**Attachment C: DA10.2022.371.2 – Conditions Recommended for Modification**

**MODIFIED CONDITIONS OF CONSENT:**

1. **Insert the following conditions into the Notice of Determination in appropriate order:**

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| **6A.** | **Staged Development**  The development is to be carried out in the following stages:  Stage 1 (CC1): Piling and Shoring  Stage 2 (CC1.1): Basement excavation including dewatering and retention  Stage 3 (CC2): Construction of basement including in-ground services up to the  underside of ground floor;  Stage 4 (CC3): Construction of structure including services  Stage 5 (CC4): Completion of remaining works and landscaping  Where conditions are required to be satisfied prior to a particular event, those conditions are the conditions relevant to the works being carried out in the stage.  The relevant conditions are the conditions deemed necessary, by the Principal Certifying Authority (PCA) appointed for the development, or, where pursuant to the issue of a Construction Certificate, the relevant consent authority. |

1. **Insert the following heading and conditions into the Notice of Determination after the parameters of consent**

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| **The following conditions are to be complied with prior to any demolition works commencing** | |
| **6B.** | **Construction and Demolition impacts**  Prior to any demolition works commencing, the applicant is required to submit a Risk Assessment/Management Plan and detailed Safe Work Methods Statements (**SWMS**) of the proposed works to **UGLRL** on behalf of **TfNSW** for review and comment on the impacts on the rail corridor. Works relating to the Proposal must not commence until such time as written confirmation had been received from **UGLRL** confirming that this condition has been satisfied. |
| **6C.** | **Fencing**  Prior to any demolition works commencing, appropriated fencing must be place between the project site and the rail corridor to prevent unauthorised access. Before installing any fencing work, the applicant must obtain approval from TfNSW. The Applicant is advised to contact **UGLRL**’s Third Party Works team via thirdpartyworks@uglregionallinx.com.au for more information. |
| **6D.** | **Excavation in, above, or adjacent to rail corridor**   * 1. Prior to issue of any subdivision works certificate or any preparatory, demolition or excavation works, whichever occurs first, the following documentation shall be provided for the review and endorsement of TfNSW and UGLRL:   2. - Final geo-technical and structural report / drawings. Geotechnical reports should include any potential impact on the CRN corridor located adjacent to the subject development site, easement and substratum;   3. - Final demolition and/or construction methodology with construction details pertaining to structural support during excavation or ground penetration. Any temporary components, for example, shoring systems, formwork and falsework, that are located such that their failure has the potential to affect rail infrastructure facilities or operations shall have a minimum service life of 10 years;   4. - If required by UGLRL or TfNSW, details of the vibration and movement monitoring system that will be in place before excavation commences   5. - Final cross sectional drawings showing ground surface, rail tracks, sub soil profile, any basement excavation, and structural design of sub ground support adjacent to the Rail Corridor. Cross sectional drawings should also include the accurate RL depths and horizontal distances from assets (any tracks, overhead lines, structures, and cables) to the nearest point of excavation or ground penetration works. All measurements are to be verified by a Registered Surveyor; and,   6. - Detailed survey plan with location of services. |
| **6E.** | **Erosion and Sediment measures**  Erosion and sedimentation controls are to be in place in accordance with the [*Guidelines for Erosion & Sediment Control on Building Sites*](Guidelines%20for%20Erosion%20and%20Sediment%20Control%20on%20Building%20Sites.). Particular attention is to be given to the provision of the following sediment and erosion control measures:  a. Temporary driveway from the edge of road to the building site;  b. Temporary downpipes immediately installed after the roof has been erected;  c. Silt fence or sediment barrier.  **Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.**  **Note: Council may impose on-the-spot fines for non-compliance with this condition.**  **Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).** |
| **6F.** | **Demolition of Existing Development**  Prior to commencement of any demolition works on Lot 11 DP 1138310 and Lot 12 DP 1138310 which are adjacent to the rail corridor, the applicant must obtain TfNSW and UGLRL’s approval for demolition of existing development. |

1. **Insert condition 9A after condition 9**

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| **9A.** | **Updated BASIX Certificate**  An updated NatHERS Certificate and NatHERS stamped plan set in accordance withBASIX Certificate No 1288442M\_03 Dated 07 June 2024 must be submitted for approval of the Construction Certificate.  Such plans are to be approved as part of the Construction Certificate. |

1. **Insert conditions 46A, 46b and 46C after condition 46:**

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| **46A.** | **Liquid Trade Waste - Section 68 Part C approval required**  An **approval** under Section 68 Part C of the Local Government Act 1993 to discharge liquid trade waste into Council’s sewer must be obtained in accordance with current NSW Liquid Trade Waste Guidelines, Council’s Liquid Trade Waste Policy and Liquid Trade Waste Guidelines.  Commercial, business, trade and industrial activities discharging or proposing to discharge to the sewer are required to notify Council and complete the Liquid Trade Waste Registration Form available at the Mullumbimby Office and from Council’s website at:  [Liquid Trade Waste registration form - Byron Shire Council (nsw.gov.au)](https://www.byron.nsw.gov.au/Council/Forms-and-certificates/Application-Form-Directory/Liquid-Trade-Waste-registration-form)  Liquid Trade Waste approval must be obtained prior to gaining Section 68 Part B approval to carry out water supply work and sewerage work. |
| **46B.** | **Site Waste Minimisation and Management Plan**  Chapter B8 of Byron Shire Development Control Plan 2014 (DCP 2014) aims to facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development. Prior to the issue of a Construction Certificate, a Site Waste Minimisation and Management Plan (SWMMP) must be submitted outlining measures to minimise and manage waste generated during demolition, construction and the ongoing operation and use of the development. The SWMMP must specify the proposed method of recycling or disposal and the waste management service provider.  A template is provided on Council’s website to assist in providing this information [www.byron.nsw.gov.au/files/publication/swmmp - pro-forma-.doc](http://www.byron.nsw.gov.au/files/publication/swmmp%20-%20pro-forma-.doc) |
| **46C.** | **Certificate of Compliance – s307 Water Management Act 2000**  Prior to issue of any Construction Certificate, a Certificate of Compliance under Section 307 of the Water Management Act 2000 must be obtained upon payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous County Council Development Servicing Plans. Where staging of the Construction Certificate occurs, a separate s307 Compliance Certificate must be obtained for each stage.  Byron Shire Council acts as Rous County Council’s agent in this matter and will issue a Certificate of Compliance on behalf of Rous County Council upon payment of the Rous County Council Development Servicing Charge to this Council.  ***Note****: For issue of the Certificate of Compliance, an application form and associated fee must be lodged via Council’s website. Copies of Byron Shire Council’s Development Servicing Plans are available via Council’s website.*  Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates by contacting Council’s Principal Engineer Systems Planning, Utilities on 02 6626 7000.  Applicable charges can also be found on Council’s website: [https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3](https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement%23section-3)  **The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.**  **Payment by Personal or Company Cheque will not be Accepted** |

1. **Insert condition 74A after condition 74, and condition 58A after condition 58:**

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| **74A**. | **Construction Environmental Management Plan**  A Construction Environmental Management Plan (CEMP) must be submitted to Council for assessment and approval.  The CEMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure that construction and demolition works do not result in any off-site impacts that could interfere with neighbourhood amenity by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise.  The CEMP must also include a Waste Management Strategy that details the management of building wastes created because of the demolition and construction processes, including on-site storage and disposal of building wastes (including asbestos and lead wastes). Requirements must take into consideration NSW DECC Guidelines and all other statutory requirements.  All works must be in accordance with NSW WorkCover Authority requirements and include a dilapidation report for all surrounding dwellings and infrastructure, which could be reasonably expected to be affected by the construction, demolition, and dewatering processes. |
| **58A.** | **Construction Noise**  Construction noise is to be limited as follows:  a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).  b. For construction periods greater than four (4) weeks and not exceeding twenty‑six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)  **Note: Council may impose on-the-spot fines for non-compliance with this condition.** |

1. **Insert conditions 102 to 105 after condition 101:**

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| **102.** | **Use of Wellness Centre**  The use of the wellness centre is approved for residents use only and not for commercial purposes. |
| **103.** | **Use of rooftop terraces**  The use of rooftop terraces is restricted to residents use only between the hours of 7am and 9pm daily. |
| **104.** | **Trade Waste**  All trade waste pre-treatment devices shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied. |
| **105.** | **Site Waste Minimisation and Management**  All works must comply with the objectives of waste minimisation and waste management of Part B8.1.2 of DCP 2014. |

1. **Insert the below condition under NOTES:**

**Water payments under the Water Management Act 2000**

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

**ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT   
(ET Policy 2022)**

|  |  |
| --- | --- |
| Water | 3.32 ET |
| Bulk Water | 3.32 ET |
| Sewer | 3.32 ET |

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website ([https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3](https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement%23section-3)).

These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.

1. **Delete condition 8 and renumber it as condition no 6G and insert it under the heading “The following conditions are to be complied with prior to any demolition works”**

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| **8. to**  **6G.** | **Environmental Management Plan**  An Environmental Management Plan (EMP) must be submitted to Council for approval prior to the issue of the Construction Certificate. The EMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure that demolition works do not result in any off-site impacts that could interfere with neighbourhood amenity by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise.  All works must be in accordance with NSW WorkCover Authority and include a dilapidation report. |

1. **Delete condition 15:**

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| **15.** | **Demolition of Existing Development**  Prior to issue of construction certificate, the Applicant must obtain TfNSW and UGLRL’s approval for demolition of existing development. |

1. **Delete condition 32 and renumber it as condition no 88A. Insert it under the heading “The following conditions are to be complied with prior to occupation of the building”:**

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| **32. to**  **88A.** | **Certificates for engineering works**  The submission of all test certificates, owners manuals, warranties and operating instructions for civil works, mechanical and/or electrical plant, together with a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council’s current “Northern Rivers Local Government Design and Construction Manuals and Specifications”. |

1. **Delete condition 45 and renumber it as condition no 6H and insert it under the heading “The following conditions are to be complied with prior to any demolition works”:**

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| **45. to 6H.** | **Revised Site Waste Minimisation and Management Plan – Demolition**  A revised Site Waste Minimisation and Management Plan (SWMMP) and site plans must be submitted with development applications seeking consent for demolition. The revised SWMMP must demonstrate that the proposed development will:   1. Pursue adaptive reuse opportunities of buildings/structures. 2. Identify all waste likely to result from the demolition, and opportunities for reuse of materials. 3. Facilitate reuse/recycling by using the process of 'deconstruction', where various materials are carefully dismantled and sorted. 4. Reuse or recycle salvaged materials onsite where possible. 5. Allocate an area for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation, and access and handling requirements). 6. Provide separate collection bins or areas for the storage of residual waste. 7. Clearly ’signpost’ the purpose and content of the bins and storage areas. 8. Implement measures to prevent damage by the elements, odour and health risks, and windborne litter. 9. Minimise site disturbance, limiting unnecessary excavation. |

1. **Modify conditions 1, 6,9,25,26,27,28,31,50 & 52 of the Notice of Determination to read as follows:**

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| 1. | **Approved plans and supporting documentation**  Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.   |  |  |  |  | | --- | --- | --- | --- | | **Title** | **Version No.** | **Drawn by** | **Dated** | | Site Plan | DA1.01 Rev 2 | Hayball | 06.09.2024 | | Basement floor plan | DA1.11 rev 2 | Hayball | 06.09.2024 | | Ground Floor Plan (Annotated by Council) | DA1.12 Rev 2 | Hayball | 06.09.2024 | | Level 1 (Annotated by Council) | DA1.13 rev 2 | Hayball | 06.09.2024 | | Level 2 | DA1.14 rev 2 | Hayball | 06.09.2024 | | Roof Plan (Annotated by Council) | DA1.15 rev 2 | Hayball | 06.09.2024 | | Typical Layouts Ground Floor  (Annotated by Council) | DA1.21 Rev 2 | Hayball | 06.09.2024 | | Typical layouts Ground Floor | DA1.22 Rev 2 | Hayball | 06.09.2024 | | Typical Layouts Level 1 (Annotated by Council) | Da1.23 Rev 2 | Hayball | 06.09.2024 | | Typical Layouts Level 1 (Annotated by Council) | Da1.24 Rev 2 | Hayball | 06.09.2024 | | Street Elevations | DA7.01 Rev 2 | Hayball | 06.09.2024 | | Elevations | DA7.02 Rev 2 | Hayball | 06.09.2024 | | Elevations | DA7.03 Rev 2 | Hayball | 06.09.2024 | | Elevations | DA7.04 Rev 2 | Hayball | 06.09.2024 | | Elevations | DA7.05 Rev 2 | Hayball | 06.09.2024 | | Elevations | DA7.06 Rev 2 | Hayball | 06.09.2024 | | Sections | DA8.01 Issue A | DAH Architecture | - | | Sections | DA8.02 Issue A | DAH Architecture | - | | Sections | DA8.03 Issue A | DAH Architecture | - | | Sections | DA8.04 Rev 2 | Hayball | 06.09.2024 | | Sections | DA8.05 Rev 2 | Hayball | 06.09.2024 | | Preliminary Engineering Services Layout Plan (Annotated by Council) | DA04 Rev D | ADG | 11/08/23 | | Preliminary Road Widening Layout Plan and Sections Milton St | DA10 Rev C | ADG | 11/08/23 | | Preliminary Driveway Crossover Details Milton St | DA12 Rev C | ADG | 11/08/23 | | Preliminary Driveway Crossover Details Cavvanbah St (Annotated by Council) | DA13 Rev C | ADG | 27/03/23 | | Preliminary Stormwater Management Layout Plan | DA17 Rev A | ADG | 11/08/23 | | ATP211137 | Noise Impact Assessment, 29 Shirley St, Byron Bay | ATP Consulting Engineers | September 2024 | | J8350 | Environmental Management Plan – Demolition, 29 Shirley St, 2-4 Milton St Byron Bay | Planit Consulting | September 2024 | | Statement of Landscape Intent  (Annotated by Council) | Statement of Landscape Intent | Urbis | November 2024 | | Letter and attachments from Sodiq Azeez of Greg Alderson and Associates addressing Internal Access and Manoeuvring | Ref: 22381 – Response To Council RFI | Sodiq Azeez – Greg Alderson and Associates | 4 October 2023 | | Letter from Anthony from Anthony Mallam of Greg Alderson and Associates RE Assessment of Proposed Ramp in Relation to Wheel Slippage for Waste Vehicles – 29 Shirley St, | Ref: 22381\_RFI Response 1 & 2\_03 10 23 | Anthony Mallam - Greg Alderson and Associates | 3 October 2023 |   In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.  **Note**: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time. |
| **6.** | **Bush fire safety measures**  This land is identified as being designated bush fire prone land and under section 4.14 of the Environmental Planning and Assessment Act 1979, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with “Planning for Bush Fire Protection 2019”.  The development is approved subject to the development complying with the requirements of Revised Bush Fire Assessment Report – Multi-storey Residential Development (version 2) prepared by Melanie Jackson (BPAD-Level 3 Accredited Practitioner & Member of FPA Australia) of Bushfire Risk Pty Ltd dated 26 June 2024. |
| **9.** | **Amendments to the plans required**  Amended plans must be submitted with the Construction Certificate to show:   1. **Maximum height of the northern building** **in 7F2 zoning**   As per the requirements of BLEP 1988 Clause 40 Height (2) (b) (ii) the vertical distance of the topmost part of the northern building, including any balustrades shall not exceed 9 metres above the existing ground level below with the floor to ceiling height on levels 1 and or 2 both reduced to achieve compliance.   1. **Maximum height Southern buildings in R3 zoning** 2. The maximum height of the building for any lift over runs shall not exceed 10.7 metres above the existing ground level . 3. The maximum height of any other elements including balustrading, pools or rooftop planters shall not exceed10.25 metres above the existing ground level. 4. **Northern Building Lift Overrun and Canopy**   The lift servicing the rooftop of unit 201 is not approved. Plans must be amended to remove the lift and canopy from the rooftop, with the lift terminating at Level 2.   1. **Internal unit layouts**   The internal layouts to units 005, 006, 007, 008, 009,105, 106,107,108,109 must be amended to remove the internal walls as marked up on the approved plans to the studies and other habitable rooms with no access to external windows.   1. **Roof top Terraces**   All roof top terraces in 7(F2) and R3 zone shall be shown as having a maximum trafficable area of 40 sqm only including any pool, bbq, entertaining and seating areas.   1. **Roof Top Landscaping**   The application for a Construction Certificate is to include plans and specifications that indicate the landscaping of the roof top of the site.  The landscaping plan must indicate:   * Detail of the medium to be used for the landscaped green roof areas including depth and composition. Pots or planters to be maximum 600m deep. * A planting schedule detailing the native species to be used for roof top landscaping, including the green roof areas. The location and dimensions of any pots or planters be used around the periphery of each deck and the native plant regime to be used in these planters / pots. Planting to be restricted to ground covers and shrubs only. * A maintenance plan detailing the ongoing maintenance and servicing of the roof top deck landscaped areas.     Note: Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bushfire Protection 2006.    **(g) Electric vehicle charging points**. A minimum 240-volt power outlet being provided on the basis of 1 for each and every residential unit in the basement carpark to enable electric vehicle charging.  Such plans are to be approved as part of the Construction Certificate. |
| **25.** | **Traffic Management Plan (TMP)**  Prior to issue of Construction Certificate for Stage 1 (CC1), consent from Council must be obtained for a Traffic Management Plan (TMP) pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The TMP is to be designed in accordance with the requirements of the current version of the Transport for NSW Traffic Control at Work Sites Technical Manual.  The report must incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.  The TMP and associated traffic guidance scheme/s must be prepared by a suitably qualified Transport for NSW accredited person. |
| **26.** | **S.88E Public Positive Covenant to be placed on title – Coastal erosion**  Prior to the issue of construction certificate for Stage 3 (CC3), documentary evidence is to be provided to the Principal Certifying Authority that a public positive covenant, pursuant to the provisions of S.88E of the Conveyancing Act, 1919, has been placed on the title to the land, the subject of this consent, stating:‑  *The development granted via development consent number 10.2022.371.1 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished immediately, and the landowner must suitably revegetate the land.*  In this covenant coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.  **Please note:** Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council’s Fees & Charges. |
| **27.** | **Fibre-ready Facilities and Telecommunications Infrastructure**  Unless exempted from Part 20A of the Telecommunications Act 1997, evidence satisfactory to the Certifying Authority must be submitted prior to the issue of the Construction Certificate for Stage 3 (CC2) in connection with a development, that the developer (whether or not a constitutional corporation) has made arrangements for:   * + - 1. the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and       2. the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.   Notes:   * 1. real estate development project has the meanings given in section 372Q of the Telecommunications Act; and   2. exemptions only apply if published on the Register of developments exempted from Part 20A of the Telecommunications Act 1997 issued by the NSW Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts, or similar. |
| **28.** | **Land to be consolidated**  All separate parcels of land are to be consolidated into one allotment and registered with NSW Land Registry Services.  Prior to issue of the construction certificate for Stage 1 (CC1) , proof of lodgement to NSW Land Registry Services must be provided to the Principal Certifying Authority. |
| **31.** | **Sewer Easements - Section 88B Instrument**  Prior to the issue of construction certificate for Stage 1 (CC1), a Section 88B Instrument and one (1) copy are to be submitted to Council. The final plan and accompanying Section 88B Instrument are to provide for:   * 1. Sewer Easements   The creation of easements for drainage of sewage over all sewage pipelines and structures located within the proposed allotments in accordance with the Policy: Building in the Vicinity of Underground Infrastructure 2020.  The minimum width of the required easement shall be 4 metres centred over the pipeline. |
| **50.** | **Sequencing of Works**  Before the commencement of any dewatering on site, all road and stormwater upgrading works in Milton St (south) must be constructed in accordance with the engineering plans required by this consent and the Roads Act consent.  Certification that all works (road & stormwater) in Milton St (south) has been constructed in accordance with the engineering plans and Work-As-Executed (WAE), prepared by a suitably qualified engineer, together with a final completion letter from Council for the Roads Act works, must be submitted to the Principal Certifying Authority prior to the issue of the Stage 2 construction certificate( CC1.1.) |
| **52.** | **Traffic Management Plan**  The approved traffic management plans are to be implemented. |