

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: 2022.335 (PAN-263809)

Development: Seniors Housing Development (construction of 86 independent living units with ancillary amenities, carparking and landscaping)

Site: Lot 602 DP 1277714, 83 Lakewood Drive, Merimbula

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

Date of determination: 16 April 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 Lot 602 DP 1277714, 83 Lakewood Drive, Merimbula.

The conditions of consent are as follows:

Conditions of approval

General

1. Approved development plans

Development shall take place in accordance with the following plans, specifications and reports, except as may be amended in red on the approved plans and by the following conditions.

Plan, Specification or Report	Plan Reference and Date
Statement of Environmental Effects	HDC Planning, dated October 19. 2022
Statement of Environmental Effects Addendum	HDC Planning, dated 19 October 2022
Architectural Plans	<p>Elk Designs, Project Number 21159 Issue N dated 25 March 2024 and including the following plans;</p> <p>Site Analysis plan Issue A Drawing Number DA010</p> <p>Site Plan Issue N Drawing Number DA030</p> <p>Site Plan – Bushfire APZ and Land Zoning Issue F Drawing Number DA032</p> <p>Site Plan – Bushfire APZ and Land Zoning Issue F Drawing Number DA033</p> <p>Perspectives Issue I, Drawing Number DA040</p> <p>Perspectives Issue H, Drawing Number DA041</p> <p>Perspectives Issue C, Drawing Number DA042</p> <p>Perspectives Issue E, Drawing Number DA043</p> <p>Air Traffic Zone Perspective and Section, Issue D Drawing Number DA045</p> <p>Height Exceedance Diagrams, Issue G, Drawing Number DA050</p> <p>Wider Neighbouring Views Pg 1, Issue A, DA061</p> <p>Wider Neighbouring Views Pg2, Issue A, Drawing Number DA062</p> <p>Wider Neighbouring Views Pg3, Issue A, Drawing Number DA063</p> <p>Wider Neighbouring Views Pg4, Issue A, Drawing Number DA064</p> <p>Wider Neighbouring Views – 81 Lakewood Drive, Issue A Drawing Number DA065</p>

	<p>Basement Level, Issue I, Drawing Number DA099</p> <p>Ground Floor, Issue O, Drawing Number DA101</p> <p>First Floor, Issue N, Drawing Number DA110</p> <p>Second Floor, Issue J, Drawing Number DA120</p> <p>Third Floor, Issue J, Drawing Number DA130</p> <p>Roof Plan, Issue H, Drawing Number DA140</p> <p>Elevations, Issue O, Drawing Number DA300</p> <p>Elevations, Issue O, Drawing Number DA301</p> <p>Sections, Issue K, Drawing Number DA400</p> <p>Sections, Issue K, Drawing Number DA401</p> <p>Sections – Privacy, Issue F, Drawing Number DA402</p> <p>Section – Acoustic and Visual Privacy, Issue C, Drawing Number DA403</p> <p>External Finishes Issue C, Drawing Number DA350</p> <p>GFA – Basement Level, Issue I, Drawing Number DA810</p> <p>GFA – Ground Floor, Issue J, Drawing Number DA811</p> <p>GFA – First Floor, Issue I, Drawing Number DA812</p> <p>GFA – Second Floor, Issue I, Drawing Number DA813</p> <p>GFA – Third Floor, Issue J, Drawing Number DA814</p>
Concept Landscape Plans	GSP Co. dated November 2023
Bushfire Assessment	Peterson Bushfire, Ref: 21159, dated 30 June 2020
Bushfire Protection Report (Response to Contentions)	Peterson Bushfire, Ref: 21159, dated 22 September 2023
Biodiversity Development Assessment Report (BDAR)	EcoPlanning 2022, dated 15 September 2022
Arboricultural Impact Assessment Report	Seasoned Tree Consulting, dated 22 September 2023
Noise Impact Assessment Report	Acoustic Dynamics, dated 8 March 2024

Waste Management Plan	Elk Designs, Issued Number C, dated 16 October 2023
BASIX Certificate	<ul style="list-style-type: none"> NatHERS Certificate No 0008050440, dated 26 March 2024 by Accredited Assessor Gavin Chambers Assessor Certificate, BSA File Ref: 18766, dated 26 March 2024 by Accredited Assessor Gavin Chambers BASIX Certificate number 1329983M_02, dated 26 March 2024, Prepared by Building Sustainability Assessments
Concept Stormwater Management Report	Northrop, Ref: NL220874, dated 27 June 2022
Access Report	Lindsay Perry Access, Ref: 22113, Revision 2 dated 2 June 2022
Traffic & Parking Assessment	Intersect Traffic, dated October 2022
Visual Impact Assessment	Green Space Planning Co, dated March 2024

2. Section 100B Bush Fire Safety Authority

The applicant shall comply with the requirements of the NSW Rural Fire Service requirements dated 5 January 2023.

Note: The general terms of approval issued by the NSW Rural Fire Service are provided as an attachment to this development consent.

3. General Terms of Approval – National Parks and Wildlife Act 1974

The applicant shall comply with the requirements of the Heritage NSW General Terms of Approval dated 5 June 2023.

Note: The general terms of approval issued by Heritage NSW are provided as an attachment to this development consent.

4. Compliance with the Building Code of Australia

All building work shall be carried out in accordance with the provisions of the Building Code of Australia. A reference to the *Building Code of Australia* is a reference to that code as in force on the date the application is made for the relevant construction certificate.

5. Provide in house bus service for residents

An in-house bus service must be provided in perpetuity to transport all residents to and from local services in Merimbula at least twice per day during daylight hours.

Reason: compliance with State Environmental Planning Policy (Housing) 2021.

6. Salon General (Hair Salon)

The construction and operation of the salon shall comply with all applicable legislation and standards, including:

- Public Health Act 2010
- Public Health Regulations

7. Pool – Operating requirements

The occupier of the premises must ensure that the pool surrounds, the pool water quality, water testing records, and all aspects of operations are in accordance with the requirements of the Public Health Act 2010 and Public Health Regulations 2012, with reference to the Public Swimming and Spa Pool Advisory Document (NSW Health, 2013).

8. Accessible car parking

Car parking spaces provided for people with disabilities shall be designed and constructed to comply with requirements of AS/NZS 2890.6:2009 (Off-street parking for people with disabilities)

Note: An accessible path of travel is required from the designated car space to the principal entrance of the building.

9. Essential Energy requirements

- a. If a pad mounted substation is required as part of the development, then that pad mount substation shall be located no closer than 6 metres from any building and 30 metres from the pool. Details of the location of the substation must be provided to and approved by Council (in addition to Essential Energy) prior to installation.
- b. Any activities in proximity to electrical infrastructure must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure
- c. Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW); and
- d. It is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.

Prior to issue of Construction Certificate (Building)

10. Acoustic certification

A suitably qualified acoustic consultant shall be engaged to review the Construction Certificate plans and certify that the recommendations, as outlined in Section 5 of the Acoustic Dynamics Noise Impact Assessment, dated 8 March 2024 (the Development Application Acoustic Report) and any other conditions of consent relating to noise impact have been included in the Construction Certificate Plans. The Construction Certificate Review Acoustic Report should be provided to the PCA before any Construction Certificate is issued.

11. Noise emission from the premises shall not exceed the following noise criteria:

- a) For residents and music in and around the Communal Function Room:
 - i. Daytime (7am to 6pm) 40 dBA (with octave criteria 1 dB less than in Table 2.4 of the Acoustic Report); and
 - ii. Evening/Night (6pm to Midnight) 37 dBA (with octave criteria 2 dB less than in Table 2.4 of the Acoustic Report).
- b) For all other noise emission:
 - i. 40 dBA in the daytime (7am to 6pm); and
 - ii. 37 dBA in the evening (6pm to 10pm); and
 - iii. 35 dBA at night (10pm to 7am).

12. Planning Agreement

The Planning Agreement offered by the developer in respect of the Development Application, the subject of this consent, to construct a footpath from the Land to connect to the existing Merimbula lakefront boardwalk, must be entered into prior to the issuing of a Construction Certificate by the Accredited Certifier in accordance with Sections 4.17 and 7.7(3) of the *Environmental Planning and Assessment Act 1979*. The terms of the Planning Agreement must, thereafter, be adhered to.

13. Comply with State Environmental Planning Policy (Housing) 2021

Full and strict compliance with the provisions of State Environmental Planning Policy (Housing) 2021 as it relates to independent living units shall be achieved. Prior to the issue of any Construction Certificate, the contracted architect / designer for the project shall certify in writing that the proposed development is compliant with the Policy. Documentation to this effect is to be submitted to the Principal Certifying Authority at the time of lodgement of Construction Certificate Application.

14. Ecosystem credit retirement conditions

The class and number of ecosystem credits in Table 1 (below) relate to the area displayed in Figure 6.1 in Ecoplaning's Biodiversity Development Assessment Report (BDAR) 2022, p 52). Any changes to the area of native vegetation clearing will require further assessment and an update of the BAM Credit Calculator (BAM-C)¹ calculations. In this case, consent conditions will be updated.

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

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Plant community type(s) that can be used to offset the impacts from development
PCT 777 – Coast Grey Box – Mountain Grey Gum – stringybark moist shrubby open forest	26	South East Coastal Ranges, Bateman, Bungonia, East Gippsland Lowlands, Kybayan-Gourock, Monaro and Snowy Mountains.	Southern Lowland Wet Sclerophyll forests. This includes PCTs: 77, 1079, 1206, 1212, 1214, 1220, 1283.

in coastal gullies, southern South East Corner Bioregion		or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	
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15. Prior to issue of construction certificate, the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.
16. The requirement to retire credits in condition 15 may be satisfied by payment to the Biodiversity Conservation Fund or Biodiversity Credits Supply Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)1.
17. Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund or Biodiversity Credits Supply Fund, in satisfaction of condition 12 must be provided to Bega Valley Shire Council prior to issue of a Construction Certificate for the development.

18. Species credit retirement conditions

The class and number of species credits in Table 2 must be retired to offset the residual biodiversity impacts of the development.

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

Impacted species credit species	Number of species credits	IBRA subregion
Swift Parrot (<i>Lathamus discolor</i>)	0.4	Anywhere in NSW
Long-nosed Potoroo (<i>Potorous tridactylus</i>)	0.3	Anywhere in NSW

19. The requirement to retire credits outlined in condition 18 may be satisfied by payment to the Biodiversity Conservation Fund or Biodiversity Credits Supply Fund, of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator (BAM-C)2.
20. Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund or Biodiversity Credits Supply Fund, in satisfaction of Table 2 requirements must be provided to Bega Valley Shire Council prior to issue of construction certification.
21. Construction Environmental Management Plan

A Construction Environmental Management Plan must be approved by Council. The CEMP must meet the expectations set out in the Biodiversity Development Assessment Report, table 6.3, p55-56, and as required the conditions of this consent and must include:

- a. A statement of, and commitment to, achieve the environmental outcomes.
- b. Specific and auditable mitigation, management and monitoring measures to avoid and minimise impacts and threats to protected matters from construction activities within the development footprint including: hygiene controls (including

weed and pathogen mitigation measures), performance indicators, trigger levels, risk management, adaptive management strategies and corrective actions.

- c. Performance and completion criteria against which mitigation measures and achievement of the environmental outcomes can be assessed.
- d. Interim milestones that set targets at regular intervals for mitigation measures and environmental objectives towards achieving the performance and completion criteria.
- e. A detailed assessment of the risks to achieving the environmental outcomes and measure to be implemented to address these risks.
- f. The governance structure, including roles and responsibilities for the implementation of the CEMP.
- g. A complaint handling procedure

22. Vegetation Management Plan

A Vegetation Management Plan (VMP) must be approved by the Council's Environmental Services section. This may be included as part of a Construction Environmental Management Plan (CEMP). The VMP shall be prepared by a qualified ecologist and provide a guide for Asset Protection Zone (APZ) establishment and include measures to ensure its ongoing practical maintenance, minimise soil erosion and to protect flora to be retained.

The VMP must include the mitigation measures outlined in the Biodiversity Development Assessment (BDAR), EcoPlanning 2022, Table 6.3, p 55-56; Arboricultural Impact Assessment Report, Seasoned Tree Consultant, 2023, Sections 9 to 11, p 16 to 23 and Peterson Bushfire, "Response to Contentions" 2023, p7. The timing and responsibility will be identified for each measure.

23. Screening of plant and equipment

Details of the proposed screening of roof top ducts, air conditioning and plant equipment shall be submitted for approval by Council.

24. Colour and materials schedule

A detailed colour and building materials schedule shall be submitted to and approved by Council. The schedule shall include:

- a) External building finishes (including glazing treatments),
- b) A colour palette (including colour samples).

25. Clothes drying areas

Drying areas shall be screened from all street frontages and adjacent properties. Details shall be submitted to Council for approval.

26. Lighting plan

A Lighting Plan, prepared by a suitably qualified and experienced lighting engineer, is to be submitted to the Principal Certifying Authority in accordance with the relevant Australian Standard.

Lighting must be installed in accordance with the approved plan.

27. Fence along rear and side boundaries

Prior to occupation of the building the property shall be fenced at the developer's cost along the side eastern boundary of the subject site to a point 10 metres north of the rear carparking area, using materials that complement the proposed development. Details are to be submitted to Council for approval.

28. Detailed landscape plan by landscape architect

A detailed landscape plan shall be submitted and approved by Council. The landscape plan shall be prepared by a qualified landscape architect and shall be consistent with Council's adopted Landscaping Guidelines.

29. Engineering design plans for carparking areas

Engineering design plans for all on-site car parking, loading/unloading areas and their associated driveways shall be prepared and certified by a suitably qualified and experienced chartered professional engineer (or equivalent) and submitted to Council.

30. Details of earthworks

The applicant shall submit full details of earthworks associated with construction of the development, including all proposed and existing ground levels and details of any proposed retaining structures for approval of Council.

31. Dilapidation report – major works

Subject to the receipt of permission of the affected adjoining landowners along the eastern boundary of the subject site, dilapidation report/s, including a photographic survey of properties at are to be prepared by an appropriately qualified structural engineer prior to commencement of demolition/excavation works.

A copy of the dilapidation report/s together with accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifying Authority and Council.

The applicant/owner shall advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making a claim regarding property damage. A copy of this information shall be submitted to Council.

32. Section 138 approval for major construction works within the road reserve

An application for approval under Section 138 of the Roads Act, 1993 for works within the road reserve shall be submitted to Council for acceptance. The Section 138 application shall be accompanied by construction plans and specifications for all public engineering works within the road reserve required as part of this development consent.

These works shall be designed in accordance with Council's Development Design and Technical Specifications as current at the date of approval, and sound engineering practice.

The works shall be designed by persons holding suitable qualifications and experience for design of works of this type and current professional indemnity insurance.

Note: Evidence of the concurrence of Transport for NSW to the design of all works within any classified road (as defined in the Roads Act, 1993) must be provided to Council.

33. Section 68 approval – carry out stormwater drainage work

A separate application is required to modify or construct council owned Public stormwater infrastructure within private land. This application shall be made to council under Section 68 of the Local Government Act 1993 and must be accompanied by construction plans and specifications in accordance with the design and construction requirements specified in this consent.

34. Contractor's insurance (Public Works)

Each contractor engaged in the construction of public works (such as road work, kerb and guttering, footway construction, stormwater drainage, water supply, sewerage works and environmental controls) must provide evidence of public liability insurance (minimum \$20,000,000.00) endorsed to note the contractor and Council for their rights and interests.

35. Builders Insurance

For all building work commenced after 1 July 2024 the builder must have and hold adequate builder's indemnity insurance and submit the certificate of insurance to the Certifier for endorsement of the plans accompanying the Construction Certificate.

36. Payment of Long Service Levy

The payment of a long service levy is required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986*.

Proof of payment is to be submitted to Council.

The levy can be paid through the LSL Portal at www.longservice.nsw.gov.au

Note: The Long Service Levy is a State Government Levy, not a Council fee.

37. Construction hours

Works shall be confined to normal working hours, being 7.00am to 6.00pm Mondays to Fridays and 8.00am to 1.00pm Saturdays, (no work on Sundays or Public Holidays) and be carried out

- a) In compliance with AS 2436-2010 and the NSW Environment Protection Authority Interim Construction Noise Guidelines; and
- b) in a manner so as not to cause a nuisance (by the generation of unreasonable noise, dust or other activity) to the owners and/or residents of adjoining and adjacent properties.

Variations to the construction hours or days may be approved by the Bega Valley Shire Council on a case by case basis.

38. Access and sanitary facilities in accordance with BCA and AS1428

The plans shall demonstrate compliance for access of people with disabilities and must be provided in accordance with the requirements of the Building Code of Australia; relevant Australian Standards and with regard to the Disability Discrimination Act 1992.

Note: Disability Access to Premises Standards 2010 – As of May 2011, if access is provided to the extent covered by these standards, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

39. Erosion and sediment control plan

A Soil and Water Management Plan (SWMP) is required. The SWMP shall be prepared in accordance with the provisions of the NSW Government and Landcom, "Managing Urban Stormwater - Soils and Construction" (4th Edition 2004) and submitted for approval by the Principal Certifying Authority.

A self-auditing program must also be developed for the site. A site inspection using a Log Book must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

The self-audit must be undertaken systematically onsite (e.g. walking anticlockwise from the main entrance) and recording:

- installation/removal of any Best Management Practices (BMPs)
- the condition of each BMP employed, noting whether it is likely to continue in an effective condition until the next self-audit
- circumstances contributing to damage to any BMPs, accidental or otherwise
- storage capacity available in pollution control structures, including:
 - waste receptacles and portable toilets
 - trash racks
 - sediment barriers and traps
 - gross pollutant traps
 - wetlands/water quality control ponds
- time, date, volume and type of any additional flocculants
- the volumes of sediment removed from sediment retention systems, where applicable, and the site where sediment is disposed
- maintenance requirements (if any) for each BMP
- circumstances contributing to the damage to BMPs
- repairs affected on erosion and pollution control devices.

Completed logbook records must be maintained onsite and shall be available for inspection onsite by Council officers or officers of the NSW EPA.

All sediment control structures described on a SWMP must be operated and maintained in an effective operational condition by following good engineering practice. A maintenance program must be established that should ensure accumulated sediment does not impinge on the capacity of the settling zone up to the design storm event. Solid materials removed from sediment retention basins must be disposed of in a way that does not pollute waters.

40. Private stormwater detention (OSD) - design

Design of stormwater drainage works as necessary to limit the peak stormwater discharge from the development to not exceed calculated flow rates for this site in an undeveloped state for rainfall events of up to a 1 in 100 year average recurrence interval.

The facility shall be designed by a suitably qualified engineer in accordance with Council's Development Design Specification D5 and in conformance with recognised industry practice.

Prior to construction work commencing

The following conditions must be complied with before any building or construction work for the development commences.

41. Appoint PCA

The person having the benefit of the Development Consent and a Construction Certificate shall:

- a) appoint a Principal Certifying Authority and notify Council of the appointment (if Council is not appointed), and
- b) notify Council of their intention to commence the erection of the building (at least 2 days' notice is required).

The Principal Certifying Authority shall determine when inspections and compliance certificates are required.

42. Signs

Signs are to be provided at the front of the property or in a prominent location, and shall contain the following details: -

- owner's name, lot number and street number
- a rural address number (when relevant) provided at the entrance of the property (e.g., affixed to an entrance gate)
- signage must clearly identify the Principal Certifying Authority (PCA) and contact number
- that unauthorised entry to the work site is prohibited
- details of the Principal Contractor (i.e., the coordinator of the building work).

43. Protection of adjoining areas

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of works if the works:

- a. Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- b. Could cause damage to adjoining lands by falling objects, or
- c. Involve the enclosure of a public place or part of a public place.

44. Construction certificate must be obtained

A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing. A construction certificate certifies that the provisions of Clauses 79A-79H of the Environmental Planning and Assessment Amendment Regulations, 1998 have been satisfied, including compliance with the Building Code of Australia and relevant conditions of development consent.

45. Removal of excavated material

No excavated material is to leave the site until Council has been provided with the following information for approval:

- a) a complete list of all destination sites for the excavated material;
- b) a report providing details as to how material will be transported, so there is no dust nuisance and/or material deposited along public roads;
- c) a transport route for cartage vehicles.

46. Certificate of compliance

A Certificate of Compliance under Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* must be obtained.

47. Construction Traffic Management Plan

No work shall commence until Council has accepted a Construction Traffic Management Plan (CTMP) for the development, and the relevant Roads Authority has issued any associated Roadworks Speed Limit.

All Traffic Guidance Schemes shall be prepared by a person who is authorised by the Transport for New South Wales to prepare these plans. Evidence of Certification must be submitted.

All measures described in the CTMP shall be implemented and maintained for the duration of any work within/adjacent to the road carriageway.

48. Vegetation Clearing

Before starting any site works, the existing northern strip of vegetation (mapped in dark green in Figure 6.1, BDAR, EcoPlanning 2022), must be enclosed with protective fencing to prevent any vehicle or machinery movements into this area.

- 49. The protective fencing specified in Condition 48 must be constructed of a 1.8 metre 'cyclone chainmesh fence'. The fencing must only be removed at the completion of the construction works. Any changes to the fencing locations must be approved by the qualified on-site ecologist.
- 50. Tree protection signage is to be attached to the protective fencing, displayed in a prominent position and the sign repeated at 10 metre intervals or closer where the fence changes direction. Each sign shall contain a clearly legible form, with the following information:
 - a. Tree protection zone/ No access.
 - b. This fence has been installed to prevent damage to the tree/s and their growing environment both above and below ground. Do not move fencing or enter tree protection zone without the agreement of the on-site ecologist.

During construction

The following conditions must be complied with whilst building or construction work for the development is being carried out.

51. Vegetation protection

Construction impacts must be restricted to the development site and must not encroach into areas of retained native vegetation and habitat. All materials stockpiles, vehicle parking, machinery storage and other temporary facilities must be located on the site outside the vegetated area.

52. Qualified ecologist to be onsite during all vegetation clearing works

A qualified ecologist must be present during all vegetation clearing and will be responsible for spotting, relocating or seeking medical attention for injured or displaced wildlife during clearing.

- a. Any injured animals must be placed within a cotton bag, secured at the top, and kept in a dark place. These would be transported immediately to the closest veterinary clinic as soon as practical.
- b. Any displaced fauna would be released in adjacent habitat as soon as practical (at night for nocturnal species).
- c. Direct contact with any wildlife should be avoided wherever possible.
- d. Any uninjured wildlife must be encouraged to leave the site.
- e. If wildlife is injured, WIRES (ph. 1300 094 737) or similarly experienced personnel should be contacted to collect and treat any injured individuals. The WIRES contact number should be retained onsite by the Works Superintendent.

53. Clearing by qualified arborist

All vegetation clearing must be carried out by a qualified Arborist with a minimum of AQF level 2 in arboriculture, in accordance with NSW Work Cover Code of Practice for the Amenity Tree Industry (1998) and AS4373 Pruning of amenity trees (2007).

The arborist must conduct clearing operations in accordance with the approved Vegetation Management Plan and a copy of the report must be on site during clearing works.

Prior to the commencement of clearing, the on-site ecologist will conduct a pre-clearing survey to confirm the absence of any nesting fauna within the vegetation to be removed.

54. Tree retention and removal is to be undertaken in accordance with the Tree Retention Plan, (Seasoned Tree Consulting, 2023, Table 4, p 9-14, Table 5, p 14 and Table 6, p 14, and Tree Location and Protection Plans, Appendices 1 and 1A, p 31-32).

55. Trees for retention

Trees for retention within the Asset Protection Zone shall be marked on site with either a white tag with number or a pink or orange spot (spray paint) and shall include:

- a. 31 x White tag - *Eucalyptus botryoides* (Bangalay) and 1 x *Angophora floribunda* (Rough-barked Apple);
- b. 20 x Pink spot – *Allocasuarina littoralis* (Black She-Oak);
- c. 32 x Orange spot – *Acacia* sp. (comprising of three different species).
- d. The trees with white tags represent the highest canopy (predominantly Bangalays) and will be retained due to having bushfire compliant level of canopy separation.
- e. Tree numbers to be retained and protected are: T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, T13, T14, T15, T16, T17, T18, T19, T20, T21, T22, T23, T24, T25, T26, T27, T28, T30, T31, T32, T33, T34, T35, T36, T37, T38, T39, T40, T41, T42, W1, W2, W3, W4, W5, W6, W7, W8, W9, W10, W11, W12, W13, W14, W15, W16, W17, W18, W19, W20, W21, W22, W23, W24, W25, AL1, AL2, AL3, AL4, AL5, AL6, AL7, AL8, AL9, AL10, AL11, AL12, AL13, AL14, AL15, AL16, AL17, AL18, AL19, AL20, AL21 (total of 80 trees).
- f. Trees numbered 3, 5, 6, 7, 8, 15, 32, 34, 41, and 42 (total of 10 trees – all *Eucalyptus* species) are located to the north outside of the APZ area and must be retained.

56. Vegetation for removal

Vegetation for removal shall be limited to the following;

- a. T29 (total of 1 tree) is to be removed.
- b. 116 x small *Allocasuarina littoralis* (Black She-Oak) with a single yellow dot in the trunk and 63 x large *Allocasuarina littoralis* (Black She-Oak) with a double yellow dot are to be removed from within the APZ (total of 179 Black She-Oaks).
- c. *Pittosporum undulatum* (Sweet Pittosporum) may be removed to satisfy the requirements of the APZ.
Note: It is noted that strategic retention of some Pittosporum may act to retard bushfire intensity and must only be retained in consultation with a bushfire specialist.
- d. Dead standing trunks may be removed to ground level and any long logs may be laid lengthways along the hill sides to assist with slope stabilisation.

57. All vegetation removal works are to be undertaken by hand-held machinery such as brush-cutters and chainsaws. No vehicles or machines with wheels or tracks are permitted within, or shall remove fuels from, the APZ.

58. Trees are only to be removed to ground level and no stump grinding is permitted.

59. Felling of trees is to be done in a manner that does not impact other trees to be retained.

60. No hollow-bearing trees have been approved for removal under this application.

61. Any wounding or injury that occurs to a tree during the clearing and/or construction process will require a qualified Arborist to be contacted for an assessment of the injury and provide mitigation/remediation advice and undertake remediation work.

Note: It is generally accepted that trees may take many years to decline and eventually die from root damage.

62. Excavations and root pruning

The Arborist must supervise and certify that all excavations and potential root pruning are in accordance with AS4373-2007 and AS4970-2009. For continuous strip footings, first manual excavation is required along the edge of the structures closest to the subject trees. Manual excavation should be a depth of 1 metre (or to unfavourable root growth conditions such as bed rock if agreed by the Arborist). Next roots must be pruned back in accordance with AS4373-2007. After all root pruning is completed, machine excavation is permitted within the footprint of the structure. Manual excavation may include the use of pneumatic and hydraulic tools, high-pressure air or a combination of high-pressure water and a vacuum device. No pruning or roots greater than 30mm in diameter is to be carried out without approval of the Arborist. All pruning roots greater than 10mm in diameter must be carried out by a qualified Arborist/Horticulturalist with a minimum AQF level 3. Root pruning is to a clean cut with a sharp tool in accordance with AS4373 Pruning of amenity trees (2007). The tree root is to be pruned back to a branch root if possible. Make a clean cut and leave as small a wound as possible.

63. Mulching

Trees and shrubs removed from the Asset Protection Zone are to be removed and taken to mulching equipment located outside the fenced vegetated zone.

Tree heads or crowns, scrub and stumps should be mulched or chipped and stockpiled outside of fenced vegetated zone for erosion and sediment control within the construction zone.

64. Weed control

Ensure all vehicles/machinery entering and leaving the site are clean and weed free and that appropriate weed/pathogen hygiene practices are employed.

65. Slope Stabilisation

After vegetation removal works, low-growing groundcovers indigenous to the local vegetation community are to be planted throughout the Asset Protection Zone. The groundcovers are to prevent soil erosion by binding soils through root establishment and protecting from rain impact by introducing vegetation cover. All ground-cover revegetation works are to be undertaken in consultation with the ecologist to minimise impacts to retained vegetation.

Note: The chosen groundcover needs to be able to be maintained in a practical manner (i.e. reduced by brush-cutting) to manage ground fuel loads throughout the year.

Trunks of larger trees (i.e. Black She Oaks with DBH greater than 20 cm) that are felled can be laid on ground in locations to prevent soil erosion and assist in establishment of a groundcover.

66. Monitoring

Vegetation occurring within the first 30 meters of the eastern boundary of the subject land is to be monitored by the project ecologist to ensure it is not being directly impacts by construction for the development (e.g. establishment of the weeds, erosion and sedimentation or from earthworks). Where impacts are detected, the project ecologist must promptly prepare an adaptive management plan to avoid further impacts.

After all construction works are complete, the Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes are identified the Arborist is to promptly provide recommendations for remediation and those measures are to be implemented with approval by Council.

67. Food Premises General

The construction and operation of the Pool House kitchen/function area shall comply with all applicable legislation/regulation and standards including:

- a. *The Food Act 2003*
- b. *Food Regulation 2015*
- c. *Food Standards Australia and New Zealand – Food Standards Code 2001*
- d. *AS 4674- 2004 Australian Standards for Design, Construction and Fit out of Food Premises*
- e. *Mechanical ventilation – Australian Standard 1668.2-2012*

68. Obstacles in flight path

A minimum of 48 hours notice to the Merimbula Airport is required for the operation or placement of any obstruction into the approach surface or the transitional surface of the Merimbula airport.

Obstacles operating on the site (crane or concrete pump) shall be fitted with a strobe light on the top of the obstacle to ensure its visibility to approaching and departing aircraft.

Note: The Merimbula Airport advise that approval to operate a crane within the air space will be denied or the obstacle will be required to be removed during any period of low visibility.

69. Certification and inspection of public engineering works

All public engineering works (driveway crossover, footpaths, roadworks, stormwater works etc) must be inspected and tested by Council's inspector in accordance with Council's Development Design and Construction Specifications.

Typically, inspections are required at, but not limited to, the following stages:

- a. After placement of all signs and control measures in accordance with the approved Traffic Control Plan;
- b. After stripping of topsoil from roads and fill areas, all Soil & Water Management Plan controls shall be in place at this stage;
- c. During application of bitumen seal or asphaltic concrete wearing surface;
- d. After completion of works;
- e. As otherwise required to confirm that the works are satisfactorily executed and in conformity with environmental controls.

It should be noted that Council charges fees for inspections and certificates.

The developer will complete quality assurance testing of all public asset works in accordance with the inspection and testing plans detailed in Council's Development Construction Specifications.

Testing results shall be provided as required throughout the construction phase of the development.

70. Vehicular entrance - other

Construct vehicular entrance(s) serving Lot 602.

The vehicular entrances(s) shall be designed and constructed in accordance with Council's Standard Drawings and industry specifications.

71. Private stormwater drainage

Construction of stormwater drainage works as necessary to convey runoff from roof and paved areas of the development to public roads or Council controlled drainage systems. Any design shall be in accordance with Council's Development Specification D5, Stormwater Drainage Design and AS3500.3 – Plumbing and Drainage, Part 3.1 – Stormwater Drainage.

72. Removal of gross pollutants

Construction of a facility to reduce the volume of gross pollutants discharged downstream of the development. Pollutant retention criteria:

POST CONSTRUCTION STORMWATER MANAGEMENT TARGETS POLLUTANT RETENTION CRITERIA

- a. Suspended Solids 80% of average annual load
- b. Total Phosphorus 45% of average annual load
- c. Total Nitrogen 45% of average annual load
- d. Gross Pollutants >5mm 70% of average annual load
- e. Litter > 50mm Retention up to the 3 month ARI peak flow
- f. Oil and Grease 90% of average annual load

The above retention criteria relates to “reduction of average annual load” of stormwater pollutants that may be expected from a fully developed catchment or site.

Design of the facility shall be in accordance with Council's Development Design Specification D7.

73. Warm Water Systems - Notification

The occupier of premises at which a warm-water system is installed must notify Council using the Cooling Towers form available from the BVSC website within one month of installation.

74. Earthworks, retaining walls and structural support

- a) Any earthworks (including any structural support or other related structure for the purposes of the development):
 - i. Must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and
 - ii. Must not redirect the flow to any surface or ground water or cause sediment to be transported onto an adjoining property, and
 - iii. That is fill brought to the site – must contain only virgin excavated natural material (VENM) *as defined in Part 3 of Schedule 1 to the Protection of the Environment Operations Act 1997*, and
 - iv. That is excavated soil to be removed from the site – must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) regulation 2005*.
- b) *Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-643-785442) published in July 2012 by Safe Work Australia*

75. Copy of plans onsite

The builder must at all times maintain on the job, a legible copy of all the relevant plans and specifications bearing the stamp and development consent of Council.

76. Toilet facilities

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.

77. Dust control requirements

During Development works, dust emissions must be minimised so as not to result in a nuisance to nearby residents or result in a potential pollution incident. Adequate dust control measures must be provided prior to the works commencing and the measures and practices maintained to the satisfaction of Council.

78. Water supply construction

Construction of all water supply reticulation works and associated facilities necessary to service the proposed development. All construction shall be as per the approved design plans. Any construction must be carried out by Bega Valley Shire Council approved contractor(s) and in accordance with WSAA Codes and Australian Standards.

79. Sewer construction

Construction of all sewerage reticulation works including sewerage junction works and any associated facilities necessary to service the development. All construction shall be in accordance with the approved design plans. Any construction shall be carried out by Council approved contractor(s) and in accordance with WSAA Codes and Australian Standards.

Prior to Occupation or Use

The following conditions of consent must be complied with before occupation or use of the development and are preconditions to the issue of an occupation certificate for the development pursuant to s.6.10 of the EPA Act.

80. Acoustic compliance report

81. A suitably qualified acoustic consultant shall be engaged to inspect the completed construction and certify that the construction has implemented the recommendations of the Development Application Acoustic Report dated 8 March 2024 and any other conditions of consent relating to noise impact have been included in the construction. The Occupation Certificate Compliance inspection should include an assessment of the music noise emitting from the Pool House and Function Room to determine if the noise criteria in Condition 11 has been met under the required management controls (doors/windows open etc). The Occupation Certificate Compliance Acoustic Report should be provided to the PCA before any Occupation Certificate is issued.
- Development finished in accordance with approved colour/materials schedule

The development shall be finished in accordance with the approved colour and building materials schedule.

82. Lighting system

A lighting system shall be installed in accordance with the approved lighting plan and Australian Standard 4282 "Control of the obtrusive effects of outdoor lighting" (1997) to provide uniform lighting across the common areas and driveways.

83. Landscape works completed

- a) All landscape works shall be completed in accordance with the approved landscape plan prior to the issue of an occupation certificate
- b) The landscape works must be maintained at all times in accordance with the approved landscape plan.

84. Footpath turfed

The footpath area immediately adjacent to the site shall be planted with turf.

85. Signage for on-site parking

Signs indicating on-site parking is available must be erected so they are visible to persons driving along the street. All spaces must be suitably signposted/marked indicating their designated use. The signs shall be maintained in good condition at all times. Such signage must be located wholly within the boundaries of the subject site.

86. Follow up dilapidation report

Follow up dilapidation report/s, including a photographic survey, shall be submitted at least one month after the completion of demolition/excavation works. A copy of the dilapidation report/s, together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifying Authority and Council.

Any damage to buildings, structures, lawns, trees, sheds, gardens and the like must be fully rectified by the applicant or owner, at no cost to the affected property owner.

87. Public Engineering Works Completion Certificate

All public engineering works (driveway crossover, footpaths, roadworks, stormwater works etc) shall be constructed in accordance with the accepted construction plans, Council's Development Construction Specifications and conditions of this consent.

In this regard a Completion of Engineering Works Certificate (Compliance Certificate) must be obtained from Council prior to the issue of an Occupation Certificate.

88. Private stormwater detention facilities – construction certification

The construction of the stormwater detention facility shall be certified by a suitably qualified engineer. Evidence of this certification shall be provided to the Principal Certifier.

89. Certification – development works & levels

Council shall be provided with certification from

- a) a suitably qualified and experienced chartered professional engineer (or equivalent) confirming that the road, driveway, stormwater, and gross pollutant removal system works satisfy the specified performance and acceptance criteria.
- b) A registered surveyor certifying that each floor, ceiling and roof level is in accordance with the levels on the approved plans.

90. Works as executed plans

Council shall be provided with the following works as executed plans for all public assets constructed:

- a) A PDF copy of the construction certificate plans clearly marked up to show all variations from the approved design.
- b) AutoCAD DWG or DXF file that includes the as-built details of all works. The map projection in the drawing shall be GDA2020 zone 55 and different infrastructure elements shall be delineated into different drawing layers.

Works as executed plans must be prepared and certified by an experienced Surveyor or Professional Engineer as a complete and accurate record of the work.

91. Basement Carparking Ventilation:

Basement carparking ventilation to be constructed to AS1668:02:2012.

92. Swimming Pool Pumps:

Swimming pool pumps are to be enclosed and/or appropriately shielded to reduce pump noise such that pump noise cannot be heard in the living areas of any apartments or on any part of the adjacent premises.

93. Pool – Notification

The occupier of the premises at which the swimming pool is located must notify the local government authority using the Swimming Pool and Spa Pool details form available from the Bega Valley Shire Council website.

94. Operational Plan of Management

- a) Prior to occupation or use of any shared facilities (including the bowling green, mens shed, pool and terrace areas) an Operational Plan of Management must be prepared and approved by the Council. The Operational Plan of Management shall address hours of operation, noise mitigation measures, complaints handling procedures as a minimum.
- b) The Operational Plan of Management shall specify the management measures as detailed in Section 5 of the Acoustic Dynamics Noise Impact Assessment, dated 8 March 2024.
- c) The development must be carried out in accordance with the approved Operational Plan of Management.

95. Occupation Certificate must be obtained

An **Occupation Certificate** must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning and Assessment Act 1997* have been satisfied.

If you have obtained an Occupation Certificate that only covers part of the development a further Occupation Certificate for the whole development must be obtained within 5 years of the partial Occupation Certificate being issued.

96. Fire safety upgrade

A Final Fire Safety Certificate must be issued for the building. As soon as practicable after a Final Fire Safety Certificate is issued, the owner of the building to which it relates must:

- a) provide a copy of the certificate (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and

- b) provide a copy of the certificate (together with a copy of the current fire safety schedule) is also prominently displayed in the building.

Conditions of use / during occupation

97. Occupation of development – Seniors Housing

- a) This consent is for use of the development for the purpose of seniors housing only.
- b) At the developers cost, a restrictive covenant must be created pursuant to s88E of the Conveyancing Act 1919 restricting the occupation of the premises to:
 - i) people aged 60 or over or people who have a disability
 - ii) people who live within the same household as people aged 60 or over or people who have a disability
 - iii) staff employed to assist in the administration of and provision of services to housing provided in this development
- c) any change of use of the Development from development for the purpose of seniors housing. The covenant is to be executed and registered prior to issue of any occupation certificate for the development.

Reasons: to comply with the State Environmental Planning Policy (Housing) 2021

98. Weed maintenance

Monitor the site and treat for new weeds during construction and for at least two years after construction activities have ceased to avoid spread of introduced weeds into surrounding bushland area. This will be undertaken using a combination of hand removal, cut/scrape and painting, brush cutting and spot spraying as required.

99. Lighting of premises to be shielded

The lighting of the premises shall be shielded and directed so as not to cause annoyance to the owners or occupiers of adjoining premises or glare to motorists on adjoining or nearby roads. All lighting shall be constructed and operated in accordance with the approved lighting design, required by Condition 26

100. Maintenance of stormwater detention facility

The stormwater detention facility constructed as part of the development shall be maintained by the landowner(s) for the life of the development.

101. Maintenance of stormwater quality improvement devices (SQIDs)

The stormwater quality improvement devices constructed as part of the development shall be maintained by the landowner(s) for the life of the development.

102. Annual fire safety statement – essential fire safety – Class 2-9

The owner of a building, to which an essential fire safety measure is applicable, shall provide Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

- a) deal with each essential fire safety measure in the building premises, and
- b) be given:
 - within 12 months after the last such statement was given, or

- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

103. Noise Management

Use and occupation of the development must:

- a. be in accordance with the recommendations in the Development Application Acoustic Report; and
- b. not result in noise from the development exceeding the noise criteria in Condition 11:

Other approvals (Section 68)

104. Application to connect to existing sewer service

A separate application to obtain approval to connect to Council's sewerage system under Section 68 of the Local Government Act 1993 must be submitted to Council for approval (copy attached). A plumbing and drainage design plan is to be submitted with the application to Council.

Advisory notes

Essential Energy requirements

- a. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
- b. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.

Location of building

It is the owner's responsibility to ensure that the building is located on the correct block of land is located free of any easements/services and satisfies the necessary setbacks as specified by Council's Codes for Local Government Legislation.

Utility services

If the work requires alteration to, or the relocation of, utility services on, or adjacent to, the lot on which the work is carried out, the work is not complete until all such works are carried out.

Dial before you dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW).

If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before you dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of

care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

National Parks and Wildlife Act

The developer's attention is drawn to the requirements of the National Parks and Wildlife Act 1974 with respect to the conservation of Aboriginal archaeology.

As a landowner and/or developer you have a responsibility to not disturb or destroy any such item.

If any objects which are suspected of being Aboriginal, including human remains, are identified during development, the following procedure must be followed;

- Immediately cease all work at the particular location
- The find and the immediate area must not be unnecessarily disturbed
- The area of the find must be marked as a no-go area to ensure no inadvertent impacts occur
- Notify the Heritage NSW via the Environment Line on 131 555
- Not recommence any work at the particular location unless authorised in writing by Heritage NSW

Carparking calculations

Car parking requirements have been calculated on the basis of the specified use. Should any change of use be contemplated car parking requirements may need to be re-assessed.

Biosecurity Act 2015

All landowners should be aware of their General Biosecurity Duty under the provisions of the Biosecurity Act 2015 which states; *"any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised"*.

For information on Priority Weeds and the South East Regional Strategic Weed Management Plan contact Council's Vegetation Management Team on 6499 2222.

Change of contact details

It is the applicant's responsibility to advise Council of any changes to contact details in a timely manner. Council will not be held responsible for any lost documents, delays or missed inspections if any of the details are in any way not up-to-date. Should duplicate documents be required they will incur an additional fee in this circumstance.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact:

Telstra's Network Integrity Team on Phone Number 1800 810 443

Section 64 Contributions

- a. Section 64 of the Local Government Act authorises the Council to issue Certificates of Compliance under section 305 of the Water Management Act 2000.
- b. The development has been assessed as imposing an additional load of 22.25 ET to the water supply system and 22.25 ET to the sewerage network. The payment due will be calculated at the rate specified in Council's adopted Fees and Charges at the time of payment.