

Telephone Inquiries:
MRL W ALLEN
File No: 16-2007-42-1
Parcel No: 5755
Det Code: ac

Dear Sir/Madam,

Re: **NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION**
Environmental Planning and Assessment Act, 1979.

Pursuant to section 80(1) of the Environmental Planning and Assessment Act, notice is hereby given of the determination by the consent authority of the Application No. 16-2007-42-1.

Date of Determination & Date from which Consent operates: **21 December, 2007**
Proposed Development: **Urban Housing - 5 Storey + Basement Car Parking**
Property Description: **LOT: 2 DP: 388255**
53 Magnus Street NELSON BAY

The Application has been determined by granting consent including other approvals as detailed in Schedule 1 and subject to conditions in Schedule 2. The reasons for the imposition of such conditions are set out in Schedule 4.

Should you wish you may seek to have this Consent reviewed by Council. Arrangements for this review must be made within twelve (12) months of determination date.

If you have any further inquiries regarding this consent, please contact Council's Sustainable Development Department at your convenience.

NOTE: THIS IS NOT AN APPROVAL TO COMMENCE WORK. BUILDING WORKS CANNOT COMMENCE UNTIL A CONSTRUCTION CERTIFICATE IS ISSUED BY COUNCIL OR AN ACCREDITED CERTIFIER.

Yours faithfully

David Broyd

DAVID BROYD
GROUP MANAGER
SUSTAINABLE PLANNING

PER: lwa:kjp

SCHEDULE 1

APPROVAL UNDER SECTION 78A(3)

1. Nil required.

SCHEDULE 2

CONDITIONS OF APPROVAL

1. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
2. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
3. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
4. The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
5. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
6. Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the following stages of construction:
 - a. On completion of ground floor construction, confirming that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.
 - b. When the roof has been completed, confirmation that the building does not exceed the Reduced Levels, as indicated on the approved plan.
7. Landscaping shall be carried out in accordance **approved landscaping plan**. The landscaping must be completed prior to issue of Occupation Certificate.
8. A colour scheme providing full details of the colours and character of all external building materials and finishes to be used shall be approved by Council **prior to the issue of the Construction Certificate**.

9. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Civic Administration	(\$356)	(\$1068)
Public Open Space, Parks and Reserves	(\$1935)	(\$5805)
Sports and Leisure Facilities	(\$4561)	(\$13686)
Cultural and Community Facilities	(\$2293)	(\$6879)
Roadworks	(\$864)	(\$2592)
Fire & Emergency Services	(\$140)	(\$420)

Note:

- a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.
- b) Contributions are to be paid prior to **issue of construction certificate**
- c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months.

10. The vehicle driveway from the roadway to the property boundary incorporating the gutter crossing shall have a width of 4.0m and shall be constructed in concrete or interlocking pavers in accordance with the options shown on **Council's Standard Drawing No. S122 & S105B.**

The construction of the footpath crossing and associated lipless layback must be constructed prior to the issue of any **Interim and Final Occupation Certificates.**

11. All redundant lay-backs shall be reinstated to match the adjoining kerb and gutter profile.
12. The stormwater detention system shall be designed and built in accordance with the approved concept plan. Impervious surface and roof water is to be disposed of by an onsite detention drainage system to Council's drainage network, designed for the critical 1:100yr storm, using a maximum infiltration rate of 2900mm/day (120mm/hour). All hardstand areas are to drain to the tank. The line along the southern boundary taking runoff off the driveway and down pipes needs to drain to the tank, and a separate overflow provided. A drainage design indicating all engineering details relevant to site regrading and the collection and disposal of the stormwater from the site is to be submitted to and approved by the certifying authority **prior to the issue of a Construction Certificate.** Details are to include detention system design, existing site levels, finished levels, pipeline sizes, invert levels, pipe grades and calculations.
13. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
14. Submission of Works-As-Executed plans and report prepared and certified by a suitability qualified drainage engineer confirming all drainage works (volume, discharge, levels, location, etc) are built in accordance with conditions of consent and the approved plan. Minor variations in height can be

certified providing they are clearly identified in the report and the engineer certifies that the overland flow paths are not altered, discharge rates are not increased, and no additional negative effects are imparted on any dwellings or property. Minor variations can only be certified where it can be demonstrated that the ease of maintenance and monitoring of the system has not been negatively affected.

The documents shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the occupation certificate.**

15. 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**. The footpath is to remove the existing blockwork wall and continue from the existing footpath, to provide pedestrian connections in the verge to the intersection of Magnus and Donald Street. This may require steps and not finishing with a retaining wall. Details shall be submitted to, and approved by Council **prior to issue of Construction Certificate.**
16. 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 approval to commence these works and **prior to issue of the Construction Certificates.**

The following items are also required to be approved by Council prior to approval being granted to commence works:

- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
 - b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
 - c) Contractors public liability insurances to a minimum value of \$10 million dollars.
17. The following fees and/or bonds are to be paid as part of this consent:
 - a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
 - b) PCA/inspection fee, prior to approval of construction certificate or plans.
 - c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)
 18. 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.
 19. All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) **prior to issue of the Occupation Certificate.**

All works associated with the Roads Act Approval shall be at no cost to Council.

20. Works associated with the Roads Act Approval are subject to:
 - a. inspection by Council,
 - b. testing by a registered NATA Laboratory and
 - c. approval by Council at each construction stage as determined by Council.
21. Works-As-Executed plans prepared by a suitability qualified person detailing all road and drainage works in accordance with Councils Subdivision Specifications. This shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the Subdivision Certificate.**
22. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
23. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
24. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.**
25. Tree clearing shall be carried out in accordance with Council's Tree Preservation Order. The development consent and construction certificate must be issued before it is possible to remove any trees within 3m of any approved building, as measured horizontally from the building wall to the outside trunk of the tree. Tree clearing for the vehicle driveway or any other purpose requires separate approval under the Tree Preservation Order. A copy of the **Tree Preservation Order is attached.**
26. Construction details for retaining walls greater than 600mm in height shall be submitted and approved by the Principal Certifying Authority **prior to commencement of works associated with the retaining wall.** All retaining walls in excess of 1m shall be designed by a Practising Structural Engineer.

Where retaining walls exceed 1m in height and located within 500mm of a site boundary, they shall be constructed of masonry material.

It is recommended to construct the retaining walls prior to the commencement of any other work, while the area is readily accessible and to prevent any movement of soil and/or potential damage to adjoining properties.
27. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
28. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting

the building in an approved manner.

The adjoining property owner shall be given 7 days notice before excavating below the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.

29. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997

Note: Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 9841 8600.
30. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
31. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
32. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
33. The development shall take place in accordance with the stated values of the energy efficiency scorecard or NatHERS assessment and/or the BASIX certificate submitted with the application. **Prior to the issue of any occupation certificate** an appropriately qualified person shall certify compliance with these requirements, as applicable.
34. The Principal Certifying Authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation certificate. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
35. **Prior to occupying the approved dwelling(s)**, contact Council's Land Information Section on 49800357 to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
36. The development shall be carried out in accordance with the Building Sustainability Index (BASIX) certificate number 115248M. Where minor changes to the development occur (eg colours and the like)

these changes shall be referred to Council **prior to the changes being made.**

Where approved, a copy of the amended/new BASIX Certificate shall be submitted to Council within fourteen days and will be considered sufficient to satisfy this condition.

37. A fire safety schedule pursuant to Section 168 of the Environmental Planning & Assessment Amendment Regulation 2000 must be attached to the construction certificate, which specifies the fire safety measures that should be implemented in the building premises.
38. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
39. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
 - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
40. This application has not been assessed for compliance with the Building Code of Australia.
41. All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
42. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
43. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L_{10} level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

44. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.

ADVICES

The following general information is provided to assist you with the preparation and prompt processing of your **Construction Certificate** where such application is made to Council.

- a) Plans in respect of an application for a Construction Certificate must be submitted to the Hunter Water Corporation for checking & stamping prior to application for the Construction Certificate being made.
- b) In the case of residential building work, prior to commencement of work submit to Council or a private certifying authority a copy of the contract of insurance under Part 6 of the Home Building Act 1989 (specific for the building work the subject of this approval) and builders licence details. (Or alternatively present to Council a copy of an Owner Builders Permit issued by the Department of Fair Trading.)
- c) If the value of the work is \$25,000 or more, you will need to pay a levy to the Long Service Corporation **prior to issue of the construction certificate**. You can either pay the Long Service Levy Corporation direct and show us your receipt OR you can pay us and we'll send your money to them.

Note: Owner builders can ask for a reduction in the levy. For more details contact the Long Service Corporation, Locked Bag 3000, CCDS, Lisarow 2252, phone 131441.

- d) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- e) Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work shall cease and the **National Parks and Wildlife Service** shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the **National Parks and Wildlife Act 1974**.
- f) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

SCHEDULE 3 – APPROVED PLANS AND DOCUMENTATION

Statement of Environmental Effects prepared by Paul Sinclair & Associates dated 26/3/07
Stamped plans prepared by Paul Sinclair and Associates. Drawing 0611.DA1'A', 0611.DA2'A', 0611.DA3'A', 0611.DA5 all dated 19/10/07, 0611.DA4 dated 13/3/07

SCHEDULE 4

REASONS FOR CONDITIONS

The conditions to approval are made in accordance with Section 80A of the Environmental Planning and Assessment Act, 1979; and are consistent with the aims and objectives of: Council's Tree Preservation Order; and the provisions of the Port Stephen's Local Environmental Plan 2000 and ensure compliance with the Local Government Act and Building Code of Australia.

FEES AND CHARGES

The fees and charges relating to this application are outlined on the attached sheet. **All** payments must be accompanied by this sheet.

RIGHT OF APPEAL

Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court. This right of appeal is only valid for 12 months from the date of the consent.

NOTES:

- (1) To ascertain the date upon which the consent becomes effective refer to Section 83 of the Act.
- (2) To ascertain the extent to which the consent is liable to lapse refer to Section 95 of the Act.

Telephone Inquiries:
MR L W ALLEN
File No:
16-2007-42-1
Parcel No: 5755

MEA PROPERTIES PTY LTD
301 HOMER STREET
EARLWOOD NSW 2206

Dear Sir/Madam,

I am pleased to advise you of Council's consent in respect of your proposed Development.

Please note that the consent does NOT give approval to commence construction. Building works may only commence once a **Construction Certificate** has been issued.

You may find that a number of conditions apply to your development. These conditions are to help you in ensuring that your development will comply with applicable codes and policies to provide a safe and environmentally responsible development. **Please read your consent carefully.**

If you have any questions about the consent or any other related matter please direct your initial inquiry to the Customer Support Section of Council's Sustainable Development Department on (02) 4980 0115. Customer Support will ensure your inquiry is directed to the appropriate officer.

Yours faithfully

Leonard Allen
SENIOR DEVELOPMENT PLANNER

Phone: 49800105 (9.00am – 12.00 noon)

leonard.allen@portstephens.nsw.gov.au

lwa:kjp

DA TRACKER

Development & Building has been listening to your suggestions for improvement. Council has now launched its On-line Application Tracking System and a revised Website so you can access key information, forms and application updates anytime, 24 hours, 7 days a week. Council welcomes your feedback on these new initiatives. Email council@portstephens.nsw.gov.au or write to The Manager Development & Building, Port Stephens Council, PO Box 42, Raymond Terrace NSW 2324