



## **Land and Environment Court New South Wales**

**Case Name:** JFPG013 Pty Ltd (ACN 655 002 387) ATF  
JFPG013 Unit Trust v Shoalhaven City Council

**Medium Neutral Citation:** [2023] NSWLEC 1539

**Hearing Date(s):** Conciliation conference on 15 September 2023

**Date of Orders:** 19 September 2023

**Date of Decision:** 19 September 2023

**Jurisdiction:** Class 1

**Before:** Horton C

**Decision:** The Court orders that:  
(1) The appeal is upheld.  
(2) Development consent is granted to  
Development Application No DA22/2061 for  
the construction of an eight unit multi dwelling  
housing development and associated works at  
8-10 Davies Street, Mollymook, subject to the  
conditions of consent at Annexure A.

**Catchwords:** DEVELOPMENT APPLICATION – multi dwelling  
housing development in R3 Medium Density  
Residential zone – conciliation conference –  
agreement between parties - orders

**Legislation Cited:** Environmental Planning and Assessment Act 1979,  
ss 4.16, 8.7  
Environmental Planning and Assessment Regulation  
2021  
Land and Environment Court Act 1979, s 34  
Shoalhaven Local Environmental Plan 2014, cl 4.1A,  
4.3, 4.4, 7.1, 7.2, 7.4, 7.11  
State Environmental Planning Policy (Building  
Sustainability Index: BASIX) 2004  
State Environmental Planning Policy (Resilience and  
Hazards) 2021, Ch 2, ss 2.10, 4.6

**Category:** Principal judgment

Parties: JFPG013 Pty Ltd (ACN 655 002 387) ATF JFPG013  
Unit Trust (Applicant)  
Shoalhaven City Council (Respondent)

Representation: Counsel:  
N Nadj (Solicitor) (Applicant)  
S Neilson (Solicitor) (Respondent)

Solicitors:  
Bick & Steele (Applicant)  
Shoalhaven City Council (Respondent)

File Number(s): 2023/168455

Publication Restriction: Nil

## JUDGMENT

- 1     **COMMISSIONER:** This Class 1 appeal is brought under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) following the refusal by Shoalhaven City Council (the Respondent) of development application No DA22/2061 that seeks development consent for a multi dwelling housing development comprising eight dwellings and associated works, infrastructure and landscaping across two adjoining lots described as Lots 192 and 193 in DP 30301, otherwise known as 8-10 Davies Street, Mollymook.
- 2     On 15 September 2023, the Court arranged a conciliation conference between the parties in accordance with s 34(1) of the *Land and Environment Court Act 1979* (LEC Act), at which I presided.
- 3     At the conciliation conference, the parties reached agreement on the matters in contention, and a signed agreement was filed with the Court on 11 September 2023, in accordance with s 34(10) of the LEC Act.
- 4     The parties ask me to uphold the appeal and grant conditional development consent to the development application according to terms set out in the s 34 agreement before the Court. In general terms, the agreement approves the development subject to amended plans that were prepared by the Applicant, noting that the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s 34 agreement.
- 5     Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 6     For the reasons set out below, I am satisfied that the parties' decision is a decision that the Court could have made in the proper exercise of its functions.



- 7 The development application is supported by the written consent of the owner. The Council advertised the development application between 11-26 October 2022, in response to which three submissions were received.
- 8 The site is located within the R3 Medium Density Residential zone, as identified by the Shoalhaven Local Environmental Plan 2014 (SLEP), in which multi dwelling development and associated works such as infrastructure and landscaping is permitted with consent, where consistent with the following objectives:
- To provide for the housing needs of the community within a medium density residential environment.
  - To provide a variety of housing types within a medium density residential environment.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - To provide opportunities for development for the purposes of tourist and visitor accommodation where this does not conflict with the residential environment.
- 9 The site, when the area of the two lots is aggregated, is 2,024m<sup>2</sup> which is greater than the minimum lot size for multi dwelling housing at cl 4.1A of the SLEP, of 900m<sup>2</sup>, and of which no part is a battle-axe to which cl 4.1A(3) is directed.
- 10 As the Height of Buildings Map at cl 4.3(2) does not show a maximum height for the subject site, the height of a building on the land is not to exceed 11m.
- 11 Likewise, the site is not identified on the Floor Space Ratio Map at cl 4.4(2) of the SLEP, and so there is no FSR standard applied to the site.
- 12 The site is identified on the Acid Sulfate Soils Map at cl 7.1(2) of the SLEP being within an area classified Class 5 soils. However, as the proposed development comprises only minor excavation for the construction of footings that will not lower the water table, an Acid Sulfate Soils Management Plan is not required.

- 13 On the basis of the Stormwater Management Plans prepared by Le Motte Group, the architectural plans prepared by ELK Designs, and the Landscape plans prepared by JK's Garden Creations & Tolero Landscape Design, and the agreed conditions of consent in respect of earthworks, I have considered those matters at cl 7.2(3) of the SLEP and regard the earthworks as minor and adequately addressed.
- 14 The site is not identified on the Coastal Risk Planning Area at cl 7.4 of the SLEP.
- 15 As the site is within a highly urbanised area adjacent to development with access to essential services of a sort described at cl 7.11 of the SLEP, I am satisfied that essential services are available to the site.

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

- 16 Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards) applies to the site. Section 2.10 requires consideration to be given as to whether the proposal is likely to adversely impact the coastal environmental values and natural coastal processes.
- 17 A Flora and Fauna Assessment prepared by Ecological Australia dated 4 August 2022 concludes the development will not adversely those values and processes.
- 18 Section 4.6 of the SEPP Resilience and Hazards precludes development consent to any development unless it has been considered whether a site is contaminated or potentially contaminated land, and if it is, that it is satisfied that the land is suitable, or will be suitable after undergoing remediation, for the proposed use.
- 19 The site is a part of an earlier subdivision for which consent was granted after considering the matter of contamination. The conclusion at that time, and again now, is that the site is not likely to be contaminated and so is suitable for the purpose for which development is proposed.

## **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

- 20 I am satisfied that the application is accompanied by a BASIX certificate (Cert No. 1295076M\_02), prepared by Building Sustainability Assessments dated 30 August 2022 in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the Environmental Planning and Assessment Regulation 2021.

### **Conclusion**

- 21 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 22 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 23 The Court notes that:
- (1) Shoalhaven City Council, as the relevant consent authority has approved, pursuant to section 38 of the Environmental Planning and Assessment Regulation 2021 to the Applicant amending development application No. DA22/2061 the subject of these proceedings to rely upon amended plans specified in Annexure A.
  - (2) The amended plans cited in Annexure A were filed with the Court on 11 September 2023.

### **Orders**

- 24 The Court orders that:
- (1) The appeal is upheld.



- (2) Development consent is granted to Development Application No DA22/2061 for the construction of an eight unit multi dwelling housing development and associated works at 8-10 Davies Street, Mollymook, subject to the conditions of consent at Annexure B.

I certify that this and the preceding 4 pages are a true copy of my reasons for judgment.

A handwritten signature in blue ink, appearing to read 'T Horton', is written over a horizontal dotted line.

**T Horton**

**Commissioner of the Court**

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## Annexure A

### SCHEDULE OF AMENDED PLANS

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Stamped plans/documents	Ref/Sheet No/Revision	Prepared by	Dated
Demolition Plan	DA020/Rev E	ELK Designs	23/08/2023
Site Plan	DA030/Rev G	ELK Designs	23/08/2023
Site Coverage Plan	DA035/Rev E	ELK Designs	23/08/2023
Ground Floor Plan	DA100/Rev E	ELK Designs	23/08/2023
First Floor Plan	DA110/Rev E	ELK Designs	23/08/2023
Roof Plan	DA150/Rev E	ELK Designs	23/08/2023
Elevations	DA300-DA303/Rev E	ELK Designs	23/08/2023
Sections	DA400-DA401/Rev E&F	ELK Designs	23/08/2023
External Shadow Diagrams	DA900-DA901/Rev E	ELK Designs	23/08/2023
Landscape Plans and Specifications	2-5	JK's Garden Creations & Tolero Landscape Design	01/08/2023
Detailed Survey	3575	Bereza Surveying	8/08/2023



## Annexure B

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA22/2061

**Development:** Construction of multi-dwelling housing comprising eight dwellings.

**Site:** 10 Davies Street, MOLLYMOOK – Lot 193 DP30301  
8 Davies Street, MOLLYMOOK – Lot 192 DP30301

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

**Date of determination:** 19 September 2023

**Date from which consent takes effect:** Date of determination.

#### TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 192 DP30301 and Lot 193 DP30301.

The conditions of consent are as follows:

## PART A: GENERAL CONDITIONS

### 1. General

The consent relates to **construction of multi-dwelling housing comprising eight dwellings** as documented in the approved plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the approved plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/Sheet No/Revision	Prepared by	Dated
Demolition Plan	DA020/Rev E	ELK Designs	23/08/2023
Site Plan	DA030/Rev G	ELK Designs	23/08/2023
Ground Floor Plan	DA100/Rev E	ELK Designs	23/08/2023
First Floor Plan	DA110/Rev E	ELK Designs	23/08/2023
Roof Plan	DA150/Rev E	ELK Designs	23/08/2023
Elevations	DA300-DA303/Rev E	ELK Designs	23/08/2023
External Finishes	DA350/Rev E	ELK Designs	23/08/2023
Sections	DA400-DA401/Rev E&F	ELK Designs	23/08/2023
Stormwater Management Plan	8701 ENG-F/Rev E	Le Mottee Group	12/04/2023
Landscape Plans and Specifications	2-5	JK's Garden Creations & Tolero Landscape Design	01/08/2023
Waste Management Plan	A	ELK Designs	



BASIX Certificate

1295076M\_02

Building  
Sustainability  
Assessments

30/08/2022

*Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.*

## 2. Prescribed Conditions

The development must comply with Part 4, Division 2, Subdivision 1 of the Environmental Planning and Assessment Regulation 2021, as applicable.

## 3. Local Infrastructure Contribution

This development will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2019 and itemised in the following table(s):

Project	Description	Rate	Qty	Total	GST	GST Incl
05 AREC 0005	Planning Area 5 - Active recreation facility upgrades various locations	\$1,181.30	6	\$7,087.80	\$0.00	\$7,087.80
05 CFAC 2010	Southern Shoalhaven Branch Library	\$594.42	6	\$3,566.52	\$0.00	\$3,566.52
CW AREC 5005	Shoalhaven Community and Recreational Precinct SCaRP Cambewarra Road Bomaderry	\$1,237.18	6	\$7,423.08	\$0.00	\$7,423.08
CW CFAC 5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	\$935.06	6	\$5,610.36	\$0.00	\$5,610.36
CW CFAC 5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	\$1,447.37	6	\$8,684.22	\$0.00	\$8,684.22
CW CFAC 5007	Shoalhaven Regional Gallery	\$79.46	6	\$476.76	\$0.00	\$476.76
CW FIRE 2001	Citywide Fire & Emergency services	\$156.12	6	\$936.72	\$0.00	\$936.72
CW FIRE 2002	Shoalhaven Fire Control Centre	\$228.40	6	\$1,370.40	\$0.00	\$1,370.40
CW MGMT 3001	Contributions Management & Administration	\$649.23	6	\$3,515.59	\$0.00	\$3,515.59

Sub Total: \$38,671.45

GST Total: \$0.00

Estimate Total: \$38,671.45

The total contribution, identified in the above table(s) or as indexed in future years, must be paid to Council prior to the issue of a Construction Certificate. Evidence of payment must be provided to the Certifying Authority.

The Contributions Plan 2019 can be accessed on Council's website [www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au) or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

*Note: There are also provisions that may apply with respect to the timing of payments.  
See: Environmental Planning and Assessment (Local Infrastructure Contributions - Timing of Payments) Direction 2020 (nsw.gov.au)*

## **PART B**

### **BUILDING WORK - PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### **4. Construction Certificate**

A Construction Certificate must be obtained from either Council or an accredited certifier before any building work can commence.

#### **5. Appointment of Principal Certifier**

Before building work commences a Principal Certifier must be appointed.

#### **6. Evidence**

A Construction Certificate must not be issued until the Certifier has received notification from, or evidence of, any Council approval that is required Before the Commencement of Works.

#### **7. Notice of Commencement**

Notice must be given to Council at least two (2) days before the commencement of building or subdivision work by completing and returning the form 'Commencement Notice for Building or Subdivision Work and Appointment of Principal Certifying Authority'.

#### **8. Toilet Facilities – Temporary**

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the Local Government Act 1993, or
- (c) be a temporary chemical closet approved under the Local Government Act 1993.

#### **9. Adaptable units**

Before the issue of the construction certificate, a report prepared by a suitably qualified consultant must be obtained that demonstrates, to the certifier's satisfaction, that any adaptable dwellings specified in the approved plans or documents comply with the provisions of AS 4299 Adaptable Housing Standards.



**10. Utilities and services**

Before the issue of the construction certificate, written evidence of the following service provider requirements must be provided to the Certifier a letter from Endeavour Energy demonstrating that satisfactory arrangements can be made for the installation and supply of electricity.

**11. Long Service Levy**

Before the issue of the relevant construction certificate, the long service levy must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Certifier.

**12. On-Site Detention – Development**

Before the issue of a Construction Certificate, details of on-site detention must be provided on the Construction Certificate plans and approved by the Certifier.

On-site detention must be provided as per certified engineering design plans and specifications prepared by a professional engineer, (as defined in the National Construction Code) or surveyor. The on-site stormwater detention (OSD) design must be designed such that stormwater runoff from the site for design storm events up to and including the 1% AEP does not exceed the pre-developed conditions.

**13. Street Numbering and Site Facilities - Australia Post**

Before the issue of a construction certificate, street numbers must be obtained from Council's GIS Department. The allocated street numbers must be clearly shown on the Construction Certificate drawing. Street numbering must comply with the State Governments Comprehensive Property Addressing System (CPAS), and Council's Property Address Numbering Policy.

Location points for mail delivery must satisfy the requirements of Australia Post.

**14. Amended Landscape Design Plans**

Before the issue of a construction certificate, amended landscaping design plans and specifications must be prepared by a suitably qualified person and approved by Council's Director of City Development or their delegate.

The landscape design plans must:

- (a) Be consistent with the architectural plans approved as part of this consent.
- (b) Provide street trees as follows:
  - i) 4 x 100 litre *Banksia integrifolia* or *Tristaniopsis laurina* 'Luscious'. Each tree is to have a clear trunk at minimum 1.2m high.
  - ii) planted at least 2m from the driveway and street light poles and 2m from services, stormwater outlets and signage.

- iii) set back a minimum 900mm from the back of the kerb or midway between the footpath and kerb. Where the tree is less than 900mm from the footpath, root barriers must be installed.
  - iv) 1m x 1.5m timber edging installed at the base of the tree constructed from the back of the kerb (edit, if required).
  - v) two hardwood stakes with 50mm hessian ties, fixed in a figure 8, to support each tree.
  - vi) minimum 75mm depth of organic mulch applied a minimum 600mm diameter surrounding the base of the trunk at the rate of one tree of minimum 60 litre pot size located centrally to each lot, or two trees of minimum 35 litre pot size evenly spaced per allotment where:
  - vii) each tree is to be bordered by 100mm x 25mm treated pine edging.
  - viii) root barriers are to be placed between the trees and above or below ground civil infrastructure to a minimum depth of 1.0 metre, at least twice the pot size away from the tree and extend along the service for a minimum length of half the mature drip line.
- (c) Include the following details:
- i) All existing and proposed infrastructure including underground services.
  - ii) Existing site conditions (contours, vegetation, drainage, etc).
  - iii) Approximate location and description of structures and vegetation on adjacent property.
  - iv) Vegetation to be retained including isolated trees or habitat of ecological significance.
  - v) All trees and other vegetation in road reserves are to be removed unless specifically identified to be retained.
  - vi) Trees in unformed road reserves, existing or proposed public/drainage reserve areas or pathways and within lots are to be assessed by an arborist and those identified as being dangerous are to be removed. Assessment for removal is to be made on the grounds of being of risk to public or private property or persons.
  - vii) Replacement trees for any trees removed from public reserves.
  - viii) Protective fencing.
  - ix) Type of grass seed or turf to be used (Council prefers Australian native grasses in rural developments and adjacent to natural areas in urban developments.
  - x) Botanic and common names of plantings (and cultivar name if applicable).
  - xi) Size in litres when planted and mature height and spread.
  - xii) Years to maturity (to determine possible restriction to sight distance at intersections and other locations as necessary).



xiii) Hard landscaping details.

## **15. Section 68 Application**

Before the issue of a construction certificate, an application for installation of plumbing & drainage, stormwater must be approved under section 68 of the Local Government Act 1993.

## **16. Retaining Walls – Design**

Before the issue of a construction certificate for approved retaining walls exceeding 0.6m in height above ground level (existing) and/or within 1m of a property boundary, detailed design plans must be prepared and submitted to the Certifier for approval.

The retaining walls must satisfy the following:

- (a) For retaining walls exceeding 0.6m in height above natural ground level (existing) a professional engineer has certified the retaining walls as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load; and
- (b) For retaining walls less than 0.6m in height above natural ground level (existing) the Certifier must be satisfied that the retaining walls are structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load.
- (c) Retaining walls, footings and drainage must be contained wholly within the development site.

Construction within a registered easement is prohibited.

Retaining walls not shown on the approved plan must meet the criteria for Exempt retaining walls and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or be approved by way of Complying Development before construction and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

## **17. Erosion and sediment control plan**

Before the issue of a construction certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Certifier:

- (a) Council's relevant development control plan,
- (b) the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
- (c) the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

**18. Shoalhaven Water – Before the issue of a construction certificate**

Before the issue of a construction certificate, all conditions listed on the Shoalhaven Water Development Notice under the heading “Before the issue of a construction certificate” must be complied with and accepted by Shoalhaven Water. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

**19. Tree and Vegetation Protection**

Before the commencement of any clearing works the following requirements must be met to the satisfaction of the Certifier:

- (a) The developer must identify the extent of clearing work as shown on the approved plans. A temporary protective barrier or similar visible material must be installed in accordance with the approved tree and vegetation plan and retained until all work are complete.
- (b) The dripline of trees to be retained must be clearly identified and protected with temporary barrier fencing in accordance with AS 4970: Protection of trees on development sites.
- (c) No works on the development site are to impact or compromise any tree or vegetation on adjoining land.

**20. Existing Infrastructure**

Before the issue of a construction certificate, all infrastructure, existing and proposed, is to be shown accurately on the engineering plans including longitudinal sections with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure. Any required alterations to infrastructure will be at the developer's expense.

**21. Road Design Standards (Urban) – Development**

Before the issue of a construction certificate, certified road design engineering plans must be prepared by a suitably qualified engineer or surveyor and approved by Council. The road design must comply with the following:

- (a) Councils Engineering Design Specifications Sections D1 – Geometric Road Design and D2 – Flexible Pavement Design.
- (b) AUSTROADS Design Requirements and Specifications.
- (c) Integral upright kerb and gutter in accordance with Council's Standard Drawings with alignment of 5.5m from the road boundary to match the existing kerb and gutter alignment along the frontage of the lots.
- (d) A road shoulder pavement constructed from the gutter crossing to 300mm beyond the edge of existing bitumen seal on a pavement having a minimum compacted thickness of 300mm and either:
  - i) a minimum 30mm AC10 on a primer seal; or,
  - ii) 2 coat bitumen seal with 14mm & 7mm aggregate



- (e) The kerb and gutter must have a minimum grade of 0.5% and the longitudinal design must extend a minimum of 30 metres each end of the development and at least 60m if the grade is  $<0.5\%$  or  $\geq 0.3\%$ .
- (f) The road table drain either side of the proposed development is to be reconstructed as required to match the kerb and gutter and to prevent ponding of water, including any adjustment or reconstruction of nearby driveways.
- (g) Subsoil drainage is to be provided behind the kerb line where an outlet to existing underground drainage (or other alternative suitable to Council) is available. Subsoil drainage is to be placed on the high side of the road or both sides if the cross-fall is neutral.

## **22. Car Parking Design Standards**

Before the issue of a Construction Certificate, certified engineering design plans and specifications must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The car parking and access design must comply with the following:

- (a) Designed in accordance with the layout of the approved architectural plans.
- (b) Designed and constructed in accordance with the following:
  - i) for light vehicular loading
  - ii) to a coloured, patterned or stamped concrete standard.
- (c) Bordered in accordance with Council's Standard Drawings by concrete kerbing, except where surface runoff is concentrated, in which case concrete integral kerb and gutter must be constructed.

## **23. Footpath Design Standards**

Before the issue of a construction certificate, certified engineering design plans must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier. The cycleway and footpath design must comply with the following:

- (a) Councils Engineering Design Specifications Section D8 – Cycleway and Footpath Design.
- (b) A 1.2 metre-wide concrete footpath designed for the full frontage of the development with:
  - i) cross section design provided from road centreline to the carpark/garage floor level at each driveway access point.
  - ii) 3% cross fall from the boundary to top of kerb.

- iii) match existing footpath levels of adjoining property frontages and be a uniform grade over the length of the development site frontage, or where this cannot be achieved, a longitudinal section must be designed.

#### **24. Stormwater Drainage Design Standards (Urban)**

Before the issue of a construction certificate, certified engineering design plans, specifications, and DRAINS model (or approved alternative) must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The stormwater drainage design must comply with the following:

- (a) Major and minor drainage systems in accordance with Council's Engineering Design Specifications - Section D5 - Stormwater Drainage Design and utilising Australian Rainfall and Runoff (ARR, 2019) Guidelines.
- (b) The minor and major systems must be designed for a 18.13% AEP and 1% Annual Exceedance Probability (AEP) rainfall events, respectively.
- (c) Generally, in accordance with concept stormwater drainage plan (Ref. No. 8701 ENG-F) prepared by Le Mottee Group on 12/04/2023.
- (d) Unless deemed not required by Council, the existing stormwater drainage system is to be adjusted to suit the new works. In this regard the following is required:
  - i) existing drainage systems are to be upgraded where necessary to contain flows in accordance with Council's Engineering Design Specifications - Section D5.04.
  - ii) all relevant calculations are to be noted on the drainage plans to confirm the adequacy of the existing system, or the upgraded design.
- (e) Design of stormwater drainage is to include piping, swales and easements to facilitate future development of the site.

#### **25. Design Standards – Works Within Road Reserve**

Before issue of a Construction Certificate, all civil works proposed within road reserves must be approved by Council.

#### **26. Lighting Design - Internal Driveway and Carparking**

Before the issue of a construction certificate, lighting design plans are to be submitted to Council for approval. Lighting is to be provided to the internal driveway and car parking area in accordance with *AS/NZS 1158.3.1 Lighting for roads and public spaces - Pedestrian area (Category P) lighting - Performance and design requirements*.



**PART C**  
**BUILDING WORK – PRIOR TO COMMENCEMENT OF BUILDING WORKS**

**27. Dilapidation report**

Before any site work commences, a dilapidation report must be prepared by a suitably qualified engineer detailing the structural condition of adjoining buildings, structures or works and public land, to the satisfaction of the Certifier.

Where access has not been granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the satisfaction of the Certifier that all reasonable steps were taken to obtain access to the adjoining properties.

No less than seven (7) days before any site work commences, adjoining building owner(s) must be provided with a copy of the dilapidation report for their property(ies) and a copy of the report(s) must be provided to council at the same time.

**28. Works within the Road Reserve**

Before undertaking any works within an existing road reserve, the developer must obtain the consent of Council under section 138 of the Roads Act, 1993.

The following details must be submitted to Council as part of the application:

- (a) Any civil works design required by this consent.
- (b) Evidence of the contractor's Public Liability Insurance to an amount of \$20 million.
- (c) Name and contact information of the person responsible for all relevant works.
- (d) A Traffic Control Plan prepared, signed, and certified by a person holding the appropriate Transport for NSW (TfNSW) accreditation.

Where the Traffic Control Plan requires a reduction of the speed limit, a 'Application for Speed Zone Authorisation' must be obtained from the relevant road authority.

**29. Construction Site Management Plan**

Before site work commences, a construction site management plan must be prepared, and provided to the Certifier. The plan must include the following matters:

- (a) The location and materials for protective fencing and hoardings on the perimeter of the site;
- (b) Provisions for public safety;
- (c) Pedestrian and vehicular site access points and construction activity zones;
- (d) Details of construction traffic management including:
  - i) Proposed truck movements to and from the site;
  - ii) Estimated frequency of truck movements; and
  - iii) Measures to ensure pedestrian safety near the site;
- (e) Details of bulk earthworks to be carried out;
- (f) The location of site storage areas and sheds;

- (g) The equipment used to carry out works;
- (h) The location of a garbage container with a tight-fitting lid;
- (i) Dust, noise and vibration control measures;
- (j) The location of temporary toilets;
- (k) The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with AS 4970 – Protection of trees on development sites.

A copy of the construction site management plan must be kept on-site at all times while work is being carried out.

### **30. Shoalhaven Water – Application for Certificate of Compliance.**

Before commencement of works, an application for a Certificate of Compliance must be made with Shoalhaven Water and where required a Water Development Notice is to be obtained.

Shoalhaven Water will determine if sewerage and/or water infrastructure and/or easements will be affected by any part of your development including what charges/fees apply. Please visit <https://shoalwater.nsw.gov.au/planning-building/developers-consultants/water-development-notice> to make application for a Certificate of Compliance or call (02) 4429 3214 to learn more about applying.

Upon the receipt of the application, Shoalhaven Water will assess the development and if required will issue a "Water Development Notice" document detailing all requirements which must be met.

Note: As water and/or sewerage infrastructure may impact on part/s or all of the development such as building, provision of services, protection of water and/or sewer assets, etc., it is recommended that this application is made as early as possible during the development process.

### **31. Erosion and sediment controls in place**

Before any site work commences, the Certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time).

### **32. Clearing of Trees – Supervision**

Before the commencement of work, a suitably qualified and licensed arborist (AQF5) must be engaged to guide and supervise construction works within tree protection zones. Evidence of engagement must be submitted to Council.



**PART D**  
**BUILDING WORK – DURING BUILDING WORKS**

**33. Implementation of the site management plans**

While site work is being carried out:

- (a) the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and
- (b) a copy of these plans must be kept on site at all times and made available to council officers upon request.

**34. Responsibility for changes to public infrastructure**

While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.

**35. Waste management**

While site work is being carried out:

- (a) all waste management must be undertaken in accordance with the waste management plan, and
- (b) upon disposal of waste, records of the disposal must be compiled and provided to the Principal Certifier, detailing the following:
  - i) The contact details of the person(s) who removed the waste
  - ii) The waste carrier vehicle registration
  - iii) The date and time of waste collection
  - iv) A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill
  - v) The address of the disposal location(s) where the waste was taken The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.

If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and council.

**36. Maintenance of Site and Surrounds**

During works, the following maintenance requirements must be complied with:

- (a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- (b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.

- (c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
- (d) The developer must maintain the approved soil water management / erosion and sediment control measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.

During construction:

- (e) all vehicles entering or leaving the site must have their loads covered, and
- (f) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

At the completion of the works, the work site must be left clear of waste and debris.

### **37. Procedure for critical stage inspections**

While building work is being carried out, the work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate.

### **38. Hours for Construction**

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

### **39. Noise**

The noise from all demolition and construction activities associated with the approved development must comply with the work practices as outlined in the NSW Department of Environment & Climate Change Interim Construction Noise Guideline. The LA10 level measured over a period of not less than 15 minutes during works must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

### **40. Discovery of relics and Aboriginal objects**

While site work is being carried out, if a person reasonably suspects a relic of Aboriginal object is discovered:

- (a) the work in the area of the discovery must cease immediately.
- (b) the following must be notified for a relic – the Heritage Council; or
- (c) for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85.

Site work may recommence at a time confirmed in writing by, for a relic – the Heritage Council; or for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85.



#### **41. Archaeology Discovered During Excavation**

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- (a) All work must stop immediately in that area.
- (b) Work may recommence in the affected area(s) if Heritage NSW advises that additional assessment and/or approval is not required (or once any required assessment has taken place or any required approval has been given).

In accordance with the Heritage Act 1997, the Heritage NSW must be advised of the discovery.

#### **42. Soil management**

While site work is being carried out, the Certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the Certifier.
- (b) All fill material imported to the site must be:
  - i) Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997, or
  - ii) a material identified as being subject to a resource recovery exemption by the NSW EPA, or
  - iii) a combination of Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 and a material identified as being subject to a resource recovery exemption by the NSW EPA.

#### **43. Earthworks Cut, Fill and Grading**

The maximum grading of cut or fill must be 2H:1V where there is no retaining wall or no other method of stabilising cut or fill during construction. The maximum depth of fill on any portion of the allotment must be 1.0 metres. The maximum depth of cut on any portion of the allotment must be 1.0 metres. Cut areas may exceed 1.0 metre provided the retained sections are located within the confines of the external walls of the buildings.

#### **44. Acid Sulfate Soils - Unexpected Finds**

If acid sulfate soils are encountered during excavation and/or construction works, all work must cease, and Shoalhaven City Council notified immediately. The extent of acid sulfate soil must be evaluated by a qualified environmental consultant with experience in the assessment of acid sulfate soils and a preliminary assessment provided to Council. Council will determine an appropriate response, including if an Acid Sulfate Soils Management Plan is required to be prepared and implemented, before works can recommence.

#### **45. Contamination - Unexpected Finds**

If unexpected, contaminated soil and/or groundwater is encountered during any works:

- (a) all work must cease, and the situation must be promptly evaluated by an appropriately qualified environmental consultant.
- (b) the contaminated soil and/or groundwater must be managed under the supervision of the environmental consultant, in accordance with relevant NSW Environment Protection Authority (EPA) Guidelines.

If unexpected, contaminated soil, or groundwater is treated and/or managed on-site an appropriately qualified environmental consultant must verify that the situation was appropriately managed in accordance with relevant NSW EPA guidelines before recommencement of works. The verification documentation must be provided to the satisfaction of the Certifier and Shoalhaven City Council before the recommencement of any works.

If contaminated soil or groundwater is to be removed from the site, it must be transported to an appropriately licensed waste facility by an NSW EPA licensed waste contractor in accordance with relevant NSW EPA guidelines including the Waste Classification Guidelines (2014).

Note: An appropriately qualified environmental consultant will have qualifications equivalent to CEnvP "Site Contamination" (SC) Specialist - by Certified Environmental Practitioner or 'Certified Professional Soil Scientist' (CPSS CSAM) by Soil Science Australia (SSA).

#### **46. Overland Stormwater Flow, Redirecting and/or Concentrating Stormwater**

All excavation, backfilling and landscaping works must not result in:

- (a) any change to the overland stormwater flow path on your property and or a neighbouring property. If any change to the overland flow path occurs on a property, the stormwater runoff must be collected and directed to a legal point of discharge.
- (b) the redirection and/or concentration of stormwater flows onto neighbouring properties.

#### **47. Construction Traffic Management Plan**

Before the commencement of works, a Construction Traffic Management Plan detailing the proposed method of dealing with construction traffic and parking must be approved by Council.

Details must include, but are not limited to:

- (a) Stabilised site construction access location
- (b) Proposed haulage routes for delivery of materials to the site
- (c) Proposed haulage routes for spoil disposal from the site
- (d) Traffic control planning for each of the various phases of construction and/or vehicle movements associated with construction
- (e) Parking arrangements for construction employees and contractors
- (f) Proposed maintenance of the haulage routes and the name of the person responsible for such maintenance



- (g) Loading / unloading areas
- (h) Requirements for construction or work zones
- (i) Pedestrian and cyclist safety
- (j) Speed zone restrictions.

**48. Surveys by a registered surveyor**

While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:

- (a) All footings / foundations in relation to the site boundaries and any registered and proposed easements
- (b) At other stages of construction – any marks that are required by the principal certifier.

**49. Tree Removal**

Trees approved for removal must be felled into the development area carefully so as not to damage trees to be retained in or beyond the development footprint.

Any hollow-bearing trees must be felled carefully in sections utilising handheld tools to allow the rescue of native fauna. Hollow-bearing sections must be carefully lowered to the ground so as not to injure native fauna.

**50. Tree protection during work**

While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:

- (a) the construction site management plan approved under this consent,
- (b) the relevant requirements of AS 4970 Protection of trees on development sites.

This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.

<p style="text-align: center;"><b>PART E</b> <b>BUILDING WORK – PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE</b></p>
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**51. Section 68 of the Local Government Act**

All the conditions under the approval of Section 68 of the Local Government Act 1993 are to be complied with before the issue of an Occupation Certificate.

**52. Schedule of Compliance**

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e., a security). A schedule of compliance in table format must be submitted with the application for an Occupation Certificate. The schedule must provide evidence of how all relevant conditions of development consent have been fulfilled.

**53. Post-construction dilapidation report**

Before the issue of an occupation certificate a post-construction dilapidation report must be prepared by a suitably qualified engineer, to the satisfaction of the Certifier detailing whether:

- (a) after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and
- (b) where there has been structural damage to any adjoining buildings, that it is a result of the work approved under this development consent, and

a copy of the post-construction dilapidation report must be provided to council (where council is not the principal certifier, or a principal certifier is not required) and to the relevant adjoining property owner(s).

**54. Completion of landscape and tree works**

Before the issue of an occupation, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.

**55. Retaining Walls – Certification**

Before the issue of an Occupation Certificate, certification must be provided to the Certifier prepared by a professional engineer, (as defined in the National Construction Code), certifying that retaining walls within 1m of the property boundary or exceeding 1m in height above ground level (existing) are constructed in accordance with the approved engineering design plans.

The Certifier must be satisfied that all retaining walls have been constructed in accordance with the relevant retaining wall plans and specifications, and in accordance with the requirements of any other conditions of this consent.

Note: This condition does not prevent a partial occupation certificate to be issued for the parts of the development that have been completed.

**56. Works in the Road Reserve - Evidence of Completion**

Before the issue of a full Occupation Certificate, the developer must provide the Certifier with a completion of works in road reserve letter provided by Council, confirming compliance with the requirements of section 138 of the Roads Act 1993.

**57. Driveway - Evidence of Completion**

Before the issue of a full Occupation Certificate, all driveway works internal to the site as shown on the approved plans must be completed.

**58. Shoalhaven Water – Certificate of Compliance**

Before the issue of any Occupation Certificate, a Certificate of Compliance under section 307 of the Water Management Act 2000 must be obtained from Shoalhaven Water to verify satisfactory compliance with all conditions for the supply of water and sewerage, as listed on the Water Development Notice.



If the development is to be completed in approved stages, or application is subsequently made for staging of the development, separate Compliance Certificates must be obtained for each stage of the development.

**59. BASIX**

Before the issue of an Occupation Certificate, documentary evidence prepared by a suitably qualified person must be submitted to the Certifier confirming that all commitments listed in the BASIX Certificate(s) are fulfilled in accordance with Clause 97A of the Environmental Planning and Assessment Regulation 2021.

**60. Repair of infrastructure**

Before the issue of an occupation certificate:

- (a) any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of council, and at no cost to council, or
- (b) if the works in (a) are not carried out to council's satisfaction, council may carry out the works required and the costs of any such works must be paid as directed by council and in the first instance will be paid using the security deposit required to be paid under this consent.

**61. Works as Executed - Stormwater Drainage**

Before the issue of an Occupation Certificate, a Works as Executed Plans and certification must be submitted to the Council by a licenced plumber/ registered surveyor / professional engineer (as defined in the National Construction Code) certifying compliance of all drainage works with the approved design plans and the National Construction Code.

The Works as Executed be shown in red on a copy of the approved plans. This plan must verify locations & sizes of all pipelines.

Where the system includes an underground tank, a certificate of structural adequacy must be prepared and provided by a professional engineer (as defined in the National Construction Code).

**62. Restrictions – Easements and Restrictions on Use of Land**

Before the issue of an Occupation Certificate, a draft 88B Instrument must be submitted to the Certifier for approval.

The instrument must be prepared under section 88B of the Conveyancing Act 1919 which will provide for the following Restrictions on the land:

- (a) All trees approved to be retained are to be protected in perpetuity.

The Instrument must contain a provision that it cannot be varied, modified, or released without the consent of the relevant parties as appropriate and without the consent of the Shoalhaven City Council.

The Instrument must not contain any restriction that prohibits development on the site allowed under the relevant environmental planning instruments.

**63. Land Consolidation**

The subject allotments must be consolidated into one (1) allotment and written notification as to the registration of such consolidation at NSW Land Registry Services must be submitted to the Certifier before the issue of an Occupation Certificate for the development.

**PART F  
BUILDING WORK – OCCUPATION AND ONGOING ISSUES**

**64. Occupation / Use**

The development must not be occupied or used before an Occupation Certificate has been issued by the Principal Certifier.

If an Occupation Certificate is not required, the use must not commence until all conditions of development consent have been met or other satisfactory agreements have been made with Council (i.e., a security).

**65. Maintenance of Stormwater Infrastructure**

The approved stormwater design and any associated on-site detention must be maintained for the life of the development in accordance with the approved documents and maintenance programs.

**PART G  
OTHER GENERAL CONDITIONS**

**General advisory notes**

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation, and other legislation. Some of these additional obligations are set out in the Conditions of development consent: advisory notes. The consent should be read together with the Conditions of development consent: advisory notes to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.



## Dictionary

The following terms have the following meanings for the purpose of this consent (except where the context clearly indicates otherwise):

**Approved plans and documents** means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

**AS** means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

**Building work** means any physical activity involved in the erection of a building.

**Certifier** means a council or a person that is registered to carry out certification work under the Building and Development Certifiers Act 2018.

**Construction certificate** means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

**Council** means Shoalhaven City Council.

**Court** means the NSW Land and Environment Court.

**EPA** means the NSW Environment Protection Authority.

**EP&A Act** means the Environmental Planning and Assessment Act 1979.

**EP&A Regulation** means the Environmental Planning and Assessment Regulation 2021.

**Independent Planning Commission** means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

**Occupation certificate** means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

**Principal certifier** means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

**Site work** means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

**Stormwater drainage system** means all works and facilities relating to:

- the collection of stormwater
- the reuse of stormwater
- the detention of stormwater
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

**Strata certificate** means a certificate in the approved form issued under Part 4 of the Strata Schemes Development Act 2015 that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.



