

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

**DETERMINATION OF DEVELOPMENT APPLICATION NO. 181-8-2004**

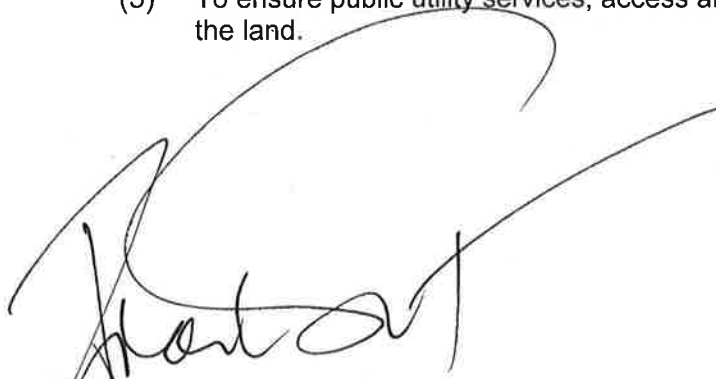
**(FILE NO. S04/01803)**

**DEMOLITION AND CONSTRUCTION OF A 4-STOREY RESIDENTIAL  
FLAT BUILDING OVER 2 LEVELS OF BASEMENT PARKING AND  
STRATA SUBDIVISION**

I, the Minister for Planning, pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and Clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) To ensure development proceeds in accordance with the approved plans;
- (2) To ensure development satisfies the relevant statutory requirements;
- (3) To ensure that measures are implemented to manage environmental and social impacts which may arise from the development;
- (4) To ensure the lots are adequately serviced; and
- (5) To ensure public utility services, access and restrictions are legalised over the land.



Frank Sartor MP  
**Minister for Planning**

Sydney,



2005

## SCHEDULE 1

### PART A—TABLE

|                                         |                                                                                                                                                                                                                                                                                         |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application made by:</b>             | Tony Krolovic, Omnico P/L,<br>17 Elizabeth Street, Wetherill Park, NSW 2164                                                                                                                                                                                                             |
| <b>Application made to:</b>             | Minister for Planning                                                                                                                                                                                                                                                                   |
| <b>Development Application:</b>         | 181-8-2004                                                                                                                                                                                                                                                                              |
| <b>On land comprising:</b>              | Lot 2 DP 15998                                                                                                                                                                                                                                                                          |
| <b>For the carrying out of:</b>         | Development described in Condition A1, Part A, Schedule 2                                                                                                                                                                                                                               |
| <b>Estimated Cost of Works</b>          | \$2.5 million                                                                                                                                                                                                                                                                           |
| <b>Type of development:</b>             | State Significant Development; Integrated Development under Section 138 of the Roads Act 1993                                                                                                                                                                                           |
| <b>S.119 Public inquiry held:</b>       | No                                                                                                                                                                                                                                                                                      |
| <b>Approval Body / Bodies:</b>          | Port Stephens Council                                                                                                                                                                                                                                                                   |
| <b>Determination made on:</b>           |                                                                                                                                                                                                                                                                                         |
| <b>Determination:</b>                   | Consent granted subject to the conditions in attached Schedule 2.                                                                                                                                                                                                                       |
| <b>Date of commencement of consent:</b> | This development consent commences following satisfaction of deferred commencement conditions.                                                                                                                                                                                          |
| <b>Date consent is liable to lapse</b>  | This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"> <li>▪ a shorter period of time is specified by the Regulations or a condition in Schedule 2, or</li> <li>▪ the development has substantially commenced.</li> </ul> |

### PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 181-8-2004

#### ***Responsibility for other approvals / agreements***

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

#### ***Appeals***

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid for a development application, within 12 months after the date on which the applicant received this notice.

#### ***Appeals—Third Party***

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

**Legal notices**

Any advice or notice to the consent authority shall be served on the Director-General.

**Section 94 Conditions**

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies where imposed in accordance with the Port Stephens Council Section 94 Contributions Plan. The Port Stephens Council Section 94 Contributions Plan may be inspected at the following location:

- Port Stephens Council, 116 Adelaide Street, Raymond Terrace

The specific public amenity or service or both are identified in the monetary contributions conditions in Part B of Schedule 2.

**PART C—DEFINITIONS**

In this consent,

**Act** means the *Environmental Planning and Assessment Act, 1979* (as amended).

**Applicant** means Northwest Residential or any party acting upon this consent.

**Approval Body** has the same meaning as within Division 5 of Part 4 of the Act,

**BCA** means the Building Code of Australia.

**Certifying Authority** has the same meaning as Part 4A of the Act.

**Council** means Port Stephens Council.

**DA No. 181-8-2004** means the development application and supporting documentation submitted by the applicant on 3 August 2004.

**Department** means the Department of Planning or its successors.

**Director** means the Director of the Urban Assessments (or its successors) within the Department.

**Director-General** means the Director-General of the Department.

**Minister** means the Minister for Planning.

**PCA** means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

**Regulations** mean the *Environmental Planning and Assessment Regulations, 2000* (as amended).

**Subject Site** has the same meaning as the land identified in Part A of this schedule.

**SCHEDULE 2****CONDITIONS OF CONSENT****DEVELOPMENT APPLICATION NO. 181-8-2004****PART A—ADMINISTRATIVE CONDITIONS****A1 Development Description**

Development consent is granted only to carrying out the development described in detail below:

Construction of a 4-Storey Residential Flat Building containing 6 Apartments over 2 Levels of Basement Car Parking with 14 Car Spaces and Strata Subdivision

**A2 Development in Accordance with Plans**

The development shall be generally in accordance with development application number 181-8-2004 submitted by the applicant on 3 August 2004, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

**Statement of Environmental Effects entitled “Proposed erection of residential flat building at 90 Magnus Street, Nelson Bay for Krslovic Homes” prepared by John Pagan, Burrell Threlfo Pagan Pty Ltd dated February 2004.**

**Architectural Drawings prepared by Perumal Pedavoli Architects (Project No. 2635)**

| Drawing No | Issue | Name of Plan            | Date      |
|------------|-------|-------------------------|-----------|
| DA01       |       | Site Plan               | 15/2/2005 |
| DA02       |       | Lower Ground Floor Plan | 15/2/2005 |
| DA03       |       | Upper Ground Floor Plan | 15/2/2005 |
| DA04       |       | First Floor Plan        | 15/2/2005 |
| DA05       |       | Second Floor Plan       | 15/2/2005 |
| DA06       |       | Third Floor Plan        | 15/2/2005 |
| DA07       |       | Fourth Floor Plan       | 15/2/2005 |
| DA08       |       | Roof Plan               | 15/2/2005 |
| DA09       |       | Elevations 01           | 15/2/2005 |
| DA10       |       | Elevations 02           | 15/2/2005 |
| DA11       |       | Section 01 and 02       | 15/2/2005 |
| DA12       |       | Section 03 and 04       | 15/2/2005 |
| DA13       |       | Shadow Diagrams         | Feb 2005  |
| DA14       |       | Shadow Diagrams         | Feb 2005  |

**Landscape Drawings prepared by Melissa Wilson (Project No. 2635)**

| Drawing No. | Issue | Name of Plan | Date |
|-------------|-------|--------------|------|
|-------------|-------|--------------|------|

|      |  |                                     |          |
|------|--|-------------------------------------|----------|
| LS01 |  | Landscape Plan – Lower Ground Floor | Feb 2004 |
| LS02 |  | Landscape Plan – Ground Floor       | Feb 2004 |
| LS03 |  | Landscape Plan – First Floor        | Feb 2004 |

**A3     *Prescribed Conditions***

The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

## **PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

### ***Design Details***

#### **B1      *Details of Materials, Colours and Finishes***

The colours and external materials used are to be of such a nature to be compatible with those of existing development in the locality. External materials shall not be reflective and glazing to external doors and windows shall not exceed a reflectivity index of 20%. Full details are to be submitted for the Principal Certifying Authority for approval with the application for a Construction Certificate.

#### **B2      *Outdoor Lighting***

All outdoor lighting shall comply with, where relevant, AS/NZ1158.3: 1999 *Pedestrian Area (Category P) Lighting* and AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Details demonstrating compliance with these requirements are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Certificate.

#### **B3      *Disabled Access***

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy and AS1428. Prior to the issue of a Construction Certificate, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the Principal Certifying Authority.

#### **B4      *Acid Sulphate Soil Management Plan***

Should acid sulphate soils be impacted upon during construction works, an Acid Sulphate Soil Management Plan shall be prepared by a suitably qualified person in accordance with the *Acid Sulphate Soil Assessment Guidelines* (Acid Sulphate Soil Management Advisory Committee, 1998). The Management Plan shall be submitted to the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.

#### **B5      *Erosion and Sedimentation Control***

Soil erosion and sediment control measures shall be designed in accordance with the document *Managing Urban Stormwater—Soils & Construction Volume 1* (2004) by Landcom. Details are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Certificate.

#### **B6      *Dilapidation Reports***

A Dilapidation Report detailing the current condition of the existing infrastructure and roads adjoining the site shall be prepared and endorsed by a qualified builder. The report shall be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Certificate.

A second Dilapidation Report shall be prepared by a suitably qualified person at the completion of the works to ascertain if any damage has occurred to the adjoining

infrastructure and roads. The report shall also be submitted to the satisfaction of the Principal Certifying Authority and should be compared with the earlier report to ascertain if any change has occurred

A copy of both reports is to be forwarded to the relevant Council.

### **B7 Engineering Works**

- (a) A stormwater drainage concept plan shall be submitted to the Principal Certifying Authority that incorporates sufficient area on the site for stormwater detention such that the permissible site discharge is restricted to pre-developed flows (i.e. natural site), for all critical storms up to the 1% AEP ("100 year") storm event. Where appropriate, infiltration methods shall be employed. All calculations of volumes and site discharge are to be shown. The whole of the detention volume shall be able to be discharged at or above ground level.
- (b) A level spreader shall be provided a minimum of 0.3m inside the property boundary and have a minimum dispersion length of 4m. The level spreader can be a box section, 150mm diameter UV stabilised PVC, masonry weir, or other. Details are to be submitted for approval with a Construction Certificate application.

### **B8 Traffic Control Plan**

A traffic control plan shall be prepared in accordance with the Roads and Traffic Authority's Traffic Control at Worksites Manual. The plan shall be approved by the Principal Certifying Authority prior to release of a Construction Certificate.

### **B9 Traffic Control Devices**

In order to ensure that vehicles exit the site in a safe manner, suitable traffic control devices including signage and line markings shall be installed and shall be clearly visible at the threshold of the driveway. Details of the type, location and operation of the device are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

### **B10 Number of Car Spaces**

The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Certificate.

| <b>Car parking allocation</b>                                    | <b>Number</b> |
|------------------------------------------------------------------|---------------|
| Total number of car parking spaces                               | 14            |
| Number of residential car spaces to be designated visitor spaces | 2             |

### **B11 Car Park and Service Vehicle Layout**

- (1) The layout of the car park shall comply with Australian Standard AS2890.1: 1993 *Parking Facilities Part 1: Off Street Parking* and the amended concept design. All parking spaces are to be linemarked.

- (2) Details demonstrating compliance with these requirements shall be submitted to the satisfaction of the Principal Certifying Authority prior the issue of a Construction Certificate.
- (3) A Driveway Application shall be submitted to Council prior to the issue of a Construction Certificate. All work is to be at the developer's expense and completed in accordance with the driveway levels provided by the Council and the following:
  - (A) The driveways shall intersect with the kerb and guttering at an angle of 70° to 90°. Details shall be submitted for approval with a Construction Certificate application.
  - (B) Existing driveways and laybacks which are not approved as being required for the development are to be removed and the footpath and kerb reinstated.
  - (C) Footpath crossings shall be a minimum of 5.5m wide and located a minimum of 1.0m from the side boundaries and will require Convex traffic mirror for safety reasons for vehicles entering and exiting the site.

### **B12     *Water Ratings***

All water fixtures installed within the premises are to have AAA water rating or more. The applicant shall submit to the Principal Certifying Authority a statement demonstrating compliance with the requirements of this condition.

### **B13     *Mechanical Ventilation***

All mechanical ventilation systems shall be installed in accordance with Part F4.5 of the Building Code of Australia and shall comply with Australian Standards AS1668.2 and AS3666 *Microbial Control of Air Handling and Water Systems of Building*, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details shall be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Certificate.

### **B14     *Storage and Handling of Waste***

The design and management of facilities for the storage and handling of waste must comply with the requirements of Council's relevant Waste Management Policy. Details are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of a Construction Certificate.

### **B15     *Water and Sewerage Services***

Prior to the issue of a Construction Certificate, a Section 50 Certificate under the Hunter Water Act 1991 shall be obtained from Hunter Energy and provided to the Principal Certifying Authority showing that adequate arrangements have been made for the provision of water and sewerage services to and within the development. The current contribution, which will be indexed annually, is \$14,594.

### **B16     *Sewer Main***

The sewer main is to be directed clear of the buildings and structures, details of which need to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

**B17 Monetary Contributions**

In accordance with Section 94 of the Environmental Planning and Assessment Act 1979, a monetary contribution shall be paid to Council prior to the issue of a Construction Certificate. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

| Category                                                                                                     | Rate Per Unit (\$) | Total Amount (\$) |
|--------------------------------------------------------------------------------------------------------------|--------------------|-------------------|
| Open Space                                                                                                   | 944                | 4,720             |
| Recreation                                                                                                   | 2,295              | 11,475            |
| Community Facilities                                                                                         | 522                | 2,610             |
| Fire Emergency Services                                                                                      | 239                | 1,195             |
| Library Resources                                                                                            | 119                | 595               |
| Roadworks Levy                                                                                               | 489                | 2,445             |
| <b>TOTAL</b>                                                                                                 |                    | <b>23,040</b>     |
| Traffic generation per unit is 6; total traffic generation for the development is 30. Levy per trip is \$81. |                    |                   |

Contribution rates are subject to indexation. The rates shown above are applicable until 30 June following the date of consent. Payment made after 30 June will be at the indexed rates applicable at that time.

The Contributions Plan and the Standard Schedule for Section 94 Plans may be viewed on at Council's offices at 116 Adelaide Street, Raymond Terrace.

**B18 Fencing**

All fencing surrounding the development shall not exceed 900mm in height. Details shall be submitted to the Principal certifying Authority for approval prior to release of a Construction Certificate.

**B19 Balcony to Unit 2**

The minimum dimension of balcony to Unit 2 shall be 2m. Details shall be submitted to the Principal Certifying Authority for approval prior to release of a Construction Certificate.

**B20 Energy Efficiency**

Prior to the issue of a Construction Certificate, certification from a consultant who is accredited by the NSW House Energy Rating Management Body is to be provided to Council to the effect that the development is to achieve a 3.5 star NatHERS (Nation Wide Housing Energy Rating Scheme) rating or better.

**B21      *Water Conservation***

Water saving showerheads shall be fitted to all showers within the development to reduce water consumption and promote energy efficiency. Details shall be provided to the Principal Certifying Authority for approval prior to release of a Construction Certificate.

**B22      *Energy Conservation***

Only energy efficient appliances shall be installed in the units. Details shall be provided to the Principal Certifying Authority prior to release of a Construction Certificate.

**B23      *Air-Conditioning***

Air-conditioning unit shall be contained in an acoustically screened enclosure. Details shall be provided to the Principal Certifying Authority for approval prior to release of the Construction Certificate.

**B24      *Compliance Report***

Prior to the issue of a Construction Certificate, the Applicant, or any party acting upon this consent, shall submit to the Principal Certifying Authority a report addressing compliance with all relevant conditions of this consent.

**PART C—PRIOR TO COMMENCEMENT OF WORKS*****Excavation Works*****C1      *Notice to be Given Prior to Excavation***

The Principal Certifying Authority and Council shall be given written notice, at least 48 hours prior to the commencement of any excavation, shoring or underpinning works on the site.

***Structural Works*****C2      *Structural Details***

Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the Principal Certifying Authority structural drawings prepared and signed by a suitably qualified practising Structural Engineer that comply with:

- (1) the relevant clauses of the Building Code of Australia,
- (2) the relevant development consent,
- (3) drawings and specifications comprising the Construction Certificate, and
- (4) the relevant Australian Standards listed in the BCA (Specification A1.3).

***Construction Management*****C3      *Construction Management Plan***

Prior to the commencement of any works on the site, a Construction Management Plan shall be submitted to and approved by the Principal Certifying Authority. The Plan shall address, but not be limited to, the following matters where relevant:

- (1) hours of work,
- (2) contact details of site manager,
- (3) traffic management,
- (4) noise and vibration management,
- (5) waste management,
- (6) erosion and sediment control, and
- (7) flora and fauna management.

The Applicant shall submit a copy of the approved plan to the Council.

**C4      *Traffic & Pedestrian Management Plan***

Prior to the commencement of any works on the site, a Traffic and Pedestrian Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Principal certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (1) ingress and egress of vehicles to the site,

- (2) loading and unloading, including construction zones,
- (3) predicted traffic volumes, types and routes,
- (4) pedestrian and traffic management methods.

The Applicant shall submit a copy of the approved plan to the Council.

### **C5      *Noise and Vibration Management Plan***

Prior to the commencement of any works on the site, a Noise and Vibration Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Principal Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (1) Identification of the specific activities that will be carried out and associated noise sources,
- (2) Identification of all potentially affected sensitive receivers including residences, schools, and properties containing noise sensitive equipment,
- (3) The construction noise objective specified in the conditions of this consent,
- (4) The construction vibration criteria specified in the conditions of this consent,
- (5) Determination of appropriate noise and vibration objectives for each identified sensitive receiver,
- (6) Noise and vibration monitoring, reporting and response procedures,
- (7) Assessment of potential noise and vibration from the proposed construction activities including noise from construction vehicles and any traffic diversions,
- (8) Description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
- (9) Justification of any proposed activities outside the construction hours specified in the conditions of this consent.
- (10) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods, and frequency,
- (11) Procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration,
- (12) Contingency plans to be implemented in the event of non-compliances and/or noise complaints,

The Applicant shall submit a copy of the approved plan to Council.

### **C6      *Construction Waste Management Plan***

Prior to the commencement of works, the Applicant shall submit to the satisfaction of the Principal Certifying Authority a Waste Management Plan prepared by a suitably qualified person in accordance with the Council's Waste Management Policy. The plan shall include the recycling of materials excluding asbestos, resulting from the demolition of structures on the site. The Applicant shall submit a copy of the plan to the Council.

### **C7      *Contact Telephone Number***

Prior to the commencement of the works, the Applicant shall forward to the Principal Certifying Authority and Council a 24 hour telephone number to be operated for the duration of the construction works.

**C8      *Site Audit***

Prior to the commencement of building works, a Site Audit conducted by a suitably qualified person shall be undertaken to ascertain that all identified hazardous materials have been removed from the site and shall be submitted to the Principal Certifying Authority.

**C9      *Demolition of Structures***

Demolition of structures on the site shall comply with AS2601-1991 – “The Demolition of Structures” To achieve safe and proper means of disposal of asbestos materials, approval shall be obtained from the Waste Services NSW prior to disposal of any asbestos materials. Details shall be provided to the Principal Certifying Authority prior to commencement of the demolition works.

## **PART D—DURING CONSTRUCTION**

### ***Site Maintenance***

#### ***D1 Erosion and Sediment Control***

All erosion and sediment control measures are to be effectively maintained in accordance with Managing Urban Stormwater—Soils & Construction Volume 1 (2004) by Landcom at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

#### ***D2 Disposal of Seepage and Stormwater***

Any seepage or rainwater collected on-site during construction shall not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.

### ***Structural Works***

#### ***D3 Setting Out of Structures***

The buildings shall be set out by a registered surveyor to verify the correct position of each structure in relation to property boundaries and the approved alignment levels. The registered surveyor shall submit a plan to the Principal Certifying Authority certifying that works are in accordance with the approved development application.

### ***Construction Management***

#### ***D4 Approved Plans to be On-site***

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the Principal Certifying Authority.

#### ***D5 Site Notice***

A site notice(s) shall be prominently displayed at the boundaries of the site for the purposes of informing the public of project details. The notice(s) is to satisfy all but not be limited to, the following requirements:

- (1) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;
- (2) The notice is to be durable and weatherproof and is to be displayed throughout the works period;
- (3) The approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and

- (4) The notice(s) is to be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.

**D6 Contact Telephone Number**

The applicant shall ensure that the 24 hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.

**D7 External Lighting**

External Lighting shall comply with AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Upon installation of lighting, but before it is finally commissioned, the Applicant shall submit to the Principal Certifying Authority evidence from an independent qualified practitioner demonstrating compliance in accordance with this condition.

**D8 Protection of Trees**

All trees on the site that are not approved for removal are to be suitably protected by way of tree guards, barriers or other measures as necessary are to be provided to protect root system, trunk and branches, during construction.

**D9 Dust Control Measures**

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures must be adopted:

- (1) All vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material,
- (2) Covers are to be adequately secured,
- (3) Cleaning of footpaths must be carried out regularly,
- (4) Roadways must be kept clean,
- (5) Gates are closed between vehicle movements,
- (6) Gates are fitted with shade cloth,
- (7) The site is hosed down when necessary, and
- (8) Wheel washes shall be installed for all vehicles exiting the site.

**Noise and Vibration****D10 Hours of Work**

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- (1) between 7:00 am and 6:00 pm, Mondays to Fridays inclusive;
- (2) between 8:00 am and 1:00 pm, Saturdays;
- (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;

- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
- (3) the work is approved through the Construction Noise and Vibration Management Plan; and
- (4) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

### **D11 Construction Noise Objective**

The construction noise objective for the Project is to manage noise from construction activities (as measured by a  $L_{A10(15\text{minute})}$  descriptor) so it does not exceed the background  $L_{A90}$  noise level by:

- (1) not more than 20dB(A) for a construction period of four weeks and under;
- (2) not more than 10dB(A) for a construction period of greater than four weeks and not exceeding 26 weeks; and
- (3) not more than 5dB(A) for a construction period greater than 26 weeks.

Background noise levels are those identified in the Statement of Environmental Effects or otherwise identified in the approved Construction Noise and Vibration Management Plan. The Applicant shall implement all feasible noise mitigation and management measures with the aim of achieving the construction noise objective.

Any activities that have the potential for noise emissions that exceed the objective must be identified and managed in accordance with the approved Construction Noise and Vibration Management Plan.

If the noise from a construction activity is substantially tonal or impulsive in nature (as described in Chapter 4 of the NSW Industrial Noise Policy), 5dB(A) must be added to the measured construction noise level when comparing the measured noise with the construction noise objective.

### **D12 Construction Noise Management**

The Applicant shall:

- (1) schedule rock breaking, rock hammering, sheet piling, pile driving and any similar activity only between the following hours unless otherwise approved in the Construction Noise and Vibration Management Plan:
  - (a) 9 am to 12 pm, Monday to Friday;
  - (b) 2pm to 5pm Monday to Friday; and
  - (c) 9 am to 12 pm, Saturday
- (2) ensure that wherever practical, and where sensitive receivers may be affected, piling activities are completed using bored piles. If driven piles are required they must only be installed where approved in the Construction Noise and Vibration Management Plan.

### **D13 Vibration Criteria**

Vibration caused by construction at any residence or structure outside the subject site must be limited to:

- (1) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings, Effects on Structures; and
- (2) for human exposure to vibration, the evaluation criteria presented in British Standard BS 6472- Guide to Evaluate Human Exposure to Vibration in Buildings (1Hz to 80 Hz) for low probability of adverse comment.

These limits apply unless otherwise approved in the Construction Noise and Vibration Management Plan.

#### ***D14 Vibration Management***

Vibratory compactors must not be used closer than 30 metres from residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified above.

#### ***Heritage***

#### ***D15 Impact of Below Ground (Sub-surface) Works – Aboriginal Relics***

If any Aboriginal archaeological relics are exposed during construction works, the Applicant shall immediately notify the National Parks and Wildlife Service and obtain any necessary approvals to continue the work. The Applicant shall comply with any request made by the NPWS to cease work for the purposes of archaeological recording.

#### ***D16 Dust Emissions***

Effective measures shall be taken to suppress dust emissions during the course of development, details of which need to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate

#### ***Compliance***

#### ***D17 Compliance Report***

The Applicant, or any party acting upon this consent, shall, for the duration of the construction period, submit to the Principal Certifying Authority a three monthly report addressing compliance with all relevant conditions of this consent.

## **PART E—SUBDIVISION**

### **E1      *Strata Title Subdivision***

Details of a works as executed plan prepared by a registered surveyor to clearly identify the boundaries of the individual lots and common property, as set out in the strata plan approved under this development consent must be submitted and approved prior to the Subdivision Certificate for the strata plan is released by Council.

### **E2      *Access***

Documentary easements for access must be created over the appropriate lots in the subdivision to provide for public access and access to lifts, lobbies, fire stairs, service areas, loading areas and car parking areas, and created pursuant to Section 88B of the *Conveyancing Act 1919*.

### **E3      *Services***

Documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over the appropriate lots in the subdivision pursuant to Section 88B of the *Conveyancing Act 1919*.

### **E4      *Car Parking Restrictions***

The on-site car parking spaces, exclusive of service spaces, are not to be used by those other than an occupant or tenant of the subject building. Any occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.

These requirements are to be enforced through the following:

- (1) restrictive covenant placed on title pursuant to Section 88B of the *Conveyancing Act, 1919*,
- (2) restriction on use under Section 68 of the *Strata Schemes (Leasehold Development) Act, 1986* to all lots comprising in part or whole car parking spaces, and

These requirements are to be made to the satisfaction of Council. All costs associated with the above requirements are to be borne solely by the applicant.

### **E5      *Common Areas and Facilities***

No right of exclusive use and enjoyment of the whole or any specified part of the designated common area or similar in the approved plans will be conferred on any person or persons without the prior consent of the relevant Council.

These requirements are to be made, at no cost to Council, and to the satisfaction of Council and a restrictive covenant placed on title pursuant to Section 88E of the *Conveyancing Act, 1919*.

**PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE****F1 Fire Safety Certificate**

A Fire Safety Certificate shall be furnished to the Principal Certifying Authority for all the Essential Fire or Other Safety Measures forming part of this approval prior to issue of an Occupation Certificate. A copy of the Fire Safety certificate must be submitted to the consent authority and Council by the Principal Certifying Authority.

**F2 Annual Fire Safety Statement**

An Annual Fire Safety Statement must be provided to Council and the NSW Fire Brigade commencing within 12 months after the date on which the consent authority initial Fire Safety Certificate is received.

**F3 Mechanical Ventilation**

Following completion, installation and testing of all the mechanical ventilation systems, the applicant shall provide evidence to the satisfaction of the Principal Certifying Authority, prior to the issue of the Occupation Certificate, that the installation and performance of the mechanical systems complies with:

- (1) The Building Code of Australia;
- (2) Australian Standard AS1668 and other relevant codes;
- (3) The development consent and any relevant modifications; and,
- (4) Any dispensation granted by the New South Wales Fire Brigade.

**F4 Structural Inspection Certificate**

A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of an Occupation Certificate and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact consent authority for specific electronic format) shall be submitted to the Council after:

- (1) The site has been periodically inspected and the Principal Certifying Authority is satisfied that the Structural Works is deemed to comply with the final Design Drawings; and,
- (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

**F5 Road Damage**

The cost of repairing any damage caused to Council or other Public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the applicant/developer prior to the issue of an Occupation Certificate.

Note: Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount a separate invoice will be issued.

**F6      *Registration of Easements***

Prior to the issue of an Occupation Certificate, the applicant shall provide to the Principal Certifying Authority evidence that all easements required by this consent, approvals, and other consents have been or will be registered on the certificates of title.

**PART G—POST OCCUPATION*****Fire Safety*****G1     *Annual Fire Safety Certification***

The owner of the building shall certify to Council every year that the essential services installed in the building for the purpose of fire safety have been inspected and at the time of inspection are capable of operating to the required minimum standard. This purpose of this condition is to ensure that there is adequate safety of persons in the building in the event of fire and for the prevention of fire, the suppression of fire and the prevention of spread of fire.

***Traffic and Parking*****G2     *Car Parking Restrictions***

The on-site car parking spaces, exclusive of service spaces, are not to be used by those other than an occupant, tenant or employee of the subject development. Any occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.

**G3     *Unobstructed Driveways and Parking Areas***

The site driveway and parking area shall be unobstructed at all times. The driveway and car spaces shall not be used for the manufacture, storage or display of goods, materials or any other equipment.

***Public Access*****G4     *Public Way to be Unobstructed***

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.

## **PART H—GENERAL TERMS OF APPROVAL**

### **PORT STEPHENS COUNCIL**

#### **H1 Engineering Works**

Engineering details, in accordance with the Port Stephen Council's Subdivision and Development Code, shall be provided of proposed road and drainage works and be approved by the Principal Certifying Authority prior to issue of a Construction Certificate. The details shall include:

- (a) A profile section of driveway levels from the centre line of the road to the proposed garage/parking area showing a level at every change of grade. This shall comply with Council's specifications for high/low level driveway construction indicated on Council's Standard drawing S105B. Full details, shall be approved by the Principal Certifying Authority prior to issue of a Construction Certificate.
- (b) A concrete footpath 1.2 metres wide and 100mm thick shall be provided, to Council's Standards, over the full street frontage of the site prior to Occupation. Details shall be submitted to, and approved by, Council prior to issue of the approval under the Roads Act 1993.
- (c) All works as listed as conditions of development consent, which are located in public roads are subject to approval under Section 138 of the Roads Act 1993. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council prior to commencement of these works and prior to issue of a Subdivision Certificate or Construction Certificate.
- (d) Works associated with the approved plans and specifications located within the existing road reserve shall not commence until:
  - (i) a Roads Act Approval has been issued, and
  - (ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.
- (e) All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council prior to issue of a Subdivision Certificate or Occupation Certificate.
- (f) Works associated with the Roads Act Approval are subject to:
  - (i) inspection by Council,
  - (ii) testing by a registered NATA Laboratory and
  - (iii) approval by Council at each construction stage as determined by Council.
- (g) Details of any proposed work within a public reserve shall be submitted to and approved by Council prior to commencement of that work within the reserve.

## **ADVISORY NOTES**

### ***AN1            Requirements of Public Authorities for Connection to Services***

The applicant shall comply with the requirements of any public authorities (e.g. Hunter Energy, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

### ***AN2            Future Vehicular Access***

Attention is drawn to the need to obtain Council approval for any proposed access prior to construction.

### ***AN3            Street Numbering***

In the event of a change to street numbers is required, a separate application shall be made to Council.

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages in accordance with Council's Street Naming Policy, prior to the occupation of the building(s) or commencement of the use.