



Land and Environment Court New South Wales

Case Name:	Sturt v Shoalhaven City Council
Medium Neutral Citation:	[2023] NSWLEC 1809
Hearing Date(s):	23 February 2024
Date of Orders:	16 April 2023
Date of Decision:	16 April 2023
Jurisdiction:	Class 1
Before:	Walsh C
Decision:	<p>The Court orders:</p> <ol style="list-style-type: none">(1) The appeal is upheld.(2) Development Consent No. DA22/1985 is modified in the terms in Annexure A.(3) Development Consent No. DA22/1985 as modified by the Court is Annexure B.(4) The exhibits are returned with the exception of Ex 1, 8, C and D, which are retained.
Catchwords:	MODIFICATION APPLICATION – two storey dwelling – breach of building height control – visual massing – foreshore location concerns – neighbour objections
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 4.15, 4.55 Land and Environment Court Act 1979, s 34AA Environmental Planning and Assessment Regulation 2021, s 113 Shoalhaven Local Environmental Plan 2014 State Environmental Planning Policy (Resilience and Hazards) 2021, ss 2.10, 2.11</p>
Texts Cited:	Shoalhaven Development Control Plan 2014, Ch G6, s 5.2.2 and Ch G12
Category:	Principal judgment
Parties:	<p>Adam Sturt (First Applicant) Sarah Sturt (Second Applicant)</p> <p>Shoalhaven City Council (Respondent)</p>

Representation:

Counsel:

J Smith (Applicants)

R O’Gorman-Hughes (Respondent)

Solicitors:

Foundation Law Group (Applicant)

Shaw Reynolds Lawyers (Respondent)

File Number(s):

2023/216058

Publication Restriction:

Nil

JUDGMENT

- 1 **COMMISSIONER:** These proceedings concern a proposed modification to a recently granted development consent on land in Huskisson.

Background

- 2 On 28 February 2023, Development Application No DA22/1985 for the demolition of an existing dwelling and construction of a two-storey dwelling house was determined by the grant of consent by Shoalhaven City Council (Council) with respect to land described as Lot 1 in Deposited Plan 30032, with a street address of 92 Burrill Street, Huskisson (site).
- 3 On 17 June 2023, a Modification Application (MA) was made under s 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EPA Act). Council assigned a reference number of DS23/1113 to this MA. An intention of MA DS23/1113 was to modify Condition 1 of the consent to DA22/1985. The essential intention was to refer to a new set of plans. According to Council's statement of facts and contentions filed on 3 August 2023, the new plans would effect the following changes to particulars approved with DA22/1985:
 - Increase the height of the building by 0.9m to a maximum building height of 8.314m.
 - Include an external staircase on the north-eastern end of the building with a nil setback to the northern (side) boundary, extending from the finished ground level up to the ground floor.
 - Provide for installation of a door at the bottom of the proposed stairs.
 - Enlarge a proposed sun bed to the north of the pool such that it would have a nil setback to the northern boundary.
- 4 On 4 July 2023, Council issued a Notice of Determination refusing MA DS23/1113. In turn, the applicants have commenced Class 1 proceedings in the Court with respect to this determination.

Proceedings

- 5 The Court initially arranged a conciliation conference between the parties under s 34AA of the *Land and Environment Court Act 1979* (LEC Act), which was held on 22 February 2024, and at which I presided. I can note here that the proceedings commenced with a site inspection, at which I had the opportunity to hear from a number of objectors and to gain an appreciation of the site context.
- 6 The parties were unable to reach an agreement during conciliation. The proceedings moved to a contested hearing on 23 February 2024.

Amendments to modification application are approved

- 7 Soon after commencement of the hearing, the applicant's sought to amend the particulars to MA DS23/1113. This was agreed to by Council under s 113(1) of the Environmental Planning and Assessment Regulation 2021. The particulars of the amendment include the following:
- Building height increase over that approved with DA22/1985 would be reduced to 0.443m, providing for a maximum building height of 7.943m.
 - Sunbed and external staircase on the north-eastern end of the building would be realigned to be setback a minimum of 1.1m from the northern boundary.
 - General increase in northern boundary setback of 600mm to a minimum of 1.6m and certain associated landscaping to effect visual privacy. There would be a directly associated reduction in southern boundary setback.
 - The roof cover over the eastern balcony would be removed, reducing the extent to which the built form over the roof would define building height.

Other contextual information

- 8 The site is an 837m² regular shaped allotment falling within a small grouping of residential blocks with frontage to Burrill Street. The rear boundary of this

residential grouping faces the foreshore of Moona Moona Creek and looks out towards Jervis Bay. There is a quite popular walkway which runs along reserve land to the rear of the site.

- 9 The site is zoned R2 Low Density Residential under Shoalhaven Local Environmental Plan 2014 (SLEP). There is no dispute the proposal is permissible in the zone. The R2 zoned area in the site vicinity is mostly single storey at present. This R2 zoning extends to the north-west of the site but land to the north-east and south-west of the site is zoned MU1 Mixed Use.
- 10 A maximum building height of 7.5m applies to the site under SLEP, which would be breached with the proposed modifications. It is noteworthy that the R2 zoned area to the north-west of the site has a maximum building height of 8.5m. Council argued this differential was important in recognising the special visual character-related issues surrounding the site and other properties in this small enclave near the water. The maximum building height control is 13m for the nearby MU1 zoned land.
- 11 The site falls within a flood planning area under SLEP. The site is mapped as being both coastal environmental area and coastal use area under State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards).
- 12 Shoalhaven Development Control Plan 2014 (SDCP) applies. Council refers to provisions in both Chs G12 (relating to dwelling houses) and G6 (relating to Coastal Management Areas).

Issues

- 13 The central and particular merits issue in dispute for the evaluation of this modification application relates to the proposed building height and massing. The proposed modifications would bring about a building that exceeds the SLEP building height controls (by up to some 0.64m). Here I note and accept the position taken by the experts that other amenity related concerns are now reasonably addressed. The privacy concern has been addressed through the

additional side setback and the proposal for screening landscaping within a dedicated area of about 1m width along the northern boundary (Ex C Drawing C1.1-1). This (additional setback and landscaping) particularly addresses concerns relating to next door privacy given the proposed trafficable areas around the proposed pool, including the external staircase and sunbed area (proposed Condition 58B addresses privacy landscaping and seeks the approval of Council prior to finalisation). It seemed to me that these changes would be responsive to a key objector concern which queried why the proposed building, and its outdoor trafficable areas, need to be so close to the northern boundary and exposed to the northern neighbour, when there is no residential neighbour to the southern boundary.

- 14 But when considering the building height and massing concern, the perspectives one needs to adopt are at least twofold. At one level there are visual massing concerns that are held by the neighbours. Here I particularly note the objecting submissions of the two nearest neighbours, who are located to the north of the site's northern boundary. While I return to this later, generally, I was not convinced that such concerns were persuasive to my evaluation of the proposal. There are two main reasons. The first is the form of the building to the north, and the considerable physical articulation which breaks up the visual massing. The second involves the amendments to the proposal which do two things: (1) increase the northern boundary setback and (2) provide for landscaping which can provide some filtering of views into the site from the north.
- 15 At another level, there is the wider public interest and the fact of the public reserve located immediately to the east and backing onto the site and which opens up to a number of congregation spaces overlooking Moona Moona Creek and further onwards to Jervis Bay. A public walkway running north south along this reserve is close to the site's western boundary. So, of concern is whether the building height and massing may affect people otherwise enjoying these public spaces. Here the applicable provisions of SEPP Resilience and Hazards arise. I quote selectively from it as follows:

2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

...

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

...

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

...

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

..., and

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

16 The rest of the judgement concentrates on this concern.

Council's contention

17 Council argues that the proposed modification would bring about significant height, bulk and scale problems. As put in Council's amended statement of facts and contentions, provided to the Court on 23 February 2024 (Ex 1, Pt B.1, 2.c):

i. The height, bulk and scale of the Proposed Development is not compatible with the existing and desired future character of the foreshore area and will:

1. have a negative visual impact and exaggerate the built form in a way that is not compatible with the locality and foreshore environment.

2. have adverse impacts on the foreshore area and streetscape.

3. result in adverse impacts impact on the amenity of the public domain.

ii. The proposed modified building height and building envelope will add to the visual bulk of the building when viewed from the public foreshore reserve to the east and south. The development does not design higher or bulkier components of the building so that they are out of direct view and sympathetic to the foreshore environment. The Proposed Development increases building height above that originally approved and above that envisaged in the provisions of the LEP and DCP along the elevation which is most clearly observed from the public foreshore reserve and adjoining Site.

iii. The provisions of the DCP read together with the LEP in relation to height bulk and scale gives effect to the orderly development of land in foreshore areas by reducing building height and building bulk as a transition where the built environment approaches foreshore areas. The proposed development does not achieve this transition and is not sympathetic the existing and future character of the foreshore area.

iv. The proposed building height and building envelope encroachments will add to the visual bulk of the building when viewed from the public foreshore reserve to the east. The bulk and scale of the Proposed Development is not compatible with adjoining development or the foreshore area and streetscape character.

v. The approval of proposed height, bulk and scale in this location would set an undesirable precedent within the locality and result in unacceptable built

Considering evidence and submissions

18 Expert town planning evidence was provided by J Mead for the applicant and P Woodworth for Council. Here I summarise their opinions in regard to three topics, which for me contextualise the building height and massing concern.

Local area planning context

- 19 In support of the applicant, there was reference to the surrounding zonings and considerably higher buildings which were already constructed or permissible to the site's north and south-west within the MU1 zone.
- 20 Council, on the other hand, highlighted the fine policy difference which SLEP adopts in regard to building height for the immediate site environs, alone. That is to emphasise the distinctly different policy ambitions for the site environs, in its immediate coastal environs setting, when compared to the other residential areas to the north-west. As put by Mr Woodworth (Ex 2 par 25):

This foreshore area like other foreshore areas with the Shoalhaven local government area has been mapped with a 7.5m building height. The step down in building height as properties approach the foreshore creates a transition in the visual bulk of foreshore buildings by reducing building height, bulk and scale, and this is further reinforced by the development controls set out in Chapter G6 [of SDCP].

- 21 The applicant countered this by reference to the provisions of SDCP which suggest an allowance might be made for variations to building envelope controls when flood planning levels come into play.

Building presentation

- 22 Mr Woodworth considers the building design as "blocky" in form and suggests that the increased height would exaggerate the bulk and scale of the building (Ex 2 par 30). Mr Woodworth was concerned about the fact that the building massing would be (Ex 2 par 31):

... most observable from the foreshore reserve to the east and south of the site and from 90 Burrill Street to the north of the site. The resultant bulk and scale of the modified development is not consistent with neighbouring development to the north of the site and the development does not locate higher components of the building out of direct view from the foreshore area; rather the design imposes the highest parts of the building in areas most visible from the adjoining foreshore. This is not consistent with performance criteria P5.1 of Chapter G6 of the DCP.

- 23 This would bring about a negative adverse visual impact for this area of the foreshore and create a precedent for the immediate area (Ex 2 par 32).

- 24 Mr Mead disagreed with Mr Woodworth's description of the proposed building (Ex 2 par 58):

...it is my view that the dwelling is sensitively modelled, well articulated and modulated in plan and elevation and that particularly the eastern façade takes on a lightweight and open (predominance of void to solid) appearance

Potential for taking in the proposed building from public viewpoints

- 25 Mr Woodworth highlighted the observability of the proposal from the foreshore reserve to the south and east of the site, "with a beach, walking/cycle path and grassed areas" (Ex 2 par 27).

- 26 Mr Mead indicated the limitations to the observability of the proposal from public vantage points with a series of photos and commentary as follows (Ex 2 par 51):

The part of the dwelling, being that above the height limit, will also from many vantage points within the character locality be obscured or concealed by existing vegetation, particular to the south and south-east and south-west. The area of non-compliance will not be viewed from the public domain to the north-west.

- 27 More broadly, the applicant argued that members of the public enjoying the foreshore area would be disinclined to pay much attention to individual buildings and whether or not a building was half a metre more or less in height. Instead attention would be paid to the natural scenic qualities of the area. It was additionally noted that public seating generally faced away from, rather than towards, the Burrill Street residences.

Consideration

Evaluation framework and findings

- 28 Section 4.55(2) and (3) of the EPA Act establish the evaluation framework for this application, and are reproduced below:

(2) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for

which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

...

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

- 29 I accept the agreed position of the parties that the requirements of s 4.55(2)(a) of the EPA Act are met. With the scale and particulars of the changes proposed, in my view it is clear that development in accordance with MA DS23/1113 would be substantially the same development, both qualitatively and quantitatively, as the development for which consent was originally granted with DA22/1985.
- 30 Similarly, I understand that the notification requirements under s 4.55(2)(b) and (c) have been met. In respect to s 4.55(2)(d), I have given consideration to the objecting submissions, as provided to me by Council and as per the oral submissions made during the site inspection.
- 31 Mindful of s 4.55(3) I have given consideration to the regular evaluation criteria for development application, as put at s 4.15(1) of the EPA Act. This includes the consideration of the fact that the proposal breaches the height of buildings

standard under cl 4.3 of SLEP. Mindful of *North Sydney Council v Michael Standley and Associates* (1998) 43 NSWLR 468 at 481 D; [1998] NSWSC 163, and subsequent decisions, there is no requirement for a jurisdictional finding, under cl 4.6 of SLEP, in regard to this.

32 I have also given consideration to the provision of SEPP Resilience and Hazards as referenced above, at [5].

33 When these provisions and the evidence of the planning experts are considered, I am generally supportive of the applicant's case. There are three key points to this.

34 First is in relation to the SDCP provisions which give direct consideration to the topic of flood planning levels and variations of building envelope controls. It is SDCP s 5.2.2 of Ch G6 at A5.3 which provides that:

... [variations to building envelope controls] will be considered where minimum floor levels are required in flood prone land. Where such levels may necessitate two storey construction or elevated construction, consideration will still be required to be given to issues of privacy, overshadowing, and visual impact.

35 The requirement for adoption of a flood planning level has had an effect on building design in this instance, it seems to me. The amended plans show a flood planning level of RL 2.90 and infer a "required" minimum height above natural ground level of about 500mm at the western (front) entrance (Ex C Drawing C2.3-1). That is to say, were the building dropped to near natural ground level at the front entrance (something I understand not to be available due to the flood planning level requirements), then there would be compliance or near compliance.

36 Second, is in relation to neighbour amenity concerns. For me, the amendments which have occurred with the proposal as a consequence of the conciliation process are significant in regard to this topic. It was a direct concern expressed by the immediate neighbour that the massing of the building could readily be shifted somewhat to the south, as a means of general cushioning of impacts to the neighbour to the north. This has occurred with the amendments. The physical shifting of the built form to the south and the improved landscaping along the

boundary are important in ensuring the proposal would not have an unreasonable effect on neighbours.

- 37 Third, is in relation to the wider public appreciation of the new building, as now proposed. I do need to note that I would not be a modest addition in its setting. But the variation in this massing and good levels of articulation, to the west and north particularly, are positive design features relating to the visual presence of the building. More generally, I accept the arguments of the applicant that the gaze of members of the public would not be drawn so much to the housing in the Burrell Street Moona Moona Creek residential enclave, when there is much more to be seen.
- 38 Council pointed to the need, under s 4.55(3) of the EPA Act, in relation to matters such as this, for consideration to be given to the reasons given by the consent authority for the grant of the consent that is sought to be modified. Council indicated that, as originally put, DA22/1985 sought consent for a maximum building height of 8.1m and a sunbed in the north-east area of the site with nil setback to the northern boundary. Council indicated its concerns with these aspects to the applicant and DA22/1985 was subsequently amended to bring the building height into compliance and to offset the sunbed area to about 1m from the boundary (Ex 4 Tab 2). I believe Council was indicating here that "the reasons" it approved DA22/1985, as was made clear to the applicant, were fundamentally related to aspects which were now being sought to be changed with MA DS23/1113. I have given consideration to this but do not find the concern as overly persuasive. The more direct evaluative considerations warrant greater attention.

Conclusion

- 39 The key issue in this case is the breach of the applicable building height control which is front and centre in regard to the central intention of MA DS23/1113. I do accept the view of the Council, that there needs to be sufficient environmental planning grounds to approve a development which involves a breach of this kind. For me the grounds are available in this instance. I can say that I was not persuaded by the suggestion that all of the building height was required to meet

unexpected construction concerns. The planning grounds of relevance principally relate to the revised treatment of the neighbour interface. The increased building setback to the northern boundary, along with landscaping as provided for in the draft conditions offered by the parties, mean the modifications as proposed will now have an improved relationship with neighbouring property, than is the case under the current consent. This, along with my view that there are policy openings for the breach, relating to the site's flood planning level constraints, and the acceptability of the built form in the wider setting, mean a positive determination for the applicant is warranted.

Orders

40 The Court orders:

- (1) The appeal is upheld.
- (2) Development Consent No. DA22/1985 is modified in the terms in Annexure A.
- (3) Development Consent No. DA22/1985 as modified by the Court is Annexure B.
- (4) The exhibits are returned with the exception of Ex 1, 8, C and D, which are retained.

I certify that this and the preceding 11 pages are a true copy of my reasons for judgment.



.....

Peter Walsh

Commissioner of the Court

Annexure A

DETERMINATION OF APPLICATION FOR MODIFICATION OF DEVELOPMENT CONSENT

Modification Application No: No DS23/1113
Development Consent modified: DA22/1985

Description of development to be carried out under the consent (as previously modified): Demolition of existing dwelling and construction of a new two storey dwelling house.

Address and particulars of title of land on which development to be carried out: Lot 1 in Deposited Plan 30032 also known as 92 Burrill Street, Huskisson

Description of modification to the development consent: The Modification Application seeks consent to modify condition 1 of the Development Consent to refer to amended plans. The amended plans seek to:

- a. increase the height of the building by 0.443m to a maximum building height of 7.943m.
- b. construct an external staircase on the north-eastern end of the building with a 1.1m setback extending from the finished ground level up to the ground floor.
- c. install of a door at the bottom of the proposed stairs.
- d. Move the dwelling 600mm south.

Determination: The development consent is modified as follows:

1. Amend schedule of stamped plans/documentation itemised in Condition 1 to read as follows:

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Plan (DS23/1133)	C1.0-1	Christ Clout Design	22/2/2024
Ground Floor Plan (DS23/1133)	C1.1-1	Christ Clout Design	22/2/2024
Upper Floor Plan (DS23/1133)	C1.2-1	Christ Clout Design	22/2/2024
Roof Plan (DS23/1133)	C1.3-1	Christ Clout Design	22/2/2024
Elevations (DS23/1133)	C2.0-1	Christ Clout Design	22/2/2024
Elevations (DS23/1133)	C2.3-1	Christ Clout Design	22/2/2024
Section (DS23/1133)	C3.0-1	Christ Clout Design	22/2/2024
Section (DS23/1133)	C3.1-1	Christ Clout Design	22/2/2024
Door & Window Schedule (DS23/1133)	C6.0-1	Christ Clout Design	22/2/2024
Site Analysis Plan (DS23/1133)	C7.0-1	Christ Clout Design	22/2/2024
Stormwater Plan	21779/3, Rev B	SET Consultants	6/4/2022
BASIX Certificate	1303538S_02	EcoResults	15/8/2022
Bushfire Assessment Report	S021779	SET Consultants	21/3/2022
Waste Management Plan	-	Foundation Law Group	12/8/2022

2. Insert new Condition 58A as follows:

Completion of Landscape and Tree Works (Inserted by DS23/1133)

Before the issue of an Occupation Certificate, 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.

Reason: To minimise visual and privacy impacts of the development.

3. Insert new Condition 58B as follows:

Landscape Screening (Inserted by DS23/1133)

Prior to the issue of an Occupation Certificate, a planted landscape screen must be established between the northern façade of the external staircase accessing the terrace area and the property boundary. The landscape screen must:

- Be provided for the full length of terrace; and
- Comprise species with a mature height of 3m;
- Comprise species suitable to provide effective screening to a height of 3m within three years of the date of the Occupation Certificate.

A detailed planting schedule of selected species must be provided to the Lead – City Development at Shoalhaven City Council for review and approval prior to the planting of the landscape screen and prior to the issue of an Occupation Certificate

Reason: To minimise visual and privacy impacts of the development.

4. Insert new Condition 64 as follows:

Maintenance of Landscape Screening (Inserted by DS23/1133)

The landscape screening between the northern façade of the external staircase accessing the terrace area and the property boundary maintained to a height and density that provides effective screening to a height of 3m for the life of the development.

Reason: To minimise visual and privacy impacts of the development.

Annexure B

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Modification Application No: No DS23/1113

Development Consent modified: DA22/1985

Development: Demolition of existing dwelling and construction
of a new two storey dwelling house.

Site: Lot 1 in Deposited Plan 30032 also known as
92 Burrill Street, Huskisson

Schedule of Modifications:

Date approved	Modification Application Number	Decision maker (Land and Environment Court or relevant council)	Proceedings Name and Number (if applicable)
16/04/2024	DS23/1113	Land and Environment Court	<i>Sturt v Shoalhaven City Council</i> (LEC Proceedings 2023/216058)

Date of determination: 28 February 2023

Date from which consent takes effect: 28 February 2023

PART A: GENERAL CONDITIONS**1. General (As modified by DS23/1133)**

The consent relates to demolition of existing dwelling and construction of a new two storey dwelling house as documented on the stamped 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 stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Plan (DS23/1133)	C1.0-1	Christ Clout Design	22/2/2024
Ground Floor Plan (DS23/1133)	C1.1-1	Christ Clout Design	22/2/2024
Upper Floor Plan (DS23/1133)	C1.2-1	Christ Clout Design	22/2/2024
Roof Plan (DS23/1133)	C1.3-1	Christ Clout Design	22/2/2024
Elevations (DS23/1133)	C2.0-1	Christ Clout Design	22/2/2024
Elevations (DS23/1133)	C2.3-1	Christ Clout Design	22/2/2024
Section (DS23/1133)	C3.0-1	Christ Clout Design	22/2/2024
Section (DS23/1133)	C3.1-1	Christ Clout Design	22/2/2024
Door & Window Schedule (DS23/1133)	C6.0-1	Christ Clout Design	22/2/2024
Site Analysis Plan (DS23/1133)	C7.0-1	Christ Clout Design	22/2/2024
Stormwater Plan	21779/3, Rev B	SET Consultants	6/4/2022
BASIX Certificate	1303538S_02	EcoResults	15/8/2022
Bushfire Assessment Report	S021779	SET Consultants	21/3/2022
Waste Management Plan	-	Foundation Law Group	12/8/2022

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 the Prescribed Conditions of Development Consent, *Environmental Planning and Assessment Regulation 2021*, as applicable.

3. 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).

4. Bushfire – Asset Protection Zone

The whole site must be managed as an inner protection area (IPA) in accordance with Appendix 4 – Asset Protection Zone Standards of Planning for Bushfire Protection 2019 and the NSW Rural Fire Service Standards for Asset Protection Zones.

5. Bushfire - Building works

New construction must comply with:

- a) AS3959 Construction of Buildings in Bushfire Prone Areas
- b) BAL-29 for western, northern and southern elevations
- c) BAL-19 for eastern elevations
- d) Planning for Bush Fire Protection 2019
- e) The report submitted by SET Consultants (Ref S021779) dated 21/3/2022

6. Endeavour Energy Requirements

The conditions specified in the Endeavour Energy Advice, Reference No: CNR-45246, dated 7/9/2022, are included as conditions of this consent and must be complied with.

Note: Relocation or an alternative arrangement for the existing overhead power supply servicing the dwelling at 90 Burrill Street (Lot 2 DP30032) must be provided in accordance with condition 21 of this consent.

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

7. Construction Certificate

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

8. Appointment of Principal Certifier

Prior to the commencement of building or subdivision work, a Principal Certifier must be appointed.

9. Notice of Commencement

Notice must be given to Council at least two (2) days prior to 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](#)'

10. 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 onsite effluent disposal system approved under the *Local Government Act 1993*, or
- c) Be a temporary chemical closet approved under the *Local Government Act 1993*.

11. Asbestos Removal

Asbestos removal must be carried out in accordance with AS2601-2 *SafeWork NSW – Code of Practice, Demolition Work [ISBN 978-0-642-78415-5]* and *SafeWork NSW – Code of Practice, How to Safely Remove Asbestos [ISBN 978-0-642-33317-9]* as applicable, by a person holding the relevant licence issued by SafeWork NSW.

A licence is not required to remove less than 10m² of non-friable asbestos, provided that the total amount of non-friable asbestos removed from the lot does not exceed 10m².

Asbestos must be taken for disposal to the licensed Waste Management Facility identified in the approved Waste Management Plan.

Post asbestos removal and prior to further work on the site, the following must be submitted to the Certifier:

- a) A clearance certificate issued by a licensed asbestos assessor or competent person as required by the *Work, Health and Safety Regulation 2017* for the specific type of asbestos removal work confirming that the area has been cleaned satisfactorily and is safe to be re-occupied for normal use.
- b) A clearance certificate is required if the removal work involved any quantity of friable asbestos, or if it involved removal of more than a total of 10 square metres of non-friable asbestos from the lot.
- c) Documentary evidence of the legitimate disposal of all asbestos in the form of tip receipts from an approved waste management facility.

12. Asbestos – Notification of Neighbours

Seven (7) days prior to the commencement of any demolition works involving asbestos, all immediate neighbours must be notified in writing of the intention to carry out asbestos demolition works. Copies of these written notifications should be retained and submitted to Council

13. Demolition

Demolition work must be carried out in accordance with AS2601-2 *SafeWork NSW – Code of Practice, Demolition Work [ISBN 978-0-642-78415-5]* and *SafeWork NSW – Code of Practice, How to Safely Remove Asbestos [ISBN 978-0-642-33317-9]* as applicable.

14. Demolition - Completion of Works

Demolition work, once commenced, must be completed within three (3) months.

15. Demolition - Decommissioning of Services

Prior to the commencement of demolition work:

- a) all existing internal sewer drainage pipework must be flushed, disconnected from the existing sewer junction and the sewer junction must be temporarily capped off.

- b) internal water lines must be disconnected from the existing water meter currently servicing the property.
- c) the capped off sewer junction and disconnected water lines must be inspected by Shoalhaven Water. For all inspections contact Shoalhaven Water on 4429 3547.
- d) the developer must provide the Certifier with evidence of compliance with the above requirements.

16. Run-off and Erosion Controls

Prior to the commencement of site works, run-off and erosion controls must be implemented and maintained during construction to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- a) diverting uncontaminated run-off around cleared or disturbed areas.
- b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties.
- c) preventing the tracking of sediment by vehicles onto roads.
- d) stockpiling topsoil, excavated materials, construction and landscaping supplies and debris within the lot.

Note: all implemented measures must not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).

17. Access Driveway Design Standards - Urban

Prior to the commencement of works within the road reserve, engineering design plans for works within the road reserve must be prepared by a suitably qualified person and approved by Council. The layback/footpath crossing design must comply with the following:

- a) Council's Engineering Design Standard Drawings.
- b) Constructed using 20 MPa reinforced concrete, reinforced with SL72 mesh, on a 75mm compacted fine crushed rock base with centrally placed slab of minimum 3 metres width and minimum 100mm depth.
- c) Removal of sufficient width of existing road seal and pavement to allow placing of formwork and laying/compaction of suitable pavement material for the driveway layback with a minimum 300mm offset to the kerb lip line.

18. Works within the Road Reserve

Prior to 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.
- e) 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.

19. Dilapidation Report

Prior to the commencement of work, the developer must engage a competent person to prepare a dilapidation report in respect of the neighbouring premises and adjacent public infrastructure, including adjacent kerbs, gutters, footpaths (formed or unformed), driveways (formed or unformed), carriageway, reserves and the like to document evidence of any existing damage.

The dilapidation report must consider the impact of any excavation work that extends below the level of the base of the footings of any structure within 0.9metres of the shared boundary. Before works commence, a copy of the dilapidation report must be provided to the Certifier and Council. The dilapidation report will be the benchmark for necessary repairs to damage caused during the development works. All repairs must be completed by the developer at the developer's cost.

Not less than seven (7) days before works commence, the developer must notify the owner of any affected property of the intention to carry out approved works. The developer must also furnish the owner with details of the approved work.

However, if the occupier or owner of any neighbouring dwelling does not permit reasonable access for the purposes for the preparation of the dilapidation report, written evidence of the efforts taken to secure access may be submitted to the *Principal Certifier* and the *Principal Certifier* may waive the requirement in relation to the relevant property.

Note: A dilapidation report can comprise of video footage and photos of adjacent public infrastructure and relevant structures on adjoining properties.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

20. Long Service Levy

Prior to the issue of a Construction Certificate any long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* and prescribed by the *Building and Construction Industry Long Service Payments Regulation 2022* must be paid or, where such a levy is payable by instalments, the first instalment of the levy must be paid. Council is authorised to accept payment. Proof of payment must be submitted to the Certifying Authority.

21. Electricity Power Lines

Prior to the issue of a Construction Certificate, the overhead power line servicing the dwelling at 90 Burrill Street (Lot 2 DP30032) must be relocated or alternative solution provided to the satisfaction of Council and Endeavour Energy.

An Accredited Service Provider (ASP) must be engaged by the proponent to ensure that the relocation of or alternative solution for the overhead power line is compliant with relevant standards and codes.

Prior to any alteration or interruption to the electricity supply to the dwelling 90 Burrill Street (Lot 2 DP30032), the proponent must discuss and enter into an agreement with the landowner of 90 Burrill Street (Lot 2 DP30032) to ensure that any works interrupting electricity supply to that dwelling are done at a convenient and mutually agreed upon time.

22. Retaining Walls - Design

Prior to 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 prior to construction and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

23. Section 68 Application

Prior to the issue of a Construction Certificate, an application to carry out water supply works, sewerage works, and stormwater drainage works must be obtained from Council under section 68 of the *Local Government Act 1993*.

24. Rainwater Facility

Prior to the issue of a Construction Certificate, details of rainwater tanks must be provided to the Certifier.

Water stored in the tank must be plumbed into the dwelling such that it is supplied to each of the fixtures listed in the BASIX Certificate for the property. Plumbing must be in accordance with the current edition of AS 3500.1 Water Services – Section 16.

It will be necessary to install, maintain and repair the facility so that it functions in a safe and efficient manner in accordance with the current editions of AS 3500.1 Water Services, the New South Wales Code of Practice Plumbing and Drainage and in accordance with the following:

- a) The tank inlet must be located a minimum of 500mm below the outlet of the eave gutter.
- b) The tank is to be installed on a firm flat and stable platform in accordance with manufacturer's recommendations. Tanks located over fill material should be placed on a concrete slab.
- c) Pumps must be located and installed to minimize any potential noise nuisance to surrounding residents, and in the case of a permanent electric pump, must be installed by a licensed electrician. Pump performance must achieve a minimum 300 Kpa output.
- d) Overflow from the tank must be directed into the approved storm water system.
- e) Any town water top-up of the tank must be by indirect connection by means of a visible "air gap", external to the rainwater tank, in accordance with the provisions of the National Plumbing and Drainage Code, AS3500.1 – Minimum air gap requirements.
- f) Marking and labelling of rainwater services must be in accordance with AS 3500.1 Section 16.
- g) The charged line to the rainwater tank is to have a flush point installed at the lowest reduced level (RL) into a 450mm x 450mm pit to enable the line to be flushed. This is to prevent the line becoming blocked.
- h) For partially buried or fully buried rainwater tanks the property owner is required to have a dual check valve with atmospheric port valve installed at the boundary water meter. Zone protection will be required at the tank or cross connection point to be installed in accordance with AS3500.1 – Section 4.

25. On-site Stormwater Disposal Design Standards

Prior to the issue of a Construction Certificate on site stormwater disposal design plans must be prepared by a Professional Engineer (as defined in the National Construction Code) and approved by the Certifier.

- a) The stormwater design must be in accordance with:
 - i) the National Construction Code
 - ii) Relevant Australian Standard/s

- iii) Shoalhaven DCP 2014 Chapter G2 – Supporting Document 1, including the provision of a geotechnical report
- b) Design plans and associated documentation must demonstrate that:
 - i) Runoff from all buildings and structures will be directed to an on-site absorption/infiltration disposal system. Any absorption system must be a minimum distance of 3 metres to any building on the lot or adjacent lots.
 - ii) Collection, diversion and disposal of stormwater will not result in surface water being concentrated onto adjoining property either above or below ground.
 - iii) Stormwater will be captured in rainwater tank(s), pipes and/or pits and the like and overland flows will be equivalent to predevelopment overland flows.
 - iv) Trench(s) will have sufficient capacity to store the inflow of a one in three months average recurrence interval design storm, with an emptying time of less than 24 hours.
 - v) The trench is not to require excavation beneath the dripline of any trees to be retained unless approved by a qualified arborist certifying that such excavation will not affect the longevity of the subject tree(s).
- c) The trench design must not include any surcharge outlet resulting in the concentration of stormwater flows. Trench design must include a documented maintenance program, copies of which are to be submitted to Council in PDF format with the design plans for the on-site stormwater disposal system.

26. Stormwater – Internal Charged Lines

Prior to issue of a Construction Certificate, the Certifier must be satisfied that any charged stormwater line on the design plans is to have a flush point installed at the lowest reduced level (RL) into a 450mm x 450mm pit to enable the line to be flushed and prevent blockage.

27. Flooding – Construction Certificate Requirements within Flood Prone Land

Prior to the issue of a Construction Certificate, a professional engineer, (as defined in the National Construction Code) must submit to the satisfaction of the Certifier, certification that the following items have been detailed on the construction drawings:

- a) All habitable floor levels must be constructed at or above the Flood Planning Level (FPL) (1% Annual Exceedance Probability (AEP) flood level plus 500mm freeboard) as documented on a Flood Certificate obtained from Council that is based on the latest flooding information held.
- b) Any proportion of the structure below the FPL must be built from flood compatible materials.
- c) All electrical installations must be constructed above the FPL or be able to be isolated prior to a flood event.

28. Flooding – Construction Certificate Structural Soundness Requirements within Flood Prone Land

Prior to the issue of a Construction Certificate, a professional engineer, (as defined in the National Construction Code) must submit to the satisfaction of the Certifier, certification that the building and associated structure(s):

- a) Will not become floating debris during a 1% Annual Exceedance Probability (AEP) flood event.

29. Existing Infrastructure

Any required alterations or damage to infrastructure will be at the developer's expense.

Note: it is recommended prior to the issue of a Construction Certificate, all infrastructure, existing and proposed, is to be shown accurately on construction plans with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure this will potentially prevent unexpected costs and expenses.

30. Pond Areas

Prior to the issue of a Construction Certificate, details of the pond areas must be provided to the Certifier demonstrating how the ponds comply with the requirements of the National Construction Code, Swimming Pool Act, 1992 and Swimming Pool Regulation, 2018.

Note: Where the pond areas exceed a depth of 300mm they may require pool fencing in accordance with the Swimming Pool Act, 1992 and Swimming Pool Regulation, 2018.

PART E: PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

NIL

PART F: DURING WORKS

31. 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.

32. 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.

33. Swimming Pool Safety During Construction

- a) A child-resistant barrier must be erected during the construction of the swimming pool and any pond areas exceeding 300mm in depth. The barrier shall comply with the requirements of the *Swimming Pools Act 1992*; *Swimming Pools Regulation 2018*; *AS1926.2 Swimming pool safety - Location of safety barriers for swimming pools* and *AS1926.1 Swimming pool safety-Safety barriers for swimming pools*.
- b) In addition to any signage that may be required under the Environmental Planning and Assessment Act 1979, or any other Act, the occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained that:
 - i) Bears a notice containing the words "This swimming pool is not to be occupied or used".
 - ii) Is located in a prominent position in the immediate vicinity of that swimming pool.
 - iii) Continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

34. Aboriginal Objects Discovered During Excavation

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately.
- b) Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing the affected area(s) based on the nature of the discovery.

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).

The Heritage NSW must be advised of the discovery in accordance with section 89A of the National Parks and Wildlife Act 1974.

35. 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.

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.

36. Survey Report – Height

In order to ensure compliance with approved plans, a Survey Certificate to Australian Height Datum must be prepared by a Registered Surveyor as follows:

- a) At the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries.
- b) At the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials.
- c) At completion, the relationship of the building and any penetrations thereto, to the boundaries.
- d) Progress certificates in response to points (a) through to (c) must be provided to the Certifier at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the proposed works.

37. Survey Certification

A survey must be undertaken by a registered surveyor and provided to the Certifier on completion of the ground floor slab formwork prior to the concrete being poured.

The surveyor must certify all of the following:

- a) The distance of the structure to all boundaries of the allotment are in accordance with the approved plans,

38. Tree Removal

Trees approved for removal must be carefully removed 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.

39. 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.
- e) During construction:
 - i) all vehicles entering or leaving the site must have their loads covered, and
 - ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- f) At the completion of the works, the work site must be left clear of waste and debris.

40. Waste Management Plan

All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Management Plan (WMP) or removed to an authorised waste disposal facility. Waste must not be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site. Compliance with the WMP must be demonstrated by the submission of tip receipts to the Certifier.

Note: "Waste" is defined in the Dictionary to the Protection of the Environment Operations Act 1997 (POEO Act).

41. Earthworks and Excavation

- a) Approved earthworks (including any structural support or other related structure for the purposes of the development):
 - i) Must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot.
 - ii) Must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property.
 - iii) That is fill brought to the site, must contain only virgin excavated natural material (VENM) or excavated natural material (ENM) as defined in Part 3 of schedule 1 to the *Protection of the Environment Operations Act 1997 (POEO Act)*.
 - iv) Documentation must be provided to the Certifier certifying that imported fill material is not contaminated and does not contain contaminants such as asbestos, chemicals or building waste.
 - v) That is excavated soil to be removed from the site, must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.

- b) Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-642-78544-2) published by Safe Work Australia in October 2018

42. 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.

43. Contamination - Unexpected Finds

- a) If unexpected contaminated soil and/or groundwater is encountered during any works:
 - i) All work must cease, and the situation must be promptly evaluated by an appropriately qualified environmental consultant.
 - ii) 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.
- b) 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 prior to recommencement of works. The verification documentation must be provided to the satisfaction of the Certifier and Shoalhaven City Council prior to the recommencement of any works.
- c) 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).

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

44. 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).

45. Air-Conditioning Systems - Noise controls

Prior to the Issue of an Occupation Certificate, air conditioning must be installed in accordance with manufacturer's instructions and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997 (POEO Act)*. Domestic air conditioners must not emit noise that can be heard within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open—

- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- b) Before 7 am or after 10 pm on any other day.

46. Registration of Swimming Pool

The swimming pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and Prior to the issue of an Occupation Certificate. The swimming pool is to be registered at www.swimmingpoolregister.nsw.gov.au

Note: Penalties may apply if a swimming pool is not registered. If you are unable to access the internet, Shoalhaven pool owners can contact Council during business hours on (02) 4429 3111 or alternatively, register in person at Council's Nowra or Ulladulla Office and our Customer Service Officers will assist you to register your pool. There is a fee for this service.

47. Warning Notice Swimming Pools

Prior to the issue of an Occupation Certificate, a Warning Notice (sign) must be erected in a prominent position in the immediate vicinity of the swimming pool and any applicable pond areas as required by section 17(1) of the *Swimming Pools Act 1992*. The sign must comply with part 3, clauses 10 and 11 of the *Swimming Pools Regulation 2018*. Details must be provided to the Certifier for approval.

48. Water Diversion from Swimming Pools

No water derived from the swimming pool or pond areas or immediate proximity of the swimming pool or pond areas (i.e hard stand areas) shall be diverted onto any adjoining property.

49. BASIX

Prior to 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 the *Environmental Planning and Assessment Regulation 2021*.

50. Colours and Materials

The development must be constructed in accordance with the approved schedule of colours and building materials and finishes.

51. Letter Boxes

A letterbox structure(s) must be provided and be designed to comply with the requirements of Australia Post, located close to the major pedestrian entry to the site, and built from materials that are non-reflective and blend in with the approved development.

52. Retaining Walls – Certification

Prior to the issue of a full Occupation Certificate, 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.

53. Works as Executed - Stormwater Drainage

Prior to the issue of the Occupation Certificate, 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 dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans. This plan must verify surface and invert levels on all pits, invert levels and sizes of all pipelines, and finished surface levels on all paved areas. All levels must relate to Australian Height Datum.

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).

54. On-site Stormwater Disposal Design Standards

Prior to the issue of an Occupation Certificate, the Certifier must be satisfied that all on-site stormwater disposal systems have been installed in accordance with any relevant condition of consent and the requirements of the National Construction Code.

55. 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 prior to the issue of an Occupation Certificate.

56. Driveway – Evidence of completion

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

57. Works in the Road Reserve - Evidence of completion

Prior to the issue of a full Occupation Certificate, the developer must provide the Certifier with a Construction Inspection Ticket / Completion of Works in Road Reserve Letter provided by council, confirming compliance with the requirements of section 138 of the *Roads Act 1993*.

58. Dilapidation Report – Evidence

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier and Council with evidence that any damage to neighbouring premises or adjacent public infrastructure, not previously identified as existing damage in the Dilapidation Report, has been repaired by the developer to the satisfaction of Council.

58A. Completion of Landscape and Tree Works (Inserted by DS23/1133)

Before the issue of an Occupation Certificate, 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.

Reason: To minimise visual and privacy impacts of the development.

58B. Landscape Screening (Inserted by DS23/1133)

Prior to the issue of an Occupation Certificate, a planted landscape screen must be established between the northern façade of the external staircase accessing the terrace area and the property boundary. The landscape screen must:

- a) Be provided for the full length of terrace; and

- b) Comprise species with a mature height of 3m;
- c) Comprise species suitable to provide effective screening to a height of 3m within three years of the date of the Occupation Certificate.

A detailed planting schedule of selected species must be provided to the Lead – City Development at Shoalhaven City Council for review and approval prior to the planting of the landscape screen and prior to the issue of an Occupation Certificate

Reason: To minimise visual and privacy impacts of the development.

PART H: PRIOR TO THE ISSUE OF A SUBDIVISION / STRATA CERTIFICATE

NIL

PART I: ONGOING USE OF THE DEVELOPMENT

59. 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 shall be collected and directed to a legal point of discharge.
- b) The redirection and/or concentration of stormwater flows onto neighbouring properties.

60. Swimming Pool – Noise Control Requirements

Pool plant and equipment must not emit 'Offensive Noise' as defined in the *Protection of the Environment Operations Act 1997 (POEO Act)*.

61. Swimming Pool - Ongoing Use

The approved swimming pool, applicable pond areas and associated structures must be maintained in accordance with:

- a) The National Construction Code
- b) Swimming Pools Act, 1992
- c) Swimming Pools Regulation, 2018.

62. Landscaping – Noxious and Environmental Weeds

The planting of plant species listed in the South East Regional Strategic Weed Management Plan 2017 – 2022 is prohibited for the life of the development. No exotic perennial grasses listed on the 'Final Determination of the NSW Scientific Committee for the key threatening process Invasion of native plant communities by exotic perennial grasses' must be sown within the outer protection area or the asset protection zone for the life of the development. Native grasses must be sown in these areas, as this is the interface between disturbed areas and the remaining native vegetation for the life of the development.

63. 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.

64. Maintenance of Landscape Screening (Inserted by DS23/1133)

The landscape screening between the northern façade of the external staircase accessing the terrace area and the property boundary maintained to a height and density that provides effective screening to a height of 3m for the life of the development.

Reason: To minimise visual and privacy impacts of the development.

PART J: OTHER COUNCIL APPROVALS AND CONSENTS

NIL

PART K: REASONS FOR CONDITIONS

The application has been assessed as required by section 4.15 of the *Environmental Planning and Assessment Act 1979* and has been determined by the granting of conditional development consent.

Statutory requirements

The development proposal, subject to the recommended conditions, is consistent with:

- a) the objects of the Environmental Planning and Assessment Act, 1979.
- b) the aims, objectives and provisions of the applicable environmental planning instruments,
- c) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).
- d) the aims, objectives and provisions of relevant Council policies.

Public notification

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2021* and Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies (POL 16/230).

Submissions

Any submissions received during the public notification period are available on [DA Tracking](#)

Community views

Issues and concerns raised by the community in submissions have been considered in the assessment of the application and, where appropriate, conditions have been included in the determination to mitigate any impacts.

Suitability of the Site

The application has been approved because the development proposal is considered to be suitable for the site.

The relevant public authorities and the water supply authority have been consulted and their requirements met, or arrangements made for the provision of services to the satisfaction of those authorities.

The increased demand for public amenities and services attributable to the development has been addressed by the requirement to pay contributions in accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and Council's Contribution Plan 2019. Contributions under Section 307 of the Water Management Act 2000 have been applied as required.

Impacts of the Development

The application was considered to be suitable for approval. Conditions have been imposed to ensure that:

- a) the development will not result in unacceptable adverse impacts on the natural and built environments.
- b) the amenity and character of land adjoining and in the locality of the development is protected.
- c) any potential adverse environmental, social or economic impacts of the development are minimised.
- d) all traffic, car parking and access arrangements for the development will be satisfactory.
- e) the development does not conflict with the public interest.

PART L: RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within the prescribed period.

PART M: GENERAL ADVICE

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

Disability Discrimination Act 1992

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "*Design for Access and Mobility*".

Disclaimer – Conveyancing Act 1919 – Division 4 – Restrictions on the Use of Land

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under Clause 1.9A of *Shoalhaven Local Environmental Plan 2014* agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

DBYD Enquiry - 'Dial Before You Dig'

In order to avoid risk to life and property it is advisable that an enquiry be made with "Dial Before You Dig" on 1100 or www.dialbeforeyoudig.com.au prior to any excavation works taking place to ascertain the location of underground services. You must also contact your Local Authority for locations of Water and Sewer Mains.

Existing and proposed Swimming Pool/ Spa Barrier

Existing and proposed swimming pools or spas on the premises must comply with the provisions of the *Swimming Pools Act 1992*, *Swimming Pools Regulation 2018* and comply with all the relevant Australian Standards.