



**PORT STEPHENS**  
C O U N C I L

**SUPPLEMENTARY  
INFORMATION**

ORDINARY COUNCIL MEETING  
9 JUNE 2020

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SUBJECT

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Nb. Bold Items have not been previously received or viewed by Councillors.

## SUPPLEMENTARY INFORMATION

ITEM NO. 1

FILE NO: 20/163554  
EDRMS NO: DA16-2019-616-1

**DEVELOPMENT APPLICATION 16-2019-616-1 FOR PROPOSED FOOD AND DRINK PREMISES - MCDONALDS RESTURANT AT 795 MEDOWIE ROAD, MEDOWIE (LOT:1 DP:1215257)**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application No.16-2019-616-1 for a Food and Drink Premises (McDonald's Restaurant), subject to the Recommended Conditions of Consent contained in **(ATTACHMENT 1)**.

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### BACKGROUND

The purpose of this report is to amend the recommended draft conditions contained within Item 1 - Development Application No.16-2019-616-1 for a Food and Drink Premises (McDonald's Restaurant).

Upon review of the Recommended Conditions of Consent contained within Item 1, the applicant requested that the conditions be amended to facilitate a more timely commencement of construction of the McDonalds Restaurant.

As noted in Item 1, the subject site on which the McDonalds development is proposed to occur is located on a lot to be delivered as part of the recently approved DA 16-2019-445-1 for the erection of a commercial premises and a 1 into 4 lot subdivision. Recommended condition 4 contained in Item 1 requires the subdivision, approved as part of DA 16-2019-445-1, to be registered with NSW Government Land and Property Information prior to the issue of the Construction Certificate. This condition would delay the commencement of construction and the applicant is seeking to construct as soon as possible.

It is considered that condition 4 can be amended, subject to ensuring certain site conditions are met so as to mitigate any potential for unintentional encroachments or construction conflicts. Despite the development application being separate to that of the broader subdivision development application it is understood that the commercial development could be constructed at similar timeframes. Given these circumstances it is appropriate to consider the change in conditions as requested by the applicant to enable the broader development to be delivered in a timely and integrated manner.

The condition is recommended to be amended to read:

4. Servicing – Prior to the release of any Construction Certificate, the applicant must provide evidence to Council that the following subdivision works, approved under DA16-2019-445-1, has occurred:
  - a. Final lot levels have been completed for approved Lot 1, including all required retaining walls along the road frontages.
  - b. Lot staking has been set out for approved Lot 1 by a registered surveyor.
  - c. Suitable road access to Muir Street and drainage connections to Council's stormwater drainage system are provided to approved Lot 1.

A further condition is also required which requires the lot to be registered prior to the issue of the Occupation Certificate. That condition is recommended to read:

Servicing – The subdivision approved as part of DA16-2019-445-1 is to be registered, with documentary evidence of the lodgement for registration of a survey plan with NSW Government Land & Property Information. The evidence must be submitted to Council prior to the issuing of any Occupation Certificate for the proposed development.

A copy of the updated Recommended Conditions of Consent are contained in **(ATTACHMENT 1)**.

## **ISSUES**

Nil.

## **ATTACHMENTS**

- 1) Draft recommended conditions of consent.

**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



**SCHEDULE 1 – CONDITIONS OF CONSENT**

**1.0 - General Conditions of Consent**

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

- 1. 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/Doc. Title	Name of plan	Prepared by	Date
A042 Issue E	Overall Site Plan	Richmond & Ross	6.05.2020
A062 Issue G	Proposed Site Plan	Richmond & Ross	6.05.2020
A101 Issue B	Floor Plan	Richmond & Ross	19.08.2019
A201 Issue B	Front & Side Building Elevations	Richmond & Ross	19.08.2019
A202 Issue B	Drivethru Elevations	Richmond & Ross	19.08.2019
A801 Issue G	Site Signage Plan	Richmond & Ross	11.05.2020
A805 Issue E	Pylon Sign	Richmond & Ross	11.05.2020
A806 & A807 Issue B	Signage Details	Richmond & Ross	19.08.2019
101, Issue D	Landscape Plan	Site Image	8.05.2020
501, Issue D	Landscape Details & Planting	Site Image	8.05.2020
502, Issue C	Landscape Specification & Details	Site Image	24.01.2020
C101, Issue E	Concept Drainage Plan	Richmond & Ross	6.05.2020
C301, Issue D	Concept Erosion & Sediment Plan	Richmond & Ross	6.05.2020
C310, Issue B	Erosion & Sediment Control Details	Richmond & Ross	19.08.2019

Document	Prepared by	Date
Plan of Management	McDonald's Australia Ltd	August 2019
Site Waste Minimisation & Management Plan	McDonald's Australia Ltd	August 2019

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

**PORT STEPHENS COUNCIL**

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# ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



2. **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'.
3. **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.

## 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.

4. **Servicing** – Prior to the release of any Construction Certificate, the applicant must provide evidence to Council that the following subdivision works, approved under DA16-2019-445-1, has occurred:
  - a. Final lot levels have been completed for approved Lot 1, including all required retaining walls along the road frontages;
  - b. Lot staking has been set out for approved Lot 1 by a registered surveyor;
  - c. Suitable road access to Muir Street and drainage connections to Council's stormwater drainage system are provided to approved Lot 1.
5. **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.

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



8. **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
9. **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roads Act Approval Certificate under Section 138B of the *Roads Act 1993*. The following information must be provided to Council as the Roads Authority with the Roads Act application:
  - a) Detailed civil engineering plans indicating line-marking and traffic management for a channelised right hand turning lane on Medowie Road and directing traffic to Muir Street.
10. **Garbage Room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be designed and 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.
11. **Construction Environment Management Plan** – A Construction Environment Management Plan (CEMP) must be submitted to and approved by to the Certifying Authority. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management
12. **Public Art** – Public Art Approval is to be obtained from Council's Public Art Committee. Public Art is to be in accordance with Council's Public Art Policy and Guidelines for the approval and installation of public art in Port Stephens.
13. **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.
14. **Hunter Water Corporation approval** – A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
15. **Food premises** – 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*;

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# ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



- 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.

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

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

The payment of the fixed development consent levy is to be accompanied by a Cost Summary Report Form setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Council Fixed Development Contributions Plan. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a Registered Associate member or above, of the Australian Institute of Quantity Surveyors.

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

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

- a) **Prior to issue of the Construction Certificate.**

17. **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.

### 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.

18. **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.



**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



19. **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.
  
20. **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.
  
21. **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.
  
22. **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.

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

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

24. **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).

25. **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.

26. **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.

### 4.0 - During Works

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

27. **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.

28. **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.

**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



29. **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.

Noise management and mitigation measures be adopted during noise intensive construction activities to limit impact on surrounding receivers. Construction noise must be managed in accordance with the Construction Recommendations Part 7 of the Noise Assessment, No. MAC190876RP1, prepared by Robin Heaton & Oliver Muller dated 29 August 2019.

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

31. **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.

32. **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:

- a) Immediately following the installation of any roof, collected stormwater runoff shall be diverted through a first flush system before being piped to the existing stormwater easement/system.

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

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

34. **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

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## ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



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.

35. **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.
36. **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.
37. **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.

38. **Fill material** – The only fill material that may be received at the development site is: Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*; or

Excavated natural material (ENM) within the meaning of the *POEO Act 1997*; or  
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.





### 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.

39. **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.

40. **Servicing** – The subdivision approved as part of DA16-2019-445-1 is to be registered, with documentary evidence of the lodgement for registration of a survey plan with NSW Government Land & Property Information. The evidence must be submitted to Council prior to the issuing of any Occupation Certificate for the proposed development.

41. **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.

42. **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*.

43. **Bushfire safety** – The site is located within a bushfire prone area. Certification from a suitability qualified BPAD Bushfire Consultant must be provided to certify that the construction of the development complies with:

The Bushfire Report provided with the DA titled Bushfire Assessment Report, by Newcastle Bushfire Consulting and dated 22.12.2019.

The latest version of NSW Rural Fire Service publication "Planning for Bush Fire Protection 2006".

44. **Public Art** – Public art is to be installed in accordance with the Public Art Approval.

45. **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.

46. **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.

**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



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

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## ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



47. **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.

48. **Works as Executed Plans and Report** – Works As Executed Plan must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.

49. **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.

50. **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.

51. **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.

52. **Street tree planting** – All street trees must be planted in accordance with the approved Street Tree Planting plan (as required under the landscape plan prepared by Site Image, dated 24.01.2020).

53. **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.

54. **Car parking requirements** – A minimum of 45 car parking spaces including 1 disabled car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

55. **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.

56. **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.

57. **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

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**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



completed fit out is to be conducted prior to the sale of food. A 'Food Business Registration form can be found on Council's website.

- 58. **Construction to be in accordance with Acoustic Report** – Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the development complies with the recommendations of the Acoustic Assessment Report No. MAC190876RP1, prepared by Robin Heaton & Oliver Muller dated 29 August 2019.

**6.0 – Ongoing Use**

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

- 59. **Display of goods on footpath** – No goods are to be displayed outside the confines of the building.
- 60. **Manoeuvring of vehicles** – All vehicles must enter and exit the site in a forward direction.
- 61. **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.
- 62. **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 – Sunday/Public Holidays	24 hours

The development shall operate via drive-through service only between the hours of 11pm and 5am, 7 days a week.

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.

- 63. **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.

The loading dock will only be operational between the hours of 7am and 10pm, 7 days a week.

- 64. **Plan of Management** – The proposal shall be operated in accordance with the approved Plan of Management (except as modified by the conditions of this consent).

The Plan of Management shall be updated in accordance with the conditions of this consent, prior to the commencement of the use.



**ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.**



65. **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.
66. **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'.
67. **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.
68. **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*.
69. **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.
70. **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.
71. **Odour** – The use and occupation of the premises is not give rise to the emissions of any 'air impurity' as defined under the protection of the Environment Operations Act 1997 (NSW), that interferes unreasonably with amenity of the neighbouring premises and/or other sensitive receivers.
- Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.
72. **Noise** – The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of The Environment Operations Act 1997 (NSW).

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## ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



73. **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.

74. **Toilet Facilities** – Toilet facilities must be made available to patrons of the development during hours of operation of the internal serving area.

75. **Waste disposal** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.

Waste disposal and management is to be carried out in accordance with the approved Site Waste Minimisation & Management Plan, prepared by Mc Donald's Australia Ltd and dated August 2019.

### 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) **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.
- (3) **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.
- (4) **Regulated premises inspections** – The premises will be incorporated in Council's Surveillance Program and will be subject to ongoing annual inspections.
- (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 Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- (6) **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.

## ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



- (7) **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.

### SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

#### REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

*The determination decision was reached for the following reasons:*

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning (Infrastructure 2007), State Environmental Planning Policy No 44 – Koala Habitat Protection, State Environmental Planning Policy No 64 – Advertising and Signage.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

#### 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.

### SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW

#### RIGHT OF APPEAL

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## ITEM 1 - ATTACHMENT 1 DRAFT RECOMMENDED CONDITIONS OF CONSENT.



If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

### **RIGHT OF REVIEW**

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. (**See exclusions note below**).

**Exclusions:** A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.

## SUPPLEMENTARY INFORMATION

ITEM NO. 3

FILE NO: 20/164162  
EDRMS NO: PSC2020-00816

### FINAL INTEGRATED PLANNING AND REPORTING DOCUMENTS

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION  
MANAGER  
GROUP: FACILITIES & SERVICES

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### RECOMMENDATION IS THAT COUNCIL:

- 1) That any increases in fees for Children's Services be delayed until 1 October 2020.

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### BACKGROUND

The purpose of this report is to inform Council of recent changes to State funding to Children's Services.

The State Government announced on Monday 8 June 2020 the introduction of transition payments to assist with costs attributable to the non-payment for child care. These transition payments are conditional upon maintaining fees and charges applicable as of the last week in March 2020. In order for Council to qualify for these transition payments, any increase in fees must be delayed until 1 October 2020.

### ISSUES

Failure to delay fee increases will mean Council is not eligible for transition funding.

### ATTACHMENTS

Nil.