

## NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION DEVELOPMENT CONSENT

Environmental Planning and Assessment Act, 1979  
RA22/1003

### TO:

Shoalhaven City Council

### being the applicant(s) for RA22/1003 relating to:

McIntosh Street, Shoalhaven Heads - Lot 7005 DP 1075719

### APPROVED USE AND OR DEVELOPMENT:

Coastal protection works including modification of an existing rock revetment structure to ameliorate the end effect erosion

### DETERMINATION DATE:

Pursuant to the Section 4.18 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

### CONSENT TO OPERATE FROM:

### CONSENT TO LAPSE ON:

*This consent is valid for five years from the date hereon.*

*In accordance with Section 4.53 of the Act, development consent for the use of the land or the erection of a building does not lapse if building, engineering or construction work relating to the building or work or the use is physically commenced on the land to which the consent applies before the lapse date.*

### DETAILS OF CONDITIONS:

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

## PART A: GENERAL CONDITIONS

### 1. General

The consent relates to **Coastal Protection Works** 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
Eastern End Plan	Drawing No. PA2559-RHD-00-DR-MW-1000	Royal Haskoning DHV	05/05/2022 (Revision A)
Eastern End Sections Sheet 1	Drawing No. PA2559-RHD-00-DR-MW-1101	Royal Haskoning DHV	05/05/2022 (Revision A)
Eastern End Sections Sheet 2	Drawing No. PA2559-RHD-00-DR-MW-1102	Royal Haskoning DHV	05/05/2022 (Revision A)
Eastern End Sections Sheet 3	Drawing No. PA2559-RHD-00-DR-MW-1103	Royal Haskoning DHV	05/05/2022 (Revision A)
Stage 2 Works - Site Plan	Reference No. 5490_41	Shoalhaven City Council	30/08/2022 (Issue 02)
Statement of Environmental Effects	-	Shoalhaven City Council	06/2022 (Version 1.6)
Coastal Management Advice: 68-86 River Road, Shoalhaven Heads	Reference No. 2021/24	UNSW Water Research Laboratory	21/02/2022
Potential Acid Sulfate Soil Assessment Report	Project No. ENRS0627	Environment & Natural Resource Solutions (ENRS Pty Ltd)	18/07/2019
Asbestos Management Plan - River Road Foreshore, Shoalhaven Heads NSW	Reference No. 19022_SCC_RRFSH_AMP_R2	Opterra	13/06/2019 (Revision R2)

*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. Approved Works Only**

This approval only relates to works shown as proposed rock armour (concealed and exposed) as shown on the approved Site Plan referenced in Condition 1 of this consent.

This approval does not include sand / beach nourishment works and Marine sands material source (including Haulage Route).

**4. Staging**

The proposed rock armour (concealed and exposed), which forms part of this approval, is required to occur concurrently with works related to sand / beach nourishment works in accordance with the *Coastal Management Advice: 68-86 River Road, Shoalhaven Heads (UNSW Water Research Laboratory, February 2022)*.

Note: As per Condition 3 of this consent, sand / beach nourishment works do not form part of this consent and therefore subject to a separate planning approval pathway.

**5. Statement of Commitment – Mitigation Measures**

The mitigation measures referenced on pages 52 – 58 of the Statement of Environmental Effects (SEE) by Shoalhaven City Council (Version 1.6, dated June 2022), must be implemented. To demonstrate compliance with these measures, reports inclusive of photos must be submitted to Council's Development Services at the following milestones:

- a) Prior to commencement of works; and
- b) During works.

The reports may be in table format reflecting the commitments listed in the SEE.

## **PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS**

**6. Department of Primary Industries (Fisheries)**

The conditions of the General Terms of Approval issued by DPI Fisheries, Reference No. IDA22/77, dated 1 August 2022, are included as conditions of this consent (as attached) and must be complied with.

## **PART C: PRIOR TO THE COMMENCEMENT OF WORKS**

**7. Construction Certificate**

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

**8. Appointment of Principal Certifier**

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

**9. Notice of Commencement**

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

**10. Coastal Protection Works Management Plan**

The applicant must prepare a Coastal Protection Works Management Plan (CPWMP) for the area comprising the rock revetment structure and sand nourishment.

The primary objective of the plan is for the management and maintenance of the rock revetment structure, rehabilitation of the embankment and beach, regeneration of native vegetation and weed management.

The CPWMP is to detail a monitoring program including a list of quantifiable performance indicators to provide a means of measuring the status and progress of management actions. These performance indicators are to be assessed at six-monthly intervals and detailed in monitoring reports for the duration of the geobag structure. In preparing and implementing the CPWMP the following are to be addressed:

- a) the site must be regularly monitored for signs of erosion in front of and beside the rock revetment structure;
- b) any end effect is repaired with beach nourishment and then stabilised and maintained when it is safe to do so;
- c) A revegetation methodology, including a list of species to be planted during rehabilitation works and measures to ensure their survival;
- d) A weed control methodology that includes a list of weed species presently occurring on the site, as well as those with the potential to invade the site, and specific control strategies for each weed species;
- e) A report on the regular monitoring and the progress of implementing the CPWMP every six months for the duration of the rock revetment structure.

**11. Waste Management**

A Waste Management Plan (WMP) must be prepared for the clearing and excavation works in accordance with Chapter G7, Shoalhaven Development Control Plan 2014. The WMP must be approved by Council prior to the commencement of any works.

**12. Toilet Facilities - Temporary**

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

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

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

### 13. Dilapidation Report

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

The dilapidation report must consider the impact of any excavation work that extends below the level of the base of the footings of any structure within 0.9metres of the shared boundary.

Before works commence, a copy of the dilapidation report must be provided to the Certifier and Council. The dilapidation report will be the benchmark for necessary repairs to damage caused during the development works. All repairs must be completed by the developer at the developer's cost.

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

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

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

### 14. Site Management

A Site Management Plan (SMP) must be prepared for the approved works, addressing hours of work, parking of vehicles and equipment and security arrangements. The SMP must be approved by Council prior to the commencement of any works.

The controls in the SMP must be maintained at all times and a copy of the SMP must be made available to the Principal Certifier on request.

## PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 15. Evidence

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

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

NIL

## PART F: DURING WORKS

### 16. **Tree Management**

All trees onsite are to be managed as per Australian Standards AS4970 – 2009 Protection of trees on development sites.

17. Tree Protection Zones (TPZ's) are to be installed under the guidance of an independent Project Arborist AQF Level 5 or higher (as per the AS4970 – 2009). The TPZ's are to be in place before site works begin. The Project Arborist can adjust the TPZ's to suit site works as required. Compliance certification must be provided to Council upon installation.

18. If any excavation is to be undertaken within the TPZ of a tree, Council must be notified, and the Project Arborist must be onsite for the duration of these works.

### 19. **Acid Sulfate Soils**

Excavation of acid sulfate soils, or potential acid sulfate soils must be carried out in accordance with the approved Acid Sulfate Soils Management Plan (ASSMP) to the satisfaction of the Certifier. Excavated material must be treated on site in accordance with the ASSMP or taken to an approved waste disposal facility.

### 20. **Asbestos – Unexpected Finds**

If asbestos is encountered during excavation and/or construction works, this is to be managed in accordance with the approved Asbestos Management Plan.

### 21. **Aboriginal Objects Discovered During Excavation**

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

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

### 22. **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.

## 23. **Waste Management Plan**

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

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

## 24. **Maintenance of Site Surrounds**

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

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
- d) The developer must maintain the approved erosion and sediment control measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.
- e) During construction:
  - i) all vehicles entering or leaving the site must have their loads covered, and
  - ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- f) At the completion of the works, the work site must be left clear of waste and debris.
- g) Public Safety and Protection of Public Property
- h) The site/area where works are being undertaken is to be fenced in accordance with SafeWork NSW requirements prior to the commencement of works, suitable for keeping members of the public and unauthorised people out.

## 25. **Hours of 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.

**26. Dilapidation Report – Evidence**

Following the completion of works, 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.

**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**

NIL

**PART J: OTHER COUNCIL APPROVALS AND CONSENTS**

NIL

**PART K: REASONS FOR CONDITIONS**

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

**Statutory requirements**

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

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

**Public notification**

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 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.

### **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.

## **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](http://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.

**SIGNED** on behalf of Shoalhaven City Council:

Andre Vernez  
Shoalhaven City Council  
Submitted via Planning Portal

Re: RA22/1003, CNR-42748 – Modification of existing rock revetment structure and beach nourishment works – River Road, Shoalhaven Heads (adjacent to Lot 7005 DP 105719)

Dear Mr Vernez,

Thank you for your referral of this integrated development application dated 25 July 2022 to DPI Fisheries, a division of NSW Department of Primary Industries.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the *Fisheries Management Act* (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated *Policy and Guidelines for Fish Habitat Conservation and Management (2013)*. DPI Fisheries is also responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks and aquatic reserves in NSW.

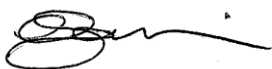
DPI Fisheries has reviewed the proposal in light of those provisions and has no objections, subject to the proponent meeting the General Terms of Approval (GTAs) that follow. As per s.4.47(3) of the *Environmental Planning and Assessment Act 1979*, any consent issued by Council must be consistent with these GTAs.

1. The proponent must apply for and obtain a Part 7 permit for dredging and reclamation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: <https://www.dpi.nsw.gov.au/fishing/habitat/help/permit>; and
2. The works are to be conducted consistent with the *Statement of Environmental Effects: River Road Foreshore Management – Coastal Protection Works* (Version 1.6, June 2022, Shoalhaven City Council); and
3. Environmental safeguards (silt curtains, sediment fences, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms; and
4. Excavation and renourishment works located below the Highest Astronomical Tide Mark are to be undertaken only whilst the area is exposed during mid-low tide; and

5. No seagrass, mangroves, saltmarsh or other marine vegetation is to be harmed during these works, including during access to the site, installation and removal of any erosion and sediment controls, and stockpiling activities; and
6. A 5m buffer area is to be established between the edge of the adjacent seagrass bed and excavation and sand nourishment activities along the foreshore near River Road. There is to be no placement of sand, excavation of material or vehicle movements within the 5m buffer zone.

For any further information , please contact me on 4222 8342 or [carla.ganassin@dpi.nsw.gov.au](mailto:carla.ganassin@dpi.nsw.gov.au).

Sincerely



**Carla Ganassin**

Senior Fisheries Manager, Coastal Systems

DPI Fisheries