

DATE OF DETERMINATION	21 December 2022
DATE OF PANEL DECISION	20 December 2022
DATE OF PANEL MEETING	22 November 2022
PANEL MEMBERS	Tim Fletcher (Acting Chair), Renata Brooks, Chris Wilson
APOLOGIES	None
DECLARATIONS OF INTEREST	Mitchell Nadin - Council is the Applicant

Papers circulated electronically on 17 November 2022.

MATTER DETERMINED

PPSSTH-16 – BEGA VALLEY – DA2019.359 at 371 Arthur Kaine Drive, Merimbula 2548 – Merimbula Airport Upgrade (Runway Extension). Stage 2 - construction and operation of extended runway being a further 80 metre extension of the runway pavement at both ends. (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.

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.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council Assessment Report.

CONDITIONS

The Development Application was approved subject to the draft conditions appended to the Council's Assessment Report received on the 16th November 2022 with the following amendments;

- **General Administrative Requirements**
To achieve consistency and clarity throughout the consent, any references to staging is to be as follows:
 - Where Stage A is referenced, describe as "Stage 2(A)"
 - Where Stage B is referenced, describe as "Stage 2(B)"
 - Where Stage A and B is referenced, describe as with "Stage 2 (A and B)"
- **Condition 2 – Time limited consent for Stage 2(B)**
Amend to clarify there is no ongoing limitation on the operation of the use once commenced as follows:
 2. *Time limited consent for Stage 2(B)*
The construction and commencement of the operation of Stage 2(B) must be completed within 8 years from the date of this consent.

Reason: To ensure that the proposed development is undertaken and the use is commenced in a timely matter.

- **Condition 5 – Biodiversity**

Move condition 5 to fall under the **State Agency Requirements** heading and replace as follows:

5. *Biodiversity*

The Applicant must comply with the Biodiversity Offset Strategy for works associated with Stages 2 (A and B), or as modified if the stewardship site does not gain approval.

- **Replace conditions 6-11 as follows:**

Prior to Works commencing

Ecosystem credit retirement Stage 2 (A) Haul Road

6. Prior to commencement of the removal of the Southern Haul Road, the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.

Note to Applicant

The requirement to retire credits in condition 6 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 6 must be provided to Council's Manager of Planning and Sustainability prior to the commencement of works.

Table 1: Ecosystem credits required to be retired – like for like

Ecosystem credits required to be retired – like for like Impacted plant community type	Number of ecosystem credits	IBRA sub-region
Grey Mangrove (Sth Runway) - 920	1	South East Coastal Ranges, Bateman, Bungonia, East Gippsland Lowlands, Kybayan-Gourock, Monaro and Snowy Mountains. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.

Species credit retirement Stage 2(A) Haul Road

7. Prior to commencement of the removal of the Southern Haul Road, the class and number of species credits in Table 2 must be retired to offset the residual biodiversity impacts of the development.

Note to Applicant

The requirement to retire credits in condition 7 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 7 must be provided to Council's Manager of Planning and Sustainability prior to the commencement of works.

Table 2: Credit Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA subregion
Leafless tongue Orchid <i>Cryptostylis hunteriana</i>	1	Anywhere in NSW
Sooty Oystercatcher <i>Haematopus fuliginosus</i>	1	Anywhere in NSW
Pied Oystercatcher <i>Haematopus longirostris</i>	1	Anywhere in NSW

Ecosystem credit retirement Stage 2(B) Runway extensions

8. Prior to commencement of Stage 2(B) runway extensions, the class and number of ecosystem credits in Table 3 must be retired to offset the residual biodiversity impacts of the development.

Note to applicant -

The requirement to retire credits in condition 8 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 8 must be provided to Council's Manager of Planning and Sustainability prior to the commencement of works.

Table 3: Ecosystem credits required to be retired – like for like

Ecosystem credits required to be retired – like for like Impacted plant community type	Number of ecosystem credits	IBRA sub-region
Bangalay Scrub (Nth Runway) - 659	2	South East Coastal Ranges, Bateman, Bungonia, East Gippsland Lowlands, Kybayan-Gourock, Monaro and Snowy Mountains. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.
Grey Mangrove (Nth Runway) - 920	1	South East Coastal Ranges, Bateman, Bungonia, East Gippsland Lowlands, Kybayan-Gourock, Monaro and Snowy Mountains.

		<p>or</p> <p>Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.</p>
Grey Mangrove (Sth Runway) - 920	26	<p>South East Coastal Ranges, Bateman, Bungonia, East Gippsland Lowlands, Kybayan-Gourock, Monaro and Snowy Mountains.</p> <p>or</p> <p>Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.</p>
Grey & River Mangrove (Sth Runway) - 920	8	<p>South East Coastal Ranges, Bateman, Bungonia, East Gippsland Lowlands, Kybayan-Gourock, Monaro and Snowy Mountains.</p> <p>or</p> <p>Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.</p>

Species credit retirement Stage 2(B) Runway extensions

9. Prior to commencement of Stage 2(B) runway extensions, the class and number of species credits in Table 4 must be retired to offset the residual biodiversity impacts of the development.

Note to applicant-

The requirement to retire credits in condition 9 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator. Change to note

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 9 must be provided to Council's Manager of Planning and Sustainability prior to the commencement of works.

Table 4: Credit Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA subregion
Sooty Oystercatcher Haematopus fuliginosus	34	Anywhere in NSW
Pied Oystercatcher Haematopus longirostris	34	Anywhere in NSW
Southern Brown Bandicoot Isodon obesulus obesulus	2	Anywhere in NSW
Long-nosed Potoroo Potorous tridactylus	2	Anywhere in NSW

- **Re-number conditions 12 - 30 to 10 – 28**

- **Condition 10 (former condition 12) Biodiversity Management**

Replace the reference to “the consent authority” and replace with “*Council’s Manager of Planning and Sustainability*”.

Replace the reference to “the Department of Planning Industry and Environment” with “*the NSW Department of Planning and Environment*”

- **Condition 13 (former condition 15) – Operational Noise Management Plan**

Amend to correct administrative error as follows:

An Operational Noise Management Plan shall be prepared consistent with the Merimbula Airport Master Plan 2033 or any future Master Plan for the Airport, to manage Aircraft Noise exceedances for Stage2 (B) runway extensions and be undertaken in consultation with affected closest sensitive receivers. The Operational Noise Plan shall be submitted for approval of Council’s Manager of Planning and Sustainability; implemented to ensure the safety and amenity of nearby residents and to appropriately manage any exceedances for the largest plane identified being a Boeing 737.

Reason: To manage aircraft noise associated with Stage 2 (B) runway extensions.

- **Condition 15 (former condition 17) – Details of earthworks**

Amend the condition to clarify staging as follows:

The applicant shall submit full details of earthworks associated with construction of Stage 2 (A and B), including all proposed and existing ground levels and details of any proposed retaining structures for approval of Council’s Manager of Planning and Sustainability.

- **Condition 17 (former condition 19) Excess fill to be deposited at approved site**

Replace reference to “Council” with *Council’s Manager of Planning and Sustainability*

- **Condition 20 (former condition 22)**

Replace “would” with “*must*” and “Management” with “*Control*” as follows:

20. Vehicles associated with any construction works must not be located within the Merimbula boat ramp car park at any time. Use of this area for turning of vehicles is also not permitted. An alternative ‘waiting and turning area’ must be established as part of the Traffic Control Plan.

- **Condition 22 (former condition 24)**

Amend to include additional sub-heading g) as follows:

g) details of on-site traffic management arrangements.

- **Condition 23 (former condition 25)**

Amend to clarify approval authority for permit as follows:

23. An application is to be made for a permit for dredging and reclamation and to remove or damage marine vegetation from NSW DPI Fisheries for Stages 2 (A and B). A copy of the permits and relevant provisions are to be included in the CEMP.

- **Conditions 25 and 26 (former conditions 27 and 28) – Contamination Management Plan**

Replace include for Stages 2 (A and B) at the end of the first sentence to read as follows;

The Applicant must prepare a Contamination Management Plan (CMP) as part of the Construction Environmental Management Plan for stages 2 (A and B)

Correct the spelling of sulphate throughout the condition

- **Condition 27 (former condition 29)**

Correct referenced condition to CEMP to “*condition 22*”

- **New Condition – Dilapidation Report**

Insert new condition as follows:

29. Prior to the commencement of any construction works for Stage 2(B), a dilapidation report is to be prepared and provided to Council’s Manager of Planning and Sustainability detailing all construction access points from the site onto Council managed roads for a distance of 200 metres along the designated transport route.

Any damage caused during the construction period shall be repaired to the satisfaction of Council’s Manager of Planning and Sustainability.

- **Condition 33 (former condition 34)**

Amend reference to Soil and Water Quality Management Plan to “*as required under Condition 24*”

- **Condition 40 (former condition 41)**

Remove the word “may” and replace as follows:

The only waste-derived fill material that can be received at the development site is:

- a) virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997). This should not include highly erosive or acidic soils (e.g. yellow pinch soils)*
- b) any other waste-derived material the subject of a resource recover exemption under Clause 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.*

Note: The application of waste-derived material to land is an activity that must require a licence under the Protection of the Environment Operations Act 1997 (POEO Act). However, a licence is not required by the occupier of land if the only material applied to land is virgin excavated natural material or waste-derived material that is the subject of a resource recovery exemption under Clause 51A of the Protection of the Environment Operations (Waste) Regulation 2005.

Reason: To ensure that appropriate fill is used.

- **Condition 46 (former condition 47) Construction Hours**

Replace reference to “the consent authority “ with *Council’s Manager of Planning and Sustainability*

- **Condition 50 (former condition 51) Ecology Monitoring Reports**

Replace reference to “Council “and replace with *Council’s Manager of Planning and Sustainability*




CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered previous written submissions made in relation to Stage 1. Concerns raised included:

- Biodiversity and water quality impacts
- Noise and air quality impacts
- Impacts of climate change
- Justification not adequate, including in relation to alternative sites
- Construction impacts
- Car parking and traffic

The Panel noted that no further submissions were received during the re- exhibition process.

The Panel considers that concerns raised by the community have been adequately addressed in the Council's assessment reports.

PANEL MEMBERS	
 <p>Tim Fletcher (Acting Chair)</p>	 <p>Renata Brooks</p>
 <p>Chris Wilson</p>	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-16 – BEGA VALLEY – DA2019.359
2	PROPOSED DEVELOPMENT	Merimbula Airport Upgrade (Runway Extension). Stage 2 (A and B) - construction and operation of extended runway being a further 80 metre extension of the runway pavement at both ends.
3	STREET ADDRESS	371 Arthur Kaine Drive, Merimbula 2548
4	APPLICANT/OWNER	Bega Valley Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Legislation <ul style="list-style-type: none"> • Environment Protection and Biodiversity Conservation Act 1999 • Civil Aviation Act 1988 and Civil Aviation Safety Regulations 1998 • Protection of the Environment Operations Act 1997 • Fisheries Management Act 1994 • Biodiversity Conservation Act 2016 • National Parks and Wildlife Act 1974 • Coastal Management Act 2016 • Biosecurity Act 2015 • Waste Avoidance and Resource Recovery Act 2001 • Water Management Act 2000 • Environmental planning instruments: <ul style="list-style-type: none"> • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Primary Production and Rural Development) 2019, previously SEPP 62 Sustainable Aquaculture • State Environmental Planning Policy (Koala Habitat Protection) 2020 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ◦ Bega Valley Development Control Plan 2013 • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> • Coastal zone management plan: State Environmental Planning Policy (Coastal Management) 2018 • 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: 16 November 2022 • Written submissions during public exhibition: 2 submissions previously received and addressed under Stage 1 determination • Total number of unique submissions received by way of objection: 1 submission previously received as an objection and addressed under Stage 1 determination

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Tuesday, 10 November 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher ○ <u>Council assessment staff</u>: Mick Fallon, Mark Fowler, Lauren Rose, Jasmine Tranquille ○ <u>Other</u>: Michelle Burns, Amanda Moylan • Briefing: Tuesday, 12 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher ○ <u>Council and DPIE assessment staff</u>: Mark Fowler, Keith Tull • Site inspection: 30 November 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (A/Chair), Chris Wilson ○ <u>Council assessment staff</u>: Mark Fowler, Keith Tull ○ <u>Applicant representatives</u>: Jenny Symons, Project Manager Merimbula Airport, Alex Warren – Project Engineer – Symal Infrastructure, Jace Brown – Project Engineer – Symal Infrastructure ○ <u>Other</u>: Sung Pak (DPE) • Site inspection: 5 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks ○ <u>Council assessment staff</u>: Rob Quick ○ <u>Applicant representatives</u>: Jenny Symons, Daniel Djikic • Determination of Stage 1 and deferral of Stage 2: 7 May 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher ○ <u>Council assessment staff</u>: Mark Fowler, Derek Van Brecht ○ <u>Other</u>: Sung Pak (DPE) • Briefing: 11 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (Acting Chair), Renata Brooks, Chris Wilson ○ <u>Council assessment staff</u>: Mark Fowler, Derek Van Brecht ○ <u>Other</u>: Sung Pak (DPE) • Final briefing to discuss council's recommendation: 22 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (Acting Chair), Renata Brooks, Chris Wilson ○ <u>Council assessment staff</u>: Mark Fowler ○ <u>Applicant representatives</u>: Jennifer Symons (Project Manager BVSC), Daniel Djikic (Manager Project Development BVSC), <u>Other</u>: Amanda Moylan (DPE)
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report