

DATE OF DETERMINATION	15 June 2023
DATE OF PANEL DECISION	15 June 2023
DATE OF PANEL MEETING	7 June 2023
PANEL MEMBERS	Chris Wilson (Chair), Doug Lord, Susan Budd
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 5 June 2023.

MATTER DETERMINED

PPSSTH-102 – Shoalhaven - RA21/1000 at Lot 1 DP 1184790 at Terara Rd Terara (located on Pig Island), Lot 2 DP 1184790 at Terara Rd Terara (located on Pig Island), Lot 3 DP 1184790 at Terara Rd Terara (located on Pig Island), Lot 4 DP 1184790 at Terara Rd Terara (located on Pig Island), Bed of Shoalhaven River below the Mean High Water Mark – Extractive Industry (Sand Mine – Terara Shoalhaven Sands) – Proposed extension to approved dredge area (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

REASONS FOR THE DECISION

The panel determined to approve the application for the reasons outlined in the council's amended assessment report subject to amendments to the recommended conditions as discussed below. Notably, the Panel was satisfied that:

- The DA had addressed the Secretary's Environmental Assessment Requirements (SEARs);
- The prerequisites for the grant of consent had been met;
- The matters raised by the Panel at its meeting of 16 May 2023 had been satisfactorily addressed as discussed below;
- A thorough assessment in terms of Section 4.15 of the *Environmental Planning and Assessment Act, 1979* had been undertaken; and
- The development would provide for the continued supply of an important source of coarse river sand for the construction and landscaping industries and was deemed to be in the public interest.

The panel initially deliberated on the matter on the 16 May 2023 and agreed unanimously to defer the determination to allow Council to prepare an updated assessment report and amended draft conditions of consent to address/provide the following matters:

- A summary of key supporting documents, and their key conclusions, which have been considered and relied on in the assessment;
- A summary of all relevant matters for the Panel to consider when satisfying itself of a particular matter as a precondition to the grant of consent;
- A summary at the end of the report identifying how each of the environmental impacts of the development have been assessed and why these impacts are considered satisfactory with a specific focus on:
 - Flooding
 - Geomorphology
 - Biodiversity – marine and land flora and fauna

- Water quality.
- Background information which:
 - details how the proposed development differs from the development as originally proposed
 - Discusses how the dredge area was determined
 - Includes a plan identifying the initial submitted dredge area versus the amended dredge area (in ha).
- Further details:
 - On the environmental impacts of silt and mud settling in areas where sand has been extracted
 - On the bait collection assessment in particular a description of why impacts are acceptable
 - Confirming the edge areas of the extraction area including confirmation that the batter edges do not encroach on the intertidal zone.
- Clarification of the following matters in relation to permissibility of the development:
 - Existing use rights – further address ‘land’ and ‘expansion’ and how the application satisfies s164 of the EPA Act
 - Objectives of the W2 zone – addressing each objective in detail
 - Review of the project against the provisions of the Resources SEPP.
- Consideration of the supplementary information provided in relation to flooding;
- A review of the matters raised in the late community submission received on 11 May 2023; and
- Further detail regarding the appropriate length of time that extraction should occur noting the likely changes in the receiving environment over an extended period.

Timeframe of Development Approval

At its meeting of 16 May 2023, the Panel questioned the extraction rate (100,000 tpa) and the timeframe for extraction (30 years) being sought by the Applicant. The Panel requested that Council address this issue in its amended assessment report and any subsequent changes to the recommended draft conditions of consent.

In response, Council noted:

“The Applicant has advised that the proposed dredge would provide a sand extraction supply for a period of 30 years – however based upon the reduction in the dredge area from 26 ha to 10.5 ha (close to half) and the maximum extraction rate – it is considered that an approval time limit of 15 years is appropriate.”

The Applicant in response to Council’s recommended draft conditions of consent advised that:

‘As to clause 27 (b), which stipulates a 15-year timeframe, we ask that this be removed or at least be extended to 30 years. In all of our discussions to date, as well as the presentation to the elected councillors, a time frame to cease dredging has never been raised or discussed. In fact the presentation made by Mitchell Mc Cormac at council chambers on Monday 24th April and indicated in the Dredging Plan stated that this operation would supply sand to the local area for 30 years.

Our licence is for 100,000 tonnes per year and is linked to the strength of the construction industry, accordingly extraction rates vary from 17,600 tonne to over 80,000 tonne per year. Our request is based on the fact, from the actual annual production rates noted in the royalty schedule, that since the 2014/2015 year the average annual production rate has been around 37,000 tonnes. We also note that the method of extraction or processing will not change and as such this figure is a current and realistic. Accepting that the approximate volume of sand to be won from the proposed expansion area is 990,000 tonnes by simple calculation it will take some 27 years to extract’.

While the Panel agrees with Council’s conclusion relating to the timeframe, the Panel’s primary concern is that insufficient information has, or can be provided to identify with any certainty the impacts of the development over the extended timeframe. The Panel acknowledges that this is difficult given the nature of the receiving environment. The Panel further acknowledges that an adaptive management approach is appropriate in the short term. However, given the lack of certainty regarding long term impacts, the Panel cannot satisfy itself that an adaptive management approach would be appropriate in the longer term. The

Panel therefore considers that a precautionary approach should be adopted and consequently supports Council's recommended limit on the development of 15 years.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

CONDITIONS

The Development Application was approved subject to the conditions in the updated Council Assessment Report, attached as Schedule 2, with the following amendments:

- The inclusion of a new deferred commencement condition which specifies the mechanism for measuring the type and volumes/quantity of material extracted on a per annum basis. (How and what is measured);
- Part K amended to include Reasons for the limitation on the time frame – the consent authority could not be satisfied that the impacts could be identified with sufficient certainty beyond 15 years;
- Conditions 8 and 9 amended to include the date reference of the relevant documents;
- Amend condition 28 (a) to read:
Record/log of all complaints made for the period as outlined in condition 29 Recording of Complaints below;
- Condition 28 (b) amended to specify as annual and daily; and
- A new condition requiring development to be carried out in accordance with the Acid Sulphate Soil Management Plan required by Condition 14.

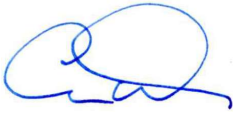
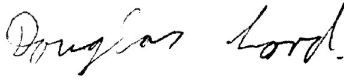
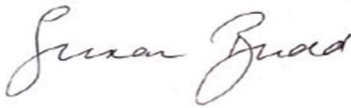
CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. Further issues were raised in a late submission received on 11 May 2023.

The Panel notes that issues of concern included:

- Water quality impacts;
- Flood afflux upon Lower Shoalhaven Floodplain communities;
- Significance of impacts upon threatened species of migratory shorebirds and the 'Swamp Oak and Salt Marsh' Endangered Ecological Community (ECC);
- Management of the coastal environment;
- Long-term scouring and bank erosion impacts upon the Terara Levee;
- Acid sulfate soils – impacts;
- Impacts on commercial and recreational fishing;
- Impacts of the spoil/waste on the island;
- Visual Impact of the waste piles from Terara;
- Terara Heritage Conservation area; and
- Unauthorised activities.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report. The Panel notes that in addressing these issues various studies have been carried out to assess the impacts of the proposal, and where relevant, conditions of consent imposed to address residual issues.

PANEL MEMBERS	
 Chris Wilson (Chair)	 Doug Lord
 Susan Budd	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-102 – Shoalhaven - RA21/1000
2	PROPOSED DEVELOPMENT	Extractive Industry (Sand Mine – Terara Shoalhaven Sands) – Proposed extension to approved dredge area
3	STREET ADDRESS	The following parcels of landform the subject site: <ul style="list-style-type: none"> • Lot 1 DP 1184790 at Terara Rd Terara (located on Pig Island) • Lot 2 DP 1184790 at Terara Rd Terara (located on Pig Island) • Lot 3 DP 1184790 at Terara Rd Terara (located on Pig Island) • Lot 4 DP 1184790 at Terara Rd Terara (located on Pig Island) • Bed of Shoalhaven River below the Mean High-Water Mark
4	APPLICANT/OWNER	Applicant: SAM 8888 Pty Ltd C/- Ernest Panucci Owner: Burruga Island Pty Ltd (Lots 1-4 DP 1184790), Department of Planning & Environment – Crown Land (Bed of the Shoalhaven River below the mean high water mark)
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - extractive industry
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Planning Systems) 2921 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ Shoalhaven Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Shoalhaven Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Clause 23 (6) and Schedule 3, section 26 • Coastal zone management plan: Coastal Environment Area and Coastal Use Area within SEPP (Resilience and Hazards) 2021 • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 26 April 2023 • Updated Council assessment report: 5 June 2023 • Late submission from member of the public: 11 May 2023 • Written submissions during public exhibition: 3 • Total number of unique submissions received by way of objection: 3
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 9 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Doug Lord ○ <u>Council assessment staff</u>: Justin Lamerton, Rebecca Lockart, Andre Vernez ○ <u>Other</u>: Amanda Moylan (DPE), Verity Rollason (DPE)

		<ul style="list-style-type: none"> • Site inspection: 3 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Doug Lord ○ <u>Council assessment staff</u>: Justin Lamerton ○ <u>Applicant</u>: Steve McCormac & Mitchell McCormac (Terara Sands) ○ <u>Other</u>: Verity Rollason (DPE) • Council Briefing: 3 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Doug Lord ○ <u>Council assessment staff</u>: Justin Lamerton, Rebecca Lockart ○ <u>Other</u>: Verity Rollason (DPE) • Final briefing to discuss council's recommendation: 16 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Doug Lord, Susan Budd ○ <u>Council assessment staff</u>: Justin Lamerton, Rebecca Lockart, Alexander Aronsson, Ben Coddington ○ <u>Applicant representatives</u>: Ernie Panucci, Jeffrey Fulton (Martens), Max de Beer, Daniel Dhiacou (Martens), Chris Gippel (Flicks Systems), Mitchell McCormac, Steve McCormac, Jason Wasiak. ○ <u>Other</u>: Amanda Moylan (DPE) • Final briefing to discuss council's updated recommendation: 7 June 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Doug Lord, Susan Budd ○ <u>Council assessment staff</u>: Justin Lamerton, Rebecca Lockart, Cathy Bern ○ <u>Other</u>: Amanda Moylan (DPE)
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council updated assessment report

SCHEDULE 2

DRAFT CONDITIONS:

The conditions of consent and reasons for such conditions are set out as follows:

DEFERRED COMMENCEMENT

Pursuant to s 4.16(3) of the *Environmental Planning and Assessment Act 1979*, the applicant must satisfy the following deferred commencement condition of consent prior to this development consent becoming operative:

a) Biodiversity Adaptive Management Plan

A Biodiversity Adaptive Management Plan must be prepared by a suitably qualified ecological consultant and be submitted to the Council for approval.

The plan must, as a minimum:

- i) Elaborate on the commitments made in the approved *Letter of Undertaking relating to an Adaptive Management Strategy* prepared by Lodge Environmental, dated 17th February 2023.
- ii) Address all items listed in Section 8.4 and Section 8.5 of the Biodiversity Assessment Method (DPIE, 2020).
- iii) Review management actions and monitoring required by Conditions 32 and 44 of DS15/1297 and incorporate these into the Plan.
- iv) Set clear objectives and measurable performance indicators for management and monitoring.
- v) Define the study area.
- vi) Describe the activity and current baseline conditions of the study area.
- vii) Identify links to legislation, other plans and documents.
- viii) Describe the threats and processes that influence the objectives with reference made to biodiversity values identified by Council (Environmental Assessment Officer referrals 1 and 2, as well as DPE's Biodiversity Conservation Division referral and DPIE Fisheries GTA).
- ix) Detail all management actions to be considered and how these will be implemented. Management actions must include education to all contractors and workers.
- x) Describe how the management actions and monitoring program will achieve objectives. Monitoring must include observational techniques (such as systematic bird point counts, photo-point monitoring and GPS vegetation mapping) as well as assessment of modelling (such as preparation of bathymetric maps).
- xi) Monitoring to assess of the effectiveness of management actions.
- xii) Describe the responsibilities and detail who will carry out the implementation and monitoring plans.
- xiii) Detail the procedure to analyse and evaluate monitoring data against measurable performance indicators.
- xiv) Provide procedures to respond and adapt management actions and monitoring if performance indicators are exceeded.

A summary of the results of the implementation of the above must be provided to Council as part of the six-monthly Audit to continue operation of the approved works. If the six-monthly Audit report is not provided, all works must cease.

b) Adaptive Management Plan – Geomorphology

An Adaptive Management Plan – Geomorphology must be prepared by a suitably qualified consultant and be submitted to Council for approval.

The plan must, as a minimum:

- i) Elaborate on the commitments made in the approved *Letter of Undertaking for an Adaptive Management Strategy – Geomorphology* prepared by Fluvial Systems, dated 27 February 2023.
- ii) Be developed in collaboration with Shoalhaven City Council and the NSW Department of Planning and Environment.
- iii) Set clear purpose and objectives to avoid significant impact to geomorphic processes and forms in the Lower Shoalhaven River. This includes but is not limited to the existing P1L1 Riverview Road and P1L2 Terara flood levees.
- iv) Detail performance measures and specific measurement methodologies for monitoring. This will include but not be limited to regular river bed and bank surveys undertaken by a registered suitably qualified surveyor or independent person with the appropriate skillset.
- v) Detail frequency of monitoring and reporting.
- vi) Define the study area and monitoring extent.
- vii) Describe the activity and current baseline conditions of the monitored area.
- viii) Define triggers for the adaptive management strategy and outline relevant response mechanisms. This includes the immediate cessation of extraction if these triggers are reached or exceeded

c) Flooding – Filling within High Hazard Floodway Areas

A professional engineer, (as defined in the National Construction Code) must submit for approval by Council, evidence that the following item is detailed on the relevant plans:

- i) All proposed filling is kept outside of areas mapped as High Hazard Floodway in the Lower Shoalhaven River Flood Study (Cardno, 2022) for the 2050 scenario 1% AEP event.
- ii) Detail must be provided confirming that batters associated with the livestock fill mounds are also retained outside the High Hazard Floodway in the Lower Shoalhaven River Flood Study (Cardno, 2022) for the 2050 scenario 1% AEP event.

Evidence that will sufficiently enable Council to be satisfied as to the compliance of these matters must be submitted to Council within 12 months of the date of determination of this deferred commencement consent, failing which, this deferred development consent will lapse pursuant to s 4.53(6) of the *Environmental Planning and Assessment Act 1979*.

This development consent will not become operative until such time that the Council notifies the applicant in writing that the requirements of deferred commencement have been satisfied.

PART A: GENERAL CONDITIONS

1. General

The consent relates to Extractive Industry (Extension to existing Sand Mining Extraction Area) 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
Proposed Extraction Area Plan	RA21-1000-1	Mac Drafting	27.02.2023
Letter of Undertaking – Adaptive Management Strategy – Geomorphology	-	Fluvial Systems	27.02.2023
Letter of Undertaking – Adaptive Management Strategy – Biodiversity	LE1637	Lodge Environmental	17.02.2023
Estuarine & Surface Water Quality Monitoring Plan	P1806743JR05V04	Martens Consulting Engineers	Feb 2023
Rehabilitation Management Plan	P1806743JR08V01	Martens Consulting Engineers	April 2019

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](#), Division 2 Subdivision 1, 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. Dredging Area

Dredging of sand must occur at all times within the approved extraction area depicted on the approved Extraction Area Map prepared by Mac Drafting.

5. Waste Management Plan

A Waste Management Plan (WMP) must be prepared in accordance with Chapter G7 of Shoalhaven Development Control Plan 2014 and submitted to Council for approval prior to works commencing, including but not limited to the method of disposal for the following waste streams:

- a) Fines, water slurry, spilt diesel, used oils, motor parts, packaging containers / cardboard / timber, office paper, mixed wastes (from sediment won), and shells.

6. Biodiversity Habitat – Intertidal Sandflats

This approval allows for the removal of up to 2.09 ha of isolated intertidal sandflats in Zone 1 shown on the approved plans and assessed in the *Letter of Undertaking relating to an Adaptive*

Management Strategy prepared by Lodge Environmental, dated 17 February 2023. This approval does not allow for any works in the area referred to as Zone 2 on the plans.

7. Biodiversity Habitat – Native Vegetation and Habitat on Pig Island

The removal and/or disturbance of native vegetation and habitat on Pig Island is not permitted with this consent. Native vegetation includes canopy trees, understorey and groundcover vegetation. Any activities on Pig Island must be completed in accordance with the approved plans.

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

8. Department of Primary Industries (Fisheries)

The General Terms of Approval issued by the Department of Primary Industries, Reference No: DOC21/860087-35, dated 25th November 2022. Fisheries are included as conditions of this consent and must be complied with.

9. Environment Protection Authority

The General Terms of Approval issued by the Environment Protection Authority, (Reference No: IDA21/131, dated 14th December 2022) are included as conditions of this consent and must be complied with.

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

10. Runoff and Erosion Controls

Prior to the commencement of site works, runoff 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 runoff 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.

11. Biodiversity Adaptive Management Plan – Prior to Works

Prior to the commencement of works, the pre-commencement or baseline measures specified in the approved Biodiversity Adaptive Management Plan must be implemented.

12. Project Ecologist – Engagement

Prior to the commencement of any work, a suitably qualified and licensed ecological consultant must be engaged to guide management actions and undertake monitoring required by the Biodiversity Adaptive Management Plan. Evidence of engagement must be submitted to Council.

13. Tree and Vegetation Protection – Pig Island and surrounds

The following requirements must be observed to enable protection of trees and vegetation on Pig Island:

- a) Stock mounds must be located outside areas of native vegetation.
- b) Prior to the commencement of any works the developer must physically mark out the boundary of the proposed stock mounds and areas where spoil is stored.
- a) Best practice sediment and erosion control measures must be in place prior to the deposition of any spoil material.
- d) Only existing roads can be used to transport spoil material across Pig Island. The establishment of new roads or access is not permitted by this consent.

14. Acid Sulfate Soil Management Plan (ASSMP)

An Acid Sulfate Soil Management Plan (ASSMP) must be developed specifically addressing excavation of acid sulfate soil, or potential acid sulfate soils by a qualified environmental consultant with experience in the assessment of acid sulfate soils. The report must be submitted to Shoalhaven City Council's Environmental Health Unit for review and acceptance.

15. Flood Emergency Evacuation Plan

Prior to the commencement of dredging works, a flood emergency evacuation plan must be prepared by a suitably qualified consulting engineer and submitted to Shoalhaven City Council. The plan must identify how the operator will inform themselves of potential flood warnings and the range of actions to be implemented by the applicant prior to a flood occurring including but not limited to:

- a) Storing of potential chemicals and fuels above flood levels;
- b) Flood evacuation procedures;
- c) Securing or relocation of machinery and the like to make sure they won't become floating debris.

16. Crown Land Licence

Prior to the commencement of dredging works, a new licence must be issued by NSW Crown Lands to cover the extraction area approved by this development consent. A copy of the new Crown Lands Licence must be provided to Shoalhaven City Council within 1 month of it being issued.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

NIL

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

NIL

PART F: DURING WORKS

17. Hours for Construction (as opposed to Operational hours in Condition 35(a))

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.

18. 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 into the affected area(s) based on the nature of the discovery.
- c) 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).
- d) The Heritage NSW must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

19. Archaeology Discovered During Excavation

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

- a) All work must stop immediately in that area.
- b) Work may recommence in the affected area(s) if Heritage NSW advises that additional assessment and/or approval is not required (or once any required assessment has taken place or any required approval has been given).
- c) In accordance with the *Heritage Act 1997*, the Heritage NSW must be advised of the discovery.

20. Maintenance of Site and Surrounds

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

- b) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
The developer must maintain the approved 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:
 - 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.

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

21. Biodiversity Adaptive Management Plan

All works must be undertaken in accordance with the approved Biodiversity Adaptive Management Plan.

22. Marine Weed Hygiene Protocol

Prior to use at the site, machinery brought from another waterway is to be cleaned, degreased and serviced.

If the machinery has previously been used in a waterway where the macroalga weed *Caulerpa taxifolia* is present, the contractor shall:

- a) inspect anchors, ropes and chains for pieces of *Caulerpa*
- b) inspect diving equipment such as wetsuits, bags and other gear before and after
- a) use inspect trailers, propellers and engine intakes
- b) inspect all equipment and materials
- e) use dedicated 'wash-down' facilities where available, ensuring that vessel and equipment is thoroughly free of all matter before leaving the area
- f) collect any fragments of *Caulerpa* that may have been picked up, seal the pieces in a plastic bag and dispose of them in a bin where they cannot re-enter the waterway.

23. Working in Proximity to Sensitive Biodiversity Habitat

Workers shall be informed of their obligations and possible offences under the NSW *Biodiversity Conservation Act* and Australian *Environmental Protection and Biodiversity Conservation Act* with respect to threatened and migratory species.

All workers shall be made aware that they are potentially working in or near the habitat of threatened and migratory species, and what to do if they identify a threatened or migratory species on site, as per the approved Biodiversity Adaptive Management Plan.

24. Unexpected Finds - Fauna

If any wildlife is unexpectedly located, disoriented or injured during works, works must stop immediately, and the Project Ecologist is to make arrangements for an ecologist experienced in wildlife handling and rescue to advise and responsibly rescue and/or relocate the animal(s).

25. Parking and Storing of Equipment and Materials

The parking of machinery and vehicles or the storing of equipment or materials, soil, spoil, or rubbish, within the areas of native vegetation is prohibited.

26. Timing of Works

To protect adjoining Endangered Ecological Communities and sensitive aquatic and semi-aquatic habitats, works involving soil disturbance or deposition must not take place during heavy rainfall periods, other than work necessary to stabilise the site.

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

NIL

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

NIL

PART I: ONGOING USE OF THE DEVELOPMENT

27. Limits

The following limits apply to the approved development:

- a) The operation of the approved development must not exceed 100,000 tonnes per year.
- b) The maximum timeframe for the carrying out of the development in accordance with the terms of this consent is 15 years, measured from the date of issue of an operational approval.

Where any alteration to the above limits are proposed, it must be the subject of a separate application lodged with Council.

28. Management Audit Plan (MAP)

The consent holder/operator must submit a Management Audit Plan (MAP) relating to the operation of the approved development for the previous 12 months period to Shoalhaven City Council. The MAP must be prepared by a suitably qualified person and must be submitted within 30 days of the twelve month anniversary of the issue of this development consent and subsequently, every twelve months for the life of the development. The MAP shall address, but not be limited to, the following:

- a) Record/log of all complaints made for the period.
- b) Quantity of material produced/obtained by the plant represented as tonnes per day and tonnes per year;
- a) An assessment by a suitably qualified air quality consultant that the air quality levels comply with the NSW EPA requirements and any associated recommendations;
- b) Annual monitoring of the extent of sea grass beds in the vicinity of the dredging operations (i.e. within 25m of the outside of the buffer) with this information to be shown on the surveys discussed in point f);
- e) Annual survey of the dredging area to indicate the extent, depth and location of dredging, location of approved dredging area as well as cross sections to test assumptions relating to angle of repose and buffer slope readjustment;

- f) Annual independent auditing and reporting of compliance against consent conditions and associated license conditions (i.e. NSW EPA, Department of Primary Industries - Fisheries);
- g) Ongoing targeted monitoring during dredging operations relating to water quality impacts (including the establishment of background levels) so as to capture the spatial and temporal variability of water quality; and
- h) Details on additional measures to be implemented (including a timeframe for implementation) to address all identified issues and/or concerns, where applicable.

29. Recording of Complaints

The owner/operator must keep a legible record/log book of all complaints made to the owner/operator or any employee or agent of the business in relation to the operation of the approved use.

The record must include details of the following:

- a) The date and time of the complaint;
- b) The method by which the complaint was made;
- c) Any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
- d) The nature of the complaint;
- e) The action taken by the operator in relation to the complaint, including any follow-up contact with the complainant; and
- f) If no action was taken by the licensee, the reasons why no action was taken.

The record of a complaint must be kept for at least 4 years after the complaint was made and must be made available to Council at any time upon request.

30. Approved Adaptive Management Plan - Geomorphology

All works and activities associated with this approval must be in accordance with the approved Adaptive Management Plan – Geomorphology.

31. Approved Biodiversity Adaptive Management Plan

All works and activities associated with this approval must be in accordance with the approved Biodiversity Adaptive Management Plan.

32. Habitat Modification, Removal and Management – Pig Island

This consent does not permit removal or disturbance of native vegetation on Pig Island, including but not limited to, canopy trees, understorey and groundcover vegetation.

33. Habitat Modification, Removal and Management – Pig Island

This consent does not permit removal or disturbance to intertidal mudflats beyond the area mapped as Zone 1 in *Letter of Undertaking relating to an Adaptive Management Strategy* prepared by Lodge Environmental, dated 17 February 2023. Any dredging works beyond the extent of Zone 1 is prohibited unless development consent is granted.

34. Grasses to stabilise Refuge Mounds

To protect adjoining Endangered Ecological Communities and sensitive aquatic and semi-aquatic habitats:

- a) 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*, are to be sown.
- b) where grass is required to be sown to stabilise the refuge mounds, it must be native grasses.

35. Environmental Noise Impact Requirements

Use of the site must be in accordance with the following requirements:

- a) Operating Hours: The dredge should only be operated during day time hours as follows:
 - i) Between 7am and 6pm Monday to Saturday, and
 - ii) Between 8am and 6pm Sundays and Public Holidays.
- b) Minimum allowable distances:
 - i) The dredge should not operate any closer than 120 metres from any residential receptor location.
 - ii) Based on the proposed expansion area, this will be achieved for every residential receptor location with the exception of receptor R1 at 43 Ferry Lane, Nowra. The receptor at 43 Ferry Lane is approximately 100 metres from the southern-most boundary of the demarcated extension area, as such:-
 - A. When operating opposite this receptor, the dredge should remain at 20 metres from the southern boundary of the demarcated area at all times.

36. Maintenance – Stock Piles and Road Conditions

Monitoring of stockpiles and road conditions must be undertaken as part of the development. This must include but not be limited to:

- i. Management and monitoring of stockpiles to prevent air pollution or dust nuisance to sensitive receptors;
- ii. implementation and/or maintenance of watering systems (whether truck or sprinklers) to be utilised and allowing application of moisture to road surfaces and stockpiles;
- iii. Maintenance and/or implementation of a meteorological station.

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,
- a) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).
- b) 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 2000* 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.

DRAFT