



## Land and Environment Court New South Wales

Case Name: **Moore v Shoalhaven City Council**

Medium Neutral Citation: [2024] NSWLEC 1664

Hearing Date(s): Conciliation conference on 12 September 2024

Date of Orders: 22 October 2024

Date of Decision: 22 October 2024

Jurisdiction: Class 1

Before: Washington C

Decision: The Court orders:  
(1) The appeal is upheld.  
(2) Development Application SF10955 for a 2 lot Torrens Title subdivision and associated driveway, onsite effluent disposal and landscaping works (the Proposed Development) on land known as 57 Wandean Road, Wandandian NSW 2540, also known as Lot 1 in Deposited Plan 1268021 is determined by grant of consent subject to the conditions at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – Torrens title subdivision – agreement between the parties – orders

Legislation Cited: *Biodiversity Conservation Act 2016* s 7.3  
*Environmental Planning and Assessment Act 1979* ss 4.16, 8.7  
*Land and Environment Court Act 1979* s 34  
*Rural Fires Act 1997* s 100B  
  
Shoalhaven Local Environmental Plan 2014 cl 2.6, 4.2B, 7.1, 7.5, 7.6, 7.11  
State Environmental Planning Policy (Resilience and Hazards) 2021 s 4.6

Texts Cited: Shoalhaven City Council Community Participation Plan 2019

Category:	Principal judgment
Parties:	Adam Moore (First Applicant) Stacey Moore (Second Applicant) Shoalhaven City Council (Respondent)
Representation:	Counsel: J Cole (Solicitor) (Applicant) A Kliese (Solicitor) (Respondent)  Solicitors: Messenger Cole Solicitors (Applicant) Shaw Reynolds Lawyers (Respondent)
File Number(s):	2024/150241
Publication Restriction:	Nil

## JUDGMENT

- 1     **COMMISSIONER:** These Class 1 proceedings arise as a result of the actual refusal, by Shoalhaven City Council, of Development Application SF10955, which seeks consent for a two-lot Torrens title subdivision into three rural residential lots with associated driveway, onsite effluent disposal and landscaping works at 57 Wandean Road, Wandandian, legally known as Lot 1 in DP 1268021.
- 2     These proceedings have been brought to the Court pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 3     The Court arranged a conciliation conference and hearing under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 12 September 2024. Prior to this conference, by leave of the Court, the application was amended to reduce the subdivision from three lots to two.
- 4     After the conciliation conference, the parties reached agreement as to acceptable terms of a decision in the proceedings. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.
- 5     Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one 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, which the parties identified and explained. From this I note the following points.

## **Jurisdictional matters**

- 6 The development application was made with the written consent of the owner of the land.
- 7 The application was adequately notified from 12 September to 28 September 2022, and further from 18 April to 4 May 2023 in accordance with the Shoalhaven City Council Community Participation Plan 2019. No submissions were made during this time.
- 8 As amended, the proposed subdivision is for two rural residential lots. The subject site is zoned RU4 Primary Production Small Lots under the Shoalhaven Local Environmental Plan 2014 (SLEP), within which subdivision is permissible with consent pursuant to cl 2.6. The proposed development is consistent with the objectives of this zone.
- 9 Pursuant to SLEP cl 4.2B, land identified as 'Locality 3' on the lot size map maybe subdivided into lots with a minimum lot size of 2 hectares and a maximum of one lot per 10 hectares, or in the case of a lot with an area of between 4 and 19 hectares, into no more than 2 lots. This site is identified as 'Locality 3' and has an area of 7.88ha. Subsequently, the subdivision is for no more than two lots, both of which are between 2 and 10ha (Lot 1, 2.21ha and Lot 2, 5.67ha) and the proposal complies with the minimum lot size requirements of SLEP cl 4.2B.
- 10 Pursuant to SLEP cl 7.1, the site is identified as Class 5 on the Acid Sulfate Soils Map, and is approximately 400m away from land that is mapped as Class 2 and 3. From the parties submission and the survey plan, I accept that the property is above 5m Australian Height Datum and that an acid sulfate soils management plan is not required, and subsequently, that the requirements of SLEP cl 7.1 are met.
- 11 Pursuant to SLEP cl 7.5, the site is mapped as 'Biodiversity – habitat corridor' on the Terrestrial Biodiversity Map. A Flora and Fauna Assessment by Fraser Ecological Consulting dated 6 August 2024 (the Flora and Fauna

Assessment) has been prepared that concludes that this proposal is unlikely to have any adverse impact upon threatened species, their habitats, populations or endangered ecological communities which form part of the habitat corridor. From this, the parties' submission and the agreed conditions of consent, I accept that the requirements of SLEP cl 7.5 are met with this application.

- 12 SLEP cl 7.6 applies to the site as it includes a 'Watercourse Category 1' on the Riparian Lands & Watercourses map. This mapped watercourse generally aligns with the existing large dam on the east of the site. From the parties' submission, the subdivision plan, and the proposed conditions of consent, I accept that the proposed development is not likely to have an adverse impact on this watercourse and that the requirements of SLEP cl 7.6 have been met.

- 13 SLEP cl 7.11 requires that development consent must not be granted unless the consent authority is satisfied that all essential services are available or that adequate arrangements have been made to make them available. Based on the parties' submission and the following documents, I accept that adequate arrangements have been made to make all essential services available as per cl 7.11:

- (1) Water Development Notice from Shoalhaven Water dated 20 September 2022,
- (2) report by AKH Design Services dated 21 August 2024,
- (3) Soil and Site Assessment for Onsite Wastewater Disposal by Harris Environmental Consulting dated March 6 2024 and,
- (4) the subdivision plans.

- 14 The land is identified as bushfire prone land and as such a Bushfire Safety Authority must be obtained before developing this land, pursuant to s 100B

of the *Rural Fires Act 1997*. To that end, General Terms of Approval (GTAs) were issued by the NSW Rural Fire Service on 19 April 2023. These GTAs have been incorporated into the agreed conditions of consent.

- 15 Pursuant to s 7.3 of the *Biodiversity Conservation Act 2016*, from the parties' submission and the Flora and Fauna Assessment, I accept that the proposal is unlikely to have a significant impact on any listed threatened species, populations and communities, and that a biodiversity assessment report is not required for the proposed development.
- 16 Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to consider whether the site is contaminated, and if so, whether it is or will be made suitable for the intended use. The parties submit, and I accept, that there is no known contamination on the site nor any history of contaminating activities and that, subject to the agreed conditions of consent, the site is suitable for the intended use.

## **Conclusion**

- 17 For these reasons, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, and subsequently, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

## **Orders**

- 18 The Court orders:
  - (1) The appeal is upheld.
  - (2) Development Application SF10955 for a 2 lot Torrens Title subdivision and associated driveway, onsite effluent disposal and landscaping works (the Proposed Development) on land known as 57 Wandean Road, Wandandian NSW 2540, also known as Lot 1 in Deposited Plan

1268021 is determined by grant of consent subject to the conditions at Annexure A.

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



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**E Washington**

**Commissioner of the Court**

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## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** SF10955

**Development:** 2 lot Torrens Title subdivision and associated driveway, sewage and landscaping work.

**Site:** 57 Wandean Road, WANDANDIAN NSW 2540

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

**Date of determination:** 22 October 2024

**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 57 Wandean Road, WANDANDIAN NSW 2540.

The conditions of consent are as follows:



**CONDITIONS THAT IDENTIFY APPROVED PLANS:****1. Approved plans and supporting documentation**

Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Date of Plan</b>
S60722 Sheet 2/5	C	Proposed Subdivision	Giammarco	7/02/2024
S60722 Sheet 3/5	C	Site Analysis	Giammarco	7/02/2024
LO1	C	Landscape Plan	Peter Phillips Landscape Architecture	Jan 2024

<b>Approved Documents</b>			
<b>Document title</b>	<b>Version number</b>	<b>Prepared by</b>	<b>Date of document</b>
Waste Minimisation and Management Plan		Giammarco Civil & Structural Engineering	22 December 2023
Bushfire Hazard Assessment	Ref: 5428BF	Harris Environmental	August 1, 2024
Flora and Fauna Assessment		Fraser Ecological Consulting	6 August 2024

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

**Reason:** To ensure compliance with the approved plans and documents.

**2. Concurrence and Referral – Endeavour Energy**

The recommended conditions of Approval issued by the Endeavour Energy, Reference No: CNR-45447, dated 11/08/2023 are included as conditions of this consent and must be complied with.

**Reason:** To ensure compliance with external concurrence and referral advice.

### **3. Existing Infrastructure**

Any required alterations or repair of damage to Council infrastructure impacted by the development 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 reduce the potential for unexpected costs and expenses.*

**Reason:** To ensure existing infrastructure is accounted for and any damage to infrastructure is suitably repaired.

### **4. Prescribed Conditions**

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

**Reason:** To ensure compliance with prescribed conditions.

### **5. Shoalhaven Water – Compliance with Conditions**

All conditions listed on the Shoalhaven Water Development Notice at each stage of work must be complied with as relevant to that stage.

Written notification must be issued by Shoalhaven Water and evidence provided to the Certifier for each applicable stage.

**Reason:** To ensure compliance with Shoalhaven Water requirements.

### **6. Bushfire Subdivision**

The development must comply with the approved Bushfire Hazard Assessment Report prepared by Harris Environmental Consulting, Ref: 5408BF, dated 1 August 2024.

**Reason:** To ensure compliance with bushfire applicable requirements.

### **7. Native Vegetation and Habitat**

The removal and/or disturbance of native vegetation and habitat on the property, including canopy trees, understorey, and groundcover vegetation must be undertaken strictly in accordance with the approved plans.

**Reason:** To minimise biodiversity impacts.

## **CONDITIONS TO BE SATISFIED BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE**

### **8. Revised subdivision plan**

**Prior to the issue of a subdivision works certificate a revised subdivision plan is to be provided to Council for approval that shows the common boundary between proposed lot 1 and lot 2 moved 14.75m to the west of the boundary indicated of the approved plan, so as to bring the majority of the previously proposed 15m wide access easement into lot 2. A new access is to be provided for lot 1. Both lots are to be a minimum of 2ha in area.**

**Reason: To ensure the subdivision provides compliant lot sizes and separate access.**

### **9. Council Approvals**

A Construction Certificate / Subdivision Works 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 building works.

**Reason:** To ensure all required approvals are obtained.

### **10. Design Standards - Rural**

Before the issue of a subdivision works 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 driveway crossover design must comply with the following:

- a) Council's Engineering Design Standard Drawings.
- b) Driveway crossing constructed using a bitumen sealed or concrete pavement with a compacted pavement thickness designed for 2x10<sup>4</sup> ESA (200mm minimum) must be constructed 5 metres wide at the property boundary and splayed to 6 metres wide at the pavement edge line.
- c) Pipe culvert or gutter crossing at the table drain in accordance with Standard Drawing 2637-35.
- d) Indented rural access at the approved driveway location in accordance with Council's Engineering Specification Plan D1.21 which must:
  - i) ensure that the largest expected vehicle does not overhang the public road travel lane.
  - ii) be a minimum of 3.5 metres wide at the gate and configured to accommodate a minimum distance of 13 metres between the gate and the table drain or 15 metres to the road shoulder if there is no table drain.
  - iii) have the same standard of construction from the road alignment to the gate as is required for the driveway crossing.
- e) be fenced where the remainder of the road property boundary is fenced.

**Reason:** To ensure appropriate design is undertaken

## **11. Erosion and Sediment Controls - Erosion and Sediment Control Plan**

Before issue of a Construction Certificate / Subdivision Works Certificate, an Erosion and Sediment Control Plan (ESCP) and specifications must be prepared in accordance with Landcom's publication Managing Urban Stormwater - Soils and Construction (2004) by a suitably qualified person, (as defined in the National Construction Code) to the satisfaction of the Certifier.

All plans must include:

Site access location and stabilisation details and restrictions;

Erosion control locations and types;

Sediment control locations and types;

Soil, water and drainage management plans;

Site rehabilitation details;

Inspection and maintenance details;

Identification of existing vegetation and site revegetation to have 70% cover established before plan is decommissioned;

Existing and final contours (clearly distinguished and adequately annotated);

Standard construction drawings for proposed soil, water and drainage management measures.

All implemented measures must ensure that a pollution incident must not occur as defined by the [Protection of the Environment Operations Act](#) (POEO).

All implemented measures must:

not cause water pollution as defined by the [Protection of the Environment Operations Act](#) (POEO).

be maintained at all times.

not be decommissioned until at least 70% revegetation cover has been established.

**Reason:** To ensure an appropriate Erosion and Sediment Control Plan has been prepared.

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

Prior to the issue of a Subdivision Works Certificate, all subdivision works proposed within road reserves must be approved by Council.

**Reason:** To ensure ongoing compliance

## **13. Tree protection – Vehicle Access and Services**

Prior to the issue of a Subdivision Works Certificate plans must be submitted to Council that demonstrate vehicle access and services, including trenching and associated impacts, can be achieved to all proposed lots without impacting trees or native vegetation as shown on Figure 9 of the *Flora and Fauna Assessment 57 Wandean Road Wandandian* prepared by Fraser Ecological Consulting, dated 6<sup>th</sup> August 2024).

**Reason:** To protect trees and native vegetation

#### **14. Revised Landscape Plan**

Prior to the issue of a Subdivision Works Certificate a revised Landscape Plan must be submitted to Council with a plant schedule that is comprised of characteristic species, including canopy species, from the plant communities on the subject site as described by Fraser Ecological Consulting. The revised plant schedule must include the important Glossy-black Cockatoo feed tree, *Allocasuarina littoralis* (Black She Oak).

**Reason:** To ensure compliance with Biodiversity requirements.

#### **15. Street Numbering**

Street numbering must comply with the State Governments Comprehensive Property Addressing System (CPAS), and Council's Property Address Numbering Policy.

Street numbering for the development must be as follows

##### **Proposed Lot 1 – 57A Wandean Rd Wandandian**

##### **Proposed Lot 2 – 57 Wandean Rd Wandandian**

The allocated numbers must be shown on the engineering/construction plans with the Construction Certificate / Subdivision Works Certificate. Where plans and details are provided to service suppliers, numbers must be in accordance with the above.

**Reason:** To ensure consistent and appropriate street numbering.

### **CONDITIONS TO BE SATISFIED BEFORE SUBDIVISION WORK COMMENCES**

#### **16. Appointment of Principal Certifier**

Before building/subdivision work commences a Principal Certifier must be appointed.

**Reason:** To ensure a Principal Certifier is appointed where required.

#### **17. 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.*

**Reason:** To ensure a Water Development Notice and Certificate of Compliance are obtained.

## **18. Dilapidation Report (Minor)**

Before 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 900mm 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.*

**Reason:** To ensure a suitable dilapidation report is prepared and the status of existing infrastructure and adjoining structures is recorded prior to the commencement of work.

## 19. 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:

diverting uncontaminated run-off around cleared or disturbed areas.

- a) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties.
- b) preventing the tracking of sediment by vehicles onto roads.
- c) 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).

**Reason:** To ensure appropriate erosion and sediment control measures are in place.

## 20. 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](#)'.

**Reason:** To ensure appropriate notice is given to Council.

## 21. Subdivision Works Certificate

A Subdivision Works Certificate must be obtained from either Council or a certifier before any subdivision work can commence.

**Reason:** To ensure appropriate building and subdivision certificates are obtained.

## 22. Tree Removal/Retention Plan

Prior to subdivision works a Tree Removal/Retention Plan must be submitted to indicate trees proposed for removal to establish Asset Protection Zones. Trees and other vegetation must be retained within the Asset Protection Zone (APZ) where it complies with the prescriptions for *Planning for Bushfire Protection 2019* guidelines.

**Reason:** To minimise biodiversity impacts.

### **23. Biodiversity – Tree and Vegetation Protection**

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

The developer must identify and physically mark environmental features to be retained as shown on the approved plans.

- a) The developer must identify the extent of clearing work as shown on the approved plans.
- b) 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.
- c) 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.
- d) Where trees have been identified for retention within an Asset Protection Zone, these trees must be physically marked to be retained in accordance with the development consent.

Evidence of compliance with the above requirements must be provided to Council prior to the commencement of any clearing works.

Site works must not commence until the Director – City Development (or delegate) of Shoalhaven City Council has confirmed in writing that the above have been satisfied.

**Reason:** To protect biodiversity values.

### **24. Work within the Road Reserve – Submissions to Council**

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.

**Reason:** To ensure relevant approvals are obtained.

## **DURING SUBDIVISION WORK**

### **25. 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.

**Reason:** To ensure acid sulfate soils are appropriately managed.

### **26. 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:

be a standard flushing toilet connected to a public sewer, or have an on-site effluent disposal system approved under the *Local Government Act 1993*, or

be a temporary chemical closet approved under the *Local Government Act 1993*.

**Reason:** To ensure suitable toilet facilities are provided.

### **27. Biodiversity – Fauna Rescue and Vegetation Removal Protocol**

During works, in order to protect wildlife the following vegetation removal protocol is to be adhered to:

Before starting each morning, all vehicles and mechanical plant must be inspected for wildlife prior to operation.

- a) All vegetation to be removed must be inspected for wildlife prior to removal.
- b) All trenches must be inspected for wildlife prior to backfilling. Once it is confirmed that there is no roosting or nesting occurring within the hollow (or as advised by

the ecologist), the hollow-bearing tree must be gently nudged with felling equipment prior to felling to encourage safe fauna evacuation. Hollow-bearing sections must be carefully lowered to the ground so as not to injure native fauna. Once the tree has been felled the hollows are to be inspected again for fauna and relocated in an appropriate location determined by the ecologist. The tree must be felled carefully in sections to allow the rescue of native fauna.

- c) Any wombat burrows located in proximity to the approved development footprint must be managed as follows:
  - i) Avoid burrows wherever possible.
  - ii) For burrows that cannot be avoided a qualified ecologist must supervise the following process:
  - iii) Set up a motion detector camera on each burrow to monitor use and confirm activity.
  - iv) Block passage to any inactive burrows.
  - v) For active burrows, install a gate at the entrances (frame with a one way exit and no re-entry) with follow up camera footage to ensure wombat has not re-entered the burrow.
  - vi)
- d) If any native wildlife is identified as breeding on site, clearing works must stop immediately and must not recommence until the Director – City Development (or delegate) of Shoalhaven City Council has confirmed in writing that clearing works may recommence.
- e) If any wildlife is disoriented or injured during clearing works, works must stop immediately, and any injured wildlife must be referred to a local Veterinary Clinic or into the care of Wildlife Rescue South Coast (0418 427 214).

Within 10 days of completing clearing work, the engaged ecologist must provide to Council written evidence of any fauna detected during clearing.

**Reason:** To protect biodiversity values

## **28. Native Vegetation Protection**

During works, areas of native vegetation as mapped in Figure 9 of *Flora and Fauna Assessment 57 Wandean Road Wandandian* (Fraser Ecological Consulting) must be managed as an exclusion zone.

Vehicle access, storage of materials, equipment, waste, fuel or disposal of liquid waste is restricted.

**Reason:** To protect biodiversity values

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

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

the work in the area of the discovery must cease immediately.

- a) the following must be notified for a relic – the Heritage Council; or
- b) 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:

- a) 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.

**Reason:** To ensure the protection of objects of potential significance during works.

## **30. 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. Earthworks and retaining walls must be constructed as per the approved plans.

**Reason:** To ensure earthworks are appropriately retained.

## **31. Potentially Contaminated Land – 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 commencement 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).*

**Reason:** To ensure any detected contaminants are appropriately managed.

### **32. Site Management – 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.

**Reason:** To ensure site work occurs within appropriate construction hours.

### **33. Site Management – Maintenance of Site and Surrounds**

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

All materials and equipment must be stored and delivered wholly within the work site unless an approval to store them elsewhere is held.

- a) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- b) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
- c) 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.
- d) During construction:
  - vii) all vehicles entering or leaving the site must have their loads covered, and
  - viii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
  - ix)

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

**Reason:** To ensure the site is maintained in a safe and secure manner.

### **34. Site Management – Noise**

The noise from all site work, 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.

**Reason:** To protect the amenity of neighbouring properties.

### **35. Stormwater - Overland 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.

**Reason:** To ensure stormwater is appropriately managed.

### **36. 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

**Reason:** To ensure excavated material is appropriately disposed of and all fill material is appropriate for usage on site.

## **CONDITIONS TO BE SATISFIED BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE**

### **37. Completion of Public Utility Services**

Before the issue of the relevant Occupation Certificate / Subdivision Certificate, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to the principal certifier.

**Reason:** To ensure required changes to public utility services are completed, in accordance with the relevant agency requirements, before occupation.

### **38. Dilapidation Report (Minor) – Evidence of Completion**

Before the issue of a Subdivision 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.

**Reason:** To ensure any damage not previously identified in the Dilapidation Report is suitably repaired.

### **39. On-Site Sewage Management System**

An application for installation of an on-site sewage management system must be approved under section 68 of the *Local Government Act 1993*. The application must be consistent with the recommendations of the wastewater report 'Soil and Site Assessment for Onsite Wastewater Disposal for 57 Wandean Road WANDANDIAN, Lot 1 DP 1268021" by Harris Environmental Consulting dated 25 September 2024 reference 5408WW; or an alternative wastewater report approved by Council in writing.

- a) Stormwater diverted from above the effluent disposal area must be splayed across the Lot. Stormwater must not be piped to the street drainage or directed onto a neighbouring property.
- b) The lot must be provided with a NSW Ministry of Health accredited sewage

management system with a minimum standard of secondary treatment (with disinfection).

- c) Effluent application areas with surface irrigation must be isolated and cannot be used for recreation purposes or the growing of vegetables. The use of effluent for fruit trees must comply with AS/NZS 1547.

**Reason:** To ensure ongoing compliance

#### **40. 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
03AREC0005	Planning Area 3 - Recreation facilities upgrade various locations	\$328.73	1.00	\$328.73	\$0.00	<b>\$328.73</b>
03AREC3003	Bay and Basin Leisure Centre	\$492.77	1.00	\$492.77	\$0.00	<b>\$492.77</b>
03CFAC0007	Bay & Basin Branch Library	\$653.72	1.00	\$653.72	\$0.00	<b>\$653.72</b>
03CFAC4001	Bay & Basin Community Hub	\$3,180.33	1.00	\$3,180.33	\$0.00	<b>\$3,180.33</b>
03ROAD2028	Wandean Road, Wandandian	\$10,920.00	1.00	\$10,920.00	\$0.00	<b>\$10,920.00</b>
CWAREC5005	Shoalhaven Community and Recreational Precinct SCaRP Cambewarra Road Bomaderry	\$2,940.78	1.00	\$2,940.78	\$0.00	<b>\$2,940.78</b>
CWCFAC5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	\$2,222.60	1.00	\$2,222.60	\$0.00	<b>\$2,222.60</b>
CWCFAC5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	\$1,502.37	1.00	\$1,502.37	\$0.00	<b>\$1,502.37</b>
CWCFAC5007	Shoalhaven Regional Gallery	\$82.48	1.00	\$82.48	\$0.00	<b>\$82.48</b>
CWFIRE2001	Citywide Fire & Emergency services	\$162.05	1.00	\$162.05	\$0.00	<b>\$162.05</b>
CWFIRE2002	Shoalhaven Fire Control Centre	\$237.08	1.00	\$237.08	\$0.00	<b>\$237.08</b>
CWMGMT3001	Contributions Management & Administration	\$673.90	1.00	\$673.90	\$0.00	<b>\$673.90</b>

**Sub Total: \$23,396.81**

**GST Total: \$0.00**

**Estimate Total: \$23,396.81**



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 Subdivision Certificate. Evidence of payment must be provided to the Certifying Authority.

The Contributions Plan 2019 can be accessed on Councils 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)*

**Reason:** To ensure applicable local infrastructure contributions are collected.

#### **41. Subdivision Certificate**

A Subdivision Certificate must be obtained from Council or an accredited certifier prior to lodgement of the Final Plan of Survey with NSW Land Registry Services.

**Reason:** To ensure appropriate building and Subdivision Certificates are obtained.

#### **42. Subdivision - Schedule of Compliance**

The Subdivision 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 a Subdivision Certificate. The schedule must provide evidence of how all relevant conditions of development consent have been fulfilled.

**Reason:** To ensure conditions of consent have been satisfied or other satisfactory arrangements made.

#### **43. Subdivision – Evidence of Compliance with Bushfire Measures**

Before the issue of the Subdivision Certificate, details must be provided to the Certifier by a BPAD Level 3 accredited consultant that the bushfire measures required by the approval have been installed.

**Reason:** To ensure compliance with bushfire applicable requirements.

#### **44. Subdivision – Provision of Utility Services**

Before the issue of a Subdivision Certificate, utility services must be provided in accordance with the following:

- a) The provision of electricity to service allotments and street lighting in the subdivision must be in accordance with the requirements of Endeavour Energy who are to confirm in writing that conditions of supply have been met.
- b) The submission of a Telecommunications Infrastructure Provisioning Confirmation from an approved telecommunications carrier to the Certifier or Council (as applicable) confirming that satisfactory arrangements have been made for the provision of telecommunication services to all individual lots
- c) A Certificate of Compliance under Section 307 of Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Water Development Notice and before the issue of a Subdivision Certificate, as the case may be.
- d) If 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.

*Note: Relevant details, including monetary contributions (where applicable) under the Water Management Act 2000, are given on the attached Notice issued by Shoalhaven Water. For further information and clarification regarding the above please contact Shoalhaven Water's Development Unit on (02) 4429 3547.*

**Reason:** To ensure utilities and services are appropriately provided.

#### **45. Subdivision – Works as Executed**

Before the issue of the Subdivision Certificate, Works as Executed Plans must be prepared by a registered surveyor / professional engineer, (as defined in the National Construction Code) and be submitted to council and the Certifier demonstrating compliance with the approved design plans.

The Works as Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans and comply with the following requirements:

- a) Council's Development Engineering Construction Specification.
- b) Show compliance with the approved design plans of all road and drainage works.
- c) Certify that all storm water pipes, and other services are wholly within an appropriate easement.
- d) Show the extent, depth and final levels of filling.
- e) Show any retaining walls including footings and agricultural drainage lines

- f) Show the location of all underground service conduits.
- g) Include all deviations from the approved Civil Engineering Plans.

**Reason:** To ensure works as executed plans are prepared and provided.

#### **46. Restrictions – Existing Easements and Restrictions on Use of Land**

Before the issue of the Subdivision Certificate:

- a) all existing easements must be acknowledged on the final subdivision plan.
- b) all existing restrictions on the use of land must be acknowledged on the final subdivision plan.

**Reason:** To ensure easements and restrictions are noted on subdivision plans.

#### **47. Restrictions – Easements and Restrictions on Use of Land**

An Instrument must be prepared under section 88B of the Conveyancing Act 1919 which will provide for the following Restrictions on the land when the subdivision is registered:

- a) Easements must be provided where and as required for inter-allotment services, drainage and sewerage.
  - i) a minimum 1m wide easement to drain water must be created over any encroaching drainage pipes.
  - ii) A minimum 1m wide easement for services must be created over any encroaching utility service.
- b) where there is a shared access or common driveway, reciprocal rights of carriageway must be provided inclusive of any maintenance responsibilities and financial apportionments, where necessary.
- c) where there is shared infrastructure, landscaping, structures, and the like, arrangements must be made for access and maintenance.
- d) Asset protection zones (APZ) as specified in the Bushfire Report by Harris Environmental, Ref: 5408BF dated August 1, 2024.
- e) An unobstructed path must be maintained between the most distant external part

of the proposed dwelling and the nearest part of the public access road. Where this cannot occur, property access roads must comply with the relevant requirements of *NSW Planning for Bush Fire Protection 2018* in perpetuity.

- f) Landscaping maintenance must comply with the relevant requirements of Appendix 4 – Asset Protection Zone Standards of Planning for Bush Fire Protection 2019 and the NSW Rural Fire Service Standards for Asset Protection Zones.

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.

A draft 88B Instrument must be submitted to the Certifier for approval before a Subdivision Certificate is issued.

**Reason:** To ensure restrictions and easements are registered on the title of the land where required.

#### **48. Works in the Road Reserve - Evidence of Completion**

Before the issue of a Subdivision 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.

**Reason:** To ensure works in the road reserve are completed appropriately.

#### **ONGOING USE FOR SUBDIVISION WORK**

#### **49. Biodiversity – Fencing in Environmental and Rural Zones**

All boundary and internal fences to be erected on the property, must comply with the following:

- a) To protect native gliding and flying mammals the use of barbed-wire for fences is prohibited.
- b) Except for fencing to contain domestic pets within the approved Asset Protection Zones for dwellings, boundary and internal fences must not impede the movement of native fauna.
- c) The removal of vegetation for fence construction must be undertaken with hand tools only (e.g. brushcutters, lawn mowers), and must be limited to a maximum width of 1 metre.

- d) No clearing of native vegetation for construction of fences is permitted within E2 / Riparian> zoned land.
- e) Construction of fences within RU2 / RU1 to RU4 zoned land is subject to the provisions and regulations of the Local Land Services Act 2013.
- f) Canopy trees must not be removed for fence construction.

**Reason:** To protect biodiversity values.

## 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.

**Please Note:** This approval for a 2-lot subdivision under Clause 4.2B (3) (c) of the Shoalhaven Local Environmental Plan 2014 has now exhausted the ability for further subdivision of the subject land.