Job Ref: 8722 Sheet 1 of 1, Plan No 001	Proposed Subdivision of Part Lot 1 D.P.1215257	De Witt Consulting	19/03/2019
Project No. 19024 – Sheet L101, Revision G	Overall Landscape Plan	Xeriscapes	20/04/2020
Project No. 19024 – Sheet L102, Revision E	Childcare Landscape Plan	Xeriscapes	8/04/2020
Project No. 19024 – Sheet L201-L202, Revision B	Landscape Sections 01 and 02	Xeriscapes	20/04/2020
Project No. 19024 – Sheet L203, Revision A	Landscape Sections 03	Xeriscapes	20/04/2020
Project No. 19024 – Sheet L301, Revision B	Indicative Plant Schedule	Xeriscapes	8/04/2020
Project No. 190514 Revision G Sheet 101	Detail Plan	ADW Johnson	14/11/2019
Project No. 190514 Revision G Sheet 501	Site Regrade Plan	ADW Johnson	14/11/2019
Project No. 190514 Revision G Sheet 701	Linemarking & Signage Plan	ADW Johnson	14/11/2019

Document title	Prepared by	Date
Stormwater Management Report	ADW Johnson	November 2019
CPTED Statement	KDC	July 2019

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

(4) Amendments to documents and plans – The development must be amended as follows:

- a) The approved landscape plan (Ref no. 19024 by Xeriscapes and dated 20/04/2020), is to be amended as follows:
- i. 4 Luscious® Tristaniopsis laurina 'DOW10 trees are to be included as a street trees. The trees are to be a minimum pot size of 45 litres and taller than 1.2m at the time of planting.
 - ii. Landscape Plan layout for the childcare centre is to be consistent with approved_ architectural plans.
 - iii. Civil engineering plans are to be amended to reflect the approved Site Plan prepared by CKDS Architecture, Ref No. 19007, Issue 17 and dated 19/04/2020; Site Elevations prepared by CKDS Architecture, Ref No. 19007, Issue 15 and dated 19/04/2020; Landscape Sections 01 and 02 prepared by Xeriscapes, Ref No. 19024, Revision B, dated 20/04/2020; and Landscape Section 03 prepared by Xeriscapes, Ref No. 19024, Revision A, dated 20/04/2020. Retaining wall details are to be consistent with these plans.

Amended plans or documentation demonstrating compliance must be provided to Council for approval prior to the issue of a Construction Certificate.

- (5) Separate Approval for Use** - A separate development application for the fit out and use of each commercial tenancy that does not have a lower order use identified must be provided to, and approved by either the Consent Authority prior to that use commencing or under the provisions of the State Environmental Planning Policy (Exempt and Complying Codes) 2008, where applicable.
- (6) Outdoor Lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (7) Shoring of Adjoining Buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.
- (8) Roof Mounted Equipment** - All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
- (9) Proposed Lot 1** - No approval is granted for any building, carpark or use on proposed Lot 1 other than earthworks, retaining wall and landscape works.

2.0 – Prior to Issue of a Subdivision Works Certificate

- (1) Subdivision Works Certificate Required** - In accordance with the provisions of Section 6.13 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- a) a Subdivision Works Certificate has been issued by a Consent Authority;

- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (2) **Civil engineering Plans** - Civil engineering plans prepared by a qualified Civil 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.

Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

- (3) **Hunter Water Corporation Approval** - A Section 49 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (4) **Stormwater/Drainage Plans** - Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).

Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

- (5) **Footings and Excavation near Council Property** - All works proposed within the zone of influence of Council's asset/s are to be designed and certified by a qualified Geotechnical or Structural Engineer.

Plans and specifications demonstrating compliance with this requirement must be submitted to the Certifying Authority.

- (6) **Dilapidation Report Council Property** - A Dilapidation Report prepared by a qualified Structural/Civil Engineer must be submitted to the Certifying Authority.

The report must include a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the subject site. The report must also include the retaining wall on the southern boundary adjoining Lot 1: DP: 1196650.

All costs incurred in achieving compliance with this condition must be borne by the applicant.

Details demonstrating compliance must be provided to the Certifying Authority.

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

Details demonstrating compliance must be provided to the Certifying Authority.

- (8) **Retaining walls** – All retaining walls must be designed and certified by a suitably qualified Structural Engineer in accordance with Council's Infrastructure Specifications.

Details demonstrating compliance must be provided to the Certifying Authority.

- (9) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

- (10) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roads Act Approval Certificate under Section 138B of the *Roads Act 1993*. The following information must be provided to Council as the Roads Authority with the Roads Act application:

- a) Detailed civil engineering plans indicating line-marking and traffic management for a channelised right hand turning lane on Medowie Road and directing traffic to Muir Street.

3.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Hunter Water Corporation Approval** - A Section 49 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (2) **Civil engineering plans** – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

- (3) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).

Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

- (4) **Footings and excavation near Council property** – All works proposed within the zone of influence of Council's asset/s are to be designed and certified by a qualified Geotechnical or Structural Engineer.

Plans and specifications demonstrating compliance with this requirement must be submitted to the Certifying Authority.

- (5) **Dilapidation Report – Council property** – A Dilapidation Report prepared by a qualified Structural/Civil Engineer must be submitted to the Certifying Authority.

The report must include a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the subject site. The report must also include the retaining wall on the southern boundary adjoining Lot 1: DP: 1196650.

All costs incurred in achieving compliance with this condition must be borne by the applicant.

Details demonstrating compliance must be provided to the Certifying Authority.

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

Details demonstrating compliance must be provided to the Certifying Authority.

- (7) **Retaining walls** – All retaining walls must be designed and certified by a suitably qualified Structural Engineer in accordance with Council's Infrastructure Specifications.

Details demonstrating compliance must be provided to the Certifying Authority.

- (8) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

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- a) Detailed civil engineering plans indicating line-marking and traffic management for a channelised right hand turning lane on Medowie Road and directing traffic to Muir Street.

- (10) **Construction Environmental Management Plan** – A Construction Environmental Management Plan (CEMP) is to be submitted to and approved by the Certifying Authority. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management

- (11) **Section 7.12 development contributions** - A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Fixed Local Infrastructure Contributions Plan,

related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (% of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the fixed development consent 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 Council Fixed Development Contributions Plan.

Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a Registered Associate member or above, of the Australian Institute of Quantity Surveyors.

This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

Payment of the above amount must apply to Development Applications as follows:

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

(12) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.

(13) **Food Premises Fit Out** - A detailed floor plan of the child care facility kitchen fit out that demonstrates compliance with AS4674-2004 and the Australia New Zealand Food Standards code is to be submitted to Council for approval.

This plan will need to clearly identify all relevant fixtures and fittings (including but not limited to, the designated hand wash basins, and cleaning/utility sinks).

If mechanical ventilation is required, the installation and fit-out must comply with AS 1668.2-2012 (as amended from time to time), the building code of Australia, and any other relevant standard or legislative instrument.

(14) **Public Toilets** – Plans are to be submitted to the certifying authority, detailing the provision of at least one unisex toilet facility made accessible to the public to cater for each commercial tenancy.

(15) **Public Art** – Public Art Approval is to be obtained from Council for the areas designated on the approved site plan (Project no. 19007 Revision 17 and dated 19/04/2020). Public Art is to be in accordance with Councils Public Art Policy and Guidelines for the approval and installation of public art in Port Stephens.

4.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

- (2) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the Registered number and date of issue of the relevant development consent;
- d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
- e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
- f) a telephone number on which the PCA may be contacted for business purposes.

- (3) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:

- a) the name and address of the person by whom the notice is being given;
- 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 number and date of issue of the relevant development consent and construction certificate;
- e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
- f) the date on which the work is intended to commence.

- (4) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:

- a) that unauthorised entry to the work site is prohibited;
- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

- (5) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- a) a Construction Certificate has been issued by a Consent Authority;
- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (6) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

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

- (7) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (8) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

No materials, waste or the like are to be stored on the all-weather access at any time.

- (9) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.

No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

- (10) **Weed management** – 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.

5.0 - During Works

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

- (1) **BCA Compliance** - All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

- (2) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.
- (3) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

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

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

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

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

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

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

- (5) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:

- a) Connected to the approved stormwater drainage easement/system/street.

- (6) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.

Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.

- (7) **Disposal of stormwater** – 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.

- (8) **Weed management** – 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 subsequently monitored for the presence of Biosecurity Matter ‘Alligator Weed’.

Cleaning must include the removal of all mud and plant matter, followed by washing with high pressure water.

An area for storage of contaminated soil that is separate from clean material shall be provided during construction.

- (9) Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.

In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.

Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

- (10) Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (11) Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.
- (12) Delivery register** - The applicant must maintain a register of fill 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.

- (13) Fill material** – The only fill material that may be received at the development site is:
- a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*; or
 - b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*; or
 - c) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

Any fill, soil, mulch and plant brought onto the site must be certified as free of weeds and weed seeds.

- (14) **Construction Environmental Management Plan** – All operations must be carried out in accordance with the recommendations contained in the Construction Environmental Management including:
- a) Noise mitigation measures.
 - b) Traffic management.
 - c) Noise and/or vibration monitoring.
 - d) Use of respite periods.
 - e) Complaints handling.
 - f) Community liaison and consultation.
- (15) **Construction Noise Mitigation** - Construction of the development must comply with the recommendations of the Acoustic Assessment Report No. MAC190867RP1V1, prepared by Muller Acoustic Consulting Pty Ltd and dated 9 July 2019.
- (16) **Survey Report** - The buildings must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
- (17) **Potential acid sulfate soils** - Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.

6.0 - Prior to Issue of a Subdivision Certificate

The following conditions of consent shall be complied with prior to the issue of a Subdivision Certificate.

- (1) **Requirement for a Subdivision Certificate** - The application for Subdivision Certificate(s) must be made in accordance with the requirements of Clause 157 of the *Environmental Planning & Assessment Regulations 2000*.

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent DA 16-2019-445-1, and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Title Plan of Subdivision.

In addition, one signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.

- (2) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.
- (3) **Burdened lots to be identified** - Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.
- (4) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.

Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.

- (5) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.

Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.

- (6) **Street lighting** - Street lighting must be provided within the subdivision in accordance with the relevant Australian Standards and to the satisfaction of the Principal Certifying Authority. All such work must be complete and operative.

- (7) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity.
- b) Water.
- c) Sewer.

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

- (8) **Section 88B Instrument** – The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:

- a) easement for services;
- b) easement to drain water and drainage easement/s over overland flow paths;
- c) easement for on-site detention;
- d) positive covenant over the on-site detention / water quality facility for the maintenance, repair and insurance of such a facility;
- e) retaining wall, positive covenant, and restriction to user; and
- f) reciprocal right of carriageway over internal driveways benefitting all lots (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway).

- (9) **Stormwater management facility** – A stormwater management facility must be constructed for the site in accordance with the approved plans and Council's Infrastructure Specification.

- (10) **Stormwater Management Facility Operation, Maintenance and Monitoring Manual/s** – Operation, Maintenance and Monitoring Manual/s ('Manuals') for the stormwater management facility must be provided for approval to the Principal Certifying Authority. The Manual(s) must be prepared by a qualified Engineer.

- (11) **Subdivision Registration** - The Subdivision Certificate for DA 16-2018-789-1 must be registered with Land Registry Services. Proof of registration of the land must be provided to the Principle Certifying Authority.

7.0 - Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate Required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.

The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.

- (2) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
- (3) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
- (4) **Works as Executed Plans and Report** - Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.
- (5) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.

- (6) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan as amended by condition 2 (4) of this consent and conditions of this Development Consent.
- (7) **Acoustic Fencing** - A 2m acoustic fence is to be constructed along the southern and eastern boundary of the childcare facility.
- (8) **Construction to be in accordance with Acoustic Report** - Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the development complies with the recommendations of the Acoustic Assessment Report No. MAC190867RP1V1, prepared by Muller Acoustic Consulting Pty Ltd and dated 9 July 2019.
- (9) **Bushfire safety** – The site is located within a bushfire prone area. Certification from a suitably qualified Bushfire Consultant must be provided to certify that the construction of the development complies with:
 - a) The NSW RFS' General Terms of Approval - Ref no. D19/2675 and dated 30 August 2019;

- b) The Bushfire Report provided with the DA titled Bushfire Assessment Report, by Newcastle Bushfire Consulting and dated 04/07/2019; and
- c) The NSW Rural Fire Service publication "Planning for Bush Fire Protection 2006."

- (10) **Fire Safety Certificates** - A Fire Safety Certificate must be provided to the PCA in accordance with the requirements of the Environmental Planning & Assessment Regulation 2000.
- (11) **Survey Certificate** - A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (12) **Public Art** – Public art is to be installed in accordance with the Public Art Approval noted in Condition 3(15) of this consent.
- (13) **Emergency Evacuation** - An emergency evacuation plan for the childcare facility is to be prepared in accordance with the Education and Care Services National Regulations and the latest version of the Child Care Planning Guideline (NSW Department of Planning & Environment) and provided to the satisfaction of the Principal Certifying Authority.
- (14) **Footpath Crossing Construction** - A footpath crossing and driveway must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.

Note: A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of such works.

- (15) **Directional Traffic Flow Signs**- All driveways must be suitably signposted and directional arrows painted on the internal driveways. All signs must be maintained in good repair at all times.
- (16) **Food Premises** - Council must be notified that the premises is being used for the preparation, manufacture or storage of food for sale and an inspection of the completed fit out is to be conducted.

A 'Food Business Registration form can be found on Council's website.

- (17) **Subdivision Registration** - The Subdivision Certificate for DA 16-2018-789-1 must be registered with Land Registry Services. Proof of registration of the land must be provided to the Principle Certifying Authority.
- (18) **Goods Lift** – The goods lift identified on the architectural plans prepared by CKDS Architecture, project no.19007 and dated 19/04/2020, must be installed to enable the ground level commercial tenancies fronting Peppertree Road access to the waste enclosure and loading area at the rear of the building.

The goods lift must be maintained in working order at all times.

- (19) **Child Care Facility Operation Approval** - Prior to the occupation of use of the child care facility, the applicant must obtain a Service Approval for the operation of a child care facility from the Regulatory Authority.

(20) ANS09 – Plan of Management - A Plan of Management for the operation of the child care centre is to be provided to Council for approval prior to issue of any Occupation Certificate. The ongoing operation of the centre must be in accordance with the plan, taking into consideration any recommendations made by a suitably qualified and experienced acoustic consultant. The Plan of Management must include, but is not limited to the following:

- Mitigating measures to minimise amenity impacts on surrounding residential properties
- Mitigating measures to minimise acoustic amenity impacts on occupants of the facility
- Managing noise impacts emanating from the premises.
- Identifying measures to minimise potential noise impacts from outdoor play areas and specifically:
 - the number of children and their age groups in each area.
 - the type of play those children will engage in in those areas.
 - the hours of play for those children in those areas.
- Deliveries and waste collection services.
- Management of carpark operations including drop off and pick up and the designation of areas.

8.0 – Ongoing Use

The following conditions of consent are operational conditions applying to the development.

(1) Hours of Operation- The property is only to be open for business and used for the purpose approved within the following hours:

Approved Hours of Operation				
<i>Day</i>	<i>Pharmacy</i>	<i>Medical</i>	<i>All Commercial tenancies</i>	<i>Childcare Facility</i>
Mon -Fri	8am – 7pm	8am – 7pm	8am – 6pm	6am – 7pm
Sat	8am – 5pm	8am – 7pm	9am – 5pm	No operation
Sun / Public Hols	8am – 5pm	8am – 5pm	9am – 5pm	No operation

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighborhood occurs.

(2) Childcare Facility Occupancy - The childcare centre is approved for a maximum capacity of 126 child care places. Any increase in this number shall be subject to separate approval from Council.

(3) Maintenance of Acoustic Fence – The acoustic fence must be maintained throughout the life of the development.

- (4) **Fire Safety Schedule** - At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the Environmental Planning & Assessment Regulations 2000.
- (5) **Illuminated Signage** - The approved signs must be maintained in a presentable and satisfactory state of repair.

The level of illumination and/or lighting intensity used to illuminate the sign/s must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.

- (6) **Bird strike** – As the subject site is located in an area mapped by the Department of Defence as "Birdstrike Group B", organic waste and/or the storage of bins associated with any future development must be covered and/or enclosed and limited on-site.
- (7) **Waste Disposal** - The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time. Waste storage areas are to be suitably screened at all times.
- (8) **Parking – Signage (Loading docks)** - Proposed parking areas, service bays, truck docks, driveways and turning areas must be maintained clear of obstructions and be used exclusively for purposes of car parking, loading/ unloading, and vehicle access respectively for the life of the development. Under no circumstances are such areas to be used for the storage of goods or waste materials.
- (9) **Driveways to be Maintained** - All access crossings and driveways must be maintained in good order for the life of the development.
- (10) **Removal of Graffiti** - The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (11) **Maintenance of Landscaping** - Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

Advice Notes:

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

- (3) **Aboriginal archaeological deposit** – In the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- (4) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development. Any works undertaken adjacent to Ausgrid underground assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables.
- (5) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the *Environmental Planning & Assessment Act 1979*, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (6) **Component certificates (where Council is PCA)** – Where Council is appointed as the Principal Certifying Authority for the development, the following component certificates, as relevant to the development, shall be provided prior to the issued of a final Occupation Certificate:
 - a) Insulation installation certificates.
 - b) Termite management system installation certificates.
 - c) Smoke alarm installation certificate from installing licensed electrician.
 - d) Survey certificate(s), prepared by a registered land surveyor, certifying that the building has been correctly and wholly located upon the subject allotment.
 - e) Certification attesting that retaining walls have been constructed in accordance with Engineers details or manufacturers specifications as applicable.
 - f) All certificates or information relating to BASIX compliance for the development.
 - g) A certificate certifying that the wet areas have been waterproofed in accordance with the requirements of the Building Code of Australia.
 - h) All certificates relating to salinity, as required by conditions of the Development Consent.
 - i) Any other certificates relating to the development (for example, engineering certification for foundations, piers, reinforcing steel or hydraulic certification for all stormwater drainage works).

Where the appointed PCA is not Council, the matters listed in this condition should be regarded as advisory only.

Note: The above certification does not override any requirements of the *Environmental Planning & Assessment Act 1979* with respect to any required critical stage inspections.