

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	7 December 2020
PANEL MEMBERS	Alison McCabe (Chair), Penny Holloway and Nicole Gurran
APOLOGIES	Juliet Grant
DECLARATIONS OF INTEREST	<p>Ryan Palmer, Paul LeMottee, Giacomo Arnott and Chris Doohan declared conflicts of interest as they had voted as councillors on a matter related to the site.</p> <p>John Maretich declared a conflict of interest as he was involved in the engineering assessment of the site.</p> <p>Sandra Hutton declared a perceived conflict of interest arising from Mavid Group involvement in the DA being a current client (not relating to this site) of her employer ADW Johnson.</p> <p>Steven Peart declared a conflict of interest as he was recently appointed as Group Manager Development Services at Port Stephens Council. Mr Peart is now accountable for the team who have undertaken an assessment of this application.</p>

Papers circulated electronically on 25 November 2020.

MATTER DETERMINED

PPSHCC-40 – Port Stephens Council – DA 16-2020-136-1 at 24 Peppertree Road Medowie – Construction and use of food and drink premises (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.

The Panel in considering this matter, raised concern in respect to the presentation of the building to the north being adjoining residential lands. The Panel understands that these lands have been the subject of a subdivision approval and that the northern boundary of this development site will ultimately front Road 4 – a cul-de-sac in the approved subdivision. The Panel sought further information and amendment to the northern elevation and streetscape presentation, to ensure an appropriate interface with the adjoining residential lands yet to be developed.

The Panel considered an amended set of architectural drawings that addressed changes to the northern elevation and landscape treatment and a revised set of conditions.

The Panel in their deliberation also considered:

- Location of offsets required
- Landscape treatments
- Potential noise impacts
- Streetscape presentation
- Pedestrian and road linkages within the commercial area and adjoining residential area
- Extent of roadworks to Peppertree Drive
- Amendments to conditions

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 all conditions in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to approve the application for the reasons attached to Council's memo of 4th December 2020 and the following.

1. The proposed development is consistent with the adopted policy framework and will provide additional facilities and employment opportunities to service the emerging commercial centre and surrounding area.
2. The potential impacts of the development have been considered and can be mitigated.
3. The Panel is satisfied subject to conditions that the development results in an appropriate interface with adjoining residential lands and that implementation of acoustic recommendations and Plan of Management will minimise impacts arising from the operation of the premises.

CONDITIONS

The development application was approved subject to the conditions in Schedule 2. The conditions were amended from those in the Council report in the following way:




- **Condition 1.2** – Approved plans list updated to reflect amended plans.
- **Condition 1.4** – Amended plan reference.
- **Condition 1.9** – Offset planting location clarified. Further consultation with Council's Natural Resources and property sections confirm that this is the preferred location.
- **Condition 2.6** – Condition clarified to confirm extent of Peppertree Road extension and road width. The condition has also been modified to include a requirement for a kerb ramp (pram ramp), enabling pedestrian connectivity to the west. Council's engineers confirm the kerb ramp must be located between the undercroft driveway access and Muir Street to match the extent of the Peppertree road extension.
- **Condition 2.7** – Amended plan reference.
- **Condition 2.17** – Amended plan reference.
- **Condition 2.18** – Condition amended to require northern elevation windows not be opened and be upgraded to conform with BCA fire safety requirements.
- **Condition 5.12** – Landscape condition amended to require an irrigation system be installed prior to OC.

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:

- Parking shortfall
- Noise
- Anti-social behaviour/crime
- Lack of police presence

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Penny Holloway
 Nicole Gurran	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-40 – Port Stephens Council – DA 16-2020-136-1
2	PROPOSED DEVELOPMENT	Construction and use of food and drink premises – pub with undercroft car parking and associated signage and landscaping
3	STREET ADDRESS	24 Peppertree Road Medowie – Lot 1 DP 1264236 (formerly known as 795 Medowie Road, Medowie – Lot 1 DP 1264236)
4	APPLICANT OWNER	Muir Point Pty Ltd C/- KDC Pty Ltd 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 (Koala Habitat Protection) 2019 State Environmental Planning Policy No 64 – Advertising and Signage State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy (Infrastructure) 2007 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>: 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: 25 November 2020 Written submissions during public exhibition: two (2) Council memo dated 4 December 2020, including revised landscape plans, architectural plan and conditions, and reasons
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 3 June 2020 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and Juliet Grant <u>Council assessment staff</u>: Rean Lourens and Ryan Falkenmire Site inspection by Alison McCabe: 18 March 2020. Final briefing to discuss council's recommendation: 2 December 2020 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Penny Holloway and Nicole Gurran

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Dylan Mitchell, Rean Lourens and Kate Drinan • Applicant Briefing: 2 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Penny Holloway and Nicole Gurran ○ <u>Council assessment staff</u>: Dylan Mitchell, Rean Lourens and Kate Drinan ○ <u>Applicant representatives</u>: Peter Chrystal, Peter Child and Noah Levin <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report.</p>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report as amended in memo dated 4 December 2020

SCHEDULE 2 – CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

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

- (1) **External agency approvals** – 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 1900099498 and dated 13 May 2020.

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

- (2) **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
13003 A01 Rev G	Site/Roof Plan	EJE Architecture	29/07/2020
13003 A03 Rev I	Basement Level	EJE Architecture	3/12/2020
13003 A04 Rev K	Ground Floor	EJE Architecture	3/12/2020
13003 A05 Rev J	Elevations	EJE Architecture	3/12/2020
13003.5 L101 & L201 Rev B	Landscape Plan	Terras Landscape Architects	3/12/2020
200047 C03 Issue 3	Stormwater Plan Sheet 1	MPC Consulting Engineers	10.9.2020
200047 C04 Issue 3	Stormwater Plan Sheet 2 and Section	MPC Consulting Engineers	10.9.2020
200047 C06 Issue 1	Bulk Earthworks Plan	MPC Consulting Engineers	10.9.2020

Document Title	Prepared by	Date
Noise Assessment	Muller Acoustic Consulting	30 July 2020
Crime Prevention Through Environmental Design Statement	KDC	September 2020
Plan of Management – Operation, Alcohol and House Policy	Applicant	July 2020

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

- (3) **Approved report recommendations** – Construction of the development must comply with the recommendations of the Crime Prevention Through Environmental Design Statement, prepared by KDC dated September 2020 detailed as follows:
- Lighting of car park area and corners;
 - All external areas not visible from the building, including the undercroft car park are to be captured on closed circuit television (CCTV) and signposted on site;
 - Trees and landscaping should be regularly maintained to ensure clear sightlines;
 - Signage is to be placed around the building advising that the building is under 24-hour camera surveillance and that any anti-social behaviour will be reported to NSW Police;
 - Broken light fixtures and bulbs within the premises and car park should be replaced within 24 hours; and
 - Any vandalism or graffiti should be repaired and removed promptly by staff or contractors within 48 hours of its application.
- (4) **Amendments to documents and plans** – The development must be amended as follows:
- a) The approved landscaping plan (prepared by Terras Landscape Architects, Ref no. 13003.5 Rev. B and dated 3/12/2020) is to be amended to be consistent with the approved architectural plans prepared by EJE Architecture. Ref no. 13003, sheets A04 Rev K and A05 Rev J.
- Amended plans or documentation demonstrating compliance must be provided to the Certifying Authority and Council prior to the issue of a Construction Certificate.
- (5) **Separate approval for signs** – A separate development application for any proposed signs additional to those signs approved as part of this development consent, must be provide to, and approved by, the Consent Authority or under the provision of the *State Environmental Planning Policy (Exempt and Complying Codes) 2008* if applicable prior to the erection or display of any such signs.
- (6) **Building Code of Australia** – 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.
- (7) **Sign on building** – 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.
- The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
- (8) **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.
- (9) **Tree removal/pruning** – Trees within the access route from Peppertree Road and those contained within LOT: 1 DP: 1264236 are approved for removal.

An offset planting plan must be prepared in consultation with Council and approved by Council's Natural Resources Team. The plan shall include provisions for the planting and maintenance of a total of fifty-nine (59) compensatory Koala feed trees, which are to be planted prior to the issue of the Occupation Certificate or Commencement of Use. The following tree species must be used:

- *Eucalyptus robusta*
- *Eucalyptus tereticornis*
- Any other koala feed tree approved by Council

Planting and maintenance of compensatory koala feed trees is to be at the applicant's expense and must be implemented on Lot 22 DP 1021843 to the satisfaction of Council.

Planted trees must be maintained until 3 meters in height.

- (10) **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'.
- (11) **Reflectivity** – The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.
- (12) **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.
- (13) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.

2.0 – 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) **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.

- (2) **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). The stormwater plans are to detail the following:
 - a) The stormwater system is to be designed to restrict post developed flows to pre developed flows for all storm events up to and including the 1%AEP.
 - b) Onsite detention is to be modelled to have a tail water condition of at least 17mAHD.
 - c) Any surcharge within the carpark is to be designed to overflow to peppertree road.

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 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.

- (4) **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.

- (5) **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.

- (6) **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 Roadworks Permit under Section 138B of the *Roads Act 1993*. The following information must be provided to Council as Roads Authority with the Roads Act application:

- a) Design plans for the extension of Peppertree Road to the northern most extent of the approved undercroft driveway access. The width of the road is to match the existing Peppertree Road and approved development to the north.
- b) Design plans for a 2.5m wide shared pathway across the full frontage of the development site within Muir Street and to the undercroft access on Peppertree Road. A kerb ramp connecting the pathway to Peppertree Road is to be included between the undercroft driveway access and Muir Street.
- c) Details of any required regulatory signage approved by the Local Traffic Committee and consistent with this condition.
- d) Any associated works to ensure satisfactory transitions to existing infrastructure.

- (7) **Landscape plan / street tree plan** – The following tree species must be planted at no cost to Council and in the location(s) specified on the Landscape Plan (prepared by Terras Landscape Architects, Ref no. 13003.5 Rev. B and dated 3/12/2020).

- a) Luscious® Tristaniopsis laurina 'DOW10, with a minimum pot size of 45 litres and taller than 1.2m at the time of planting.

Details demonstrating compliance must be provided to the Certifying Authority.

- (8) **Protect Existing Vegetation and Natural Landscape Features** - Approval to remove existing vegetation is not to occur until the issue of the Construction Certificate.

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.

- (9) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:

- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
- b) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room; and
- c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (10) **Parking areas and loading bays** - Loading bays are to be provided in accordance with AS2890 Part 2 'Parking Facilities'.

Details demonstrating compliance must be provided to the Certifying Authority.

- (11) **Construction Environmental Management Plan** - A Construction Environmental Management Plan (CEMP) must be submitted to and approved by to the Certifying Authority and Council. 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
- (12) **Mechanical exhaust system** – Mechanical exhaust system(s) must comply with AS 1668 'The use and Ventilation and Air Conditioning in Buildings' Parts 1 and 2 (including exhaust air quantities and discharge location points).

Details demonstrating compliance must be provided to the Certifying Authority.

- (13) **Hunter Water Corporation approval** - A Section 50 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.
- (14) **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 Contribution Levy, 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 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 Council Fixed Local Infrastructure Contribution 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) Prior to issue of the Construction Certificate.
- (15) **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.

- (16) **Bushfire safety – Other developments** – The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019" (PBP2019). In this regard the following is required:
- a) Proposed development must comply with the construction requirements of Planning for Bushfire Protection and the National Construction Code 2016 Structural Fire Safety requirements.
 - b) The entire property must be managed as an 'Inner Protection Area' as outlined within PBP2019.
 - c) Compliance with Appendix 3 of PBP2019.
 - d) Compliance with the specific requirements of Chapter 8 of PBP2019.

Details demonstrating compliance must be provided to the Certifying Authority by a suitably qualified NSW BPAD Bushfire Consultant.

- (17) **Public Art** – Public Art Approval is to be obtained from Council for the areas designated on the approved architectural plans prepared by EJE Architecture. Ref no. 13003, sheets A04 Rev K and A05 Rev J. 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.
- (18) **Construction to be in accordance with Acoustic Report** – Certification is to be submitted to the Principal Certifying Authority to certify that the development complies with the recommendations of the Noise Assessment prepared by Muller Acoustic Consulting, Ref no. MAC201049-01RP1V2 and dated 30 July 2020, and in addition, include the following:
- a) A loading dock wall (eastern side of the loading bay) is to be included as per the site plans in Appendix B. The fence should be a minimum of 2.0m above relative ground level and consist of materials with a surface density of at least 10kg/m² (such as lapped and capped timber or equivalent) and not contain any gaps.
 - b) All windows along the northern elevation must be upgraded to be fire rated in accordance with the BCA and designed to remain closed at all times.

3.0 - 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.
- (7) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.

Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.

- (8) **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).

- (9) **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.

- (10) **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.

- (11) **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following:

- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

4.0 - During Works

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

- (1) **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.

- (2) **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.

- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (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) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
- (6) **Survey report** – The building 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.
- (7) **Construction Environmental Management Plan implementation** - All construction environmental management procedures and systems identified in the approved CEMP must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (8) **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.
- (9) **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 monitored for priority weeds as defined by the NSW Biosecurity Act 2015. Cleaning must include the removal of all mud and plant matter, followed by washing with high pressure water.
- An area for storage of contaminated soil that is separate from clean material shall be provided during construction.
- (10) **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.

- (11) **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.
- (12) **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.
- (13) **Delivery register** - The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.

This register must be made available to Council officers on request and be provided to the Council at the completion of the development.

- (14) **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.

- (15) **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.

- (16) **Construction Noise Mitigation** – Construction of the development must comply with the construction noise mitigation recommendations of the Noise Assessment prepared by Muller Acoustic Consulting, Ref no. MAC201049-01RP1V2 and dated 30 July 2020.

5.0 - 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) **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*.

- (3) **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.

- (4) **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.

- (5) **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; and
- d) Gas (where available).

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.

- (6) **Stormwater/drainage 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.

- (7) **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.

- (8) **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.

- (10) **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.

- (11) **Street tree planting** – All street trees must be planted in accordance with the approved Street Tree Planting plan (as required under condition 2(7) of this consent).

- (12) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent. An irrigation system is to be installed for the full extent of the landscape areas and is to remain operational for the life of the development.
- (13) **Bicycle requirements** – Bicycle parking racks to accommodate a minimum of 6 bicycles must be installed in the bicycle parking area in accordance with the approved plans.
- (14) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
- (15) **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.
- (16) **Mechanical exhaust system** – A Certificate of Compliance prepared by a qualified Engineer confirming that the mechanical exhaust systems have been designed, constructed and installed in accordance with the relevant requirements of Clause F4.12 of the Building Code of Australia and AS1668 'The use and Ventilation and Air Conditioning in must be provided to the Certifying Authority.

Certification must be provided that the air handling system as installed has been tested and complies with the approved plans and specifications, including ventilation requirements and fire precautions.
- (17) **Public Art** – Public art is to be installed in accordance with the Public Art Approval noted in Condition 2(16) of this consent.
- (18) **Food Premises Fit Out** - The design, construction and fit-out of the food premises and/or food storage area must comply with all applicable Acts, Regulation, codes and standards including:
 - a) the *Food Act 2003*;
 - b) the *Food Regulation 2004*;
 - c) The food Standards Australia and New Zealand, Food Standards Code 3.2.3 and Food standards and Equipment;
 - d) AS 1668 'The Use of Ventilation and Air Conditioning in Buildings'; and
 - e) AS 4674 'Design, Construction and Fitout of Food Premise

Details demonstrating compliance must be provided to the Certifying Authority.

- (19) **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 prior to operation.
A 'Food Business Registration form can be found on Council's website.
- (20) **Construction to be in accordance with Acoustic Report** – Certification is to be submitted to the Principal Certifying Authority to certify that construction of the development complies with the recommendations of the Noise Assessment prepared by Muller Acoustic Consulting, Ref no. MAC201049-01RP1V2 and dated 30 July 2020.
- (21) **Bush Fire Emergency Management and Evacuation Plan** - A Bush Fire Emergency Management and Evacuation Plan is to be prepared consistent with the NSW RFS publication: A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan, and the Australian Standard AS 3745:2010 Planning for emergencies in facilities.

6.0 – Ongoing Use

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

- (1) **Manoeuvring of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **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.
- (3) **Hours of operation** – The property is only to be open for business and used for the purpose approved within the following hours:

Day	Hours of Operation
Monday - Saturday	10am to 12pm
Sunday and Public Holidays	10am to 10pm

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

- (4) **Loading to occur on site** – All loading and unloading operations are to be carried out wholly within the building/site and in accordance with the approved plans.

The loading dock (if provided) must be used for loading and unloading operations in connection with the approved use.

- (5) **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.
- (6) **Approved signage maintenance** – 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'.

Illumination of signage is only to occur during operational hours.

- (7) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (8) **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*.
- (9) **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.

- (10) **Waste management and collection** – At all times, the strata management body must make arrangements for the placement of the garbage bins at the kerbside for weekly collection and must ensure the return of the bins to the garbage room as soon as practicable after collection.
- (11) **Amenity** – The business must be conducted, and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises.
- (12) **Waste water treatment devices** – All wastewater treatment devices (including drainage systems, sumps, traps and pumps) must be regularly maintained in good working order to ensure that they remain effective.
- A maintenance schedule must be developed and incorporated into a Plan of Management (PoM) and kept on-site at all times for staff to comply with. All liquid and solid wastes collected from the treatment device must be disposed of in accordance with relevant environmental protection and waste control Legislation.
- (13) **Ongoing Deliveries** – Deliveries are to be made outside of peak times, during day time hours only, being 7am – 6pm.
- (14) **Plan of Management** – The ongoing use and management of the development is to be carried out in accordance with the approved Plan of Management Operation, Alcohol and House Policy, prepared by the applicant and dated July 2020 and the Bush Fire Emergency Management and Evacuation Plan.
- (15) **Ongoing Use in accordance with Acoustic Report** – Ongoing use of the development is to comply with the recommendations of the Noise Assessment prepared by Muller Acoustic Consulting, Ref no. MAC201049-01RP1V2 and dated 30 July 2020, including, but not limited to the following:
- a) Windows are to be closed during live internal music performances.
 - b) There are to be no external live music performances.
 - c) All mechanical plant for cooling and refrigeration are located internally within the basement area.
- (16) **Offensive Noise** - The use and occupation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the *Protection of the Environment Operation Act 1997* and must comply with the *NSW Noise Policy for Industry 2017* (as amended).
- (17) **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.

Advice Note(s):

- (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) **Premise standard** – It is the Applicants responsibility to ensure compliance with the requirements of the *Disability Discrimination Act 1992* (DDA).

Note: Compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.

- (4) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (5) **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 Heritage NSW 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.
- (6) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development in Pepper Tree Road and Muir Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables.
- (7) **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.
- (8) **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 the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

1. Confirm and clarify the terms of Council's Approval;
2. Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
3. Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
4. Set standards and performance measures for acceptable environmental performance; and
5. Provide for the ongoing management of the development.