

General Terms of Approval

Notice No: 1639002



General Manager
Shellharbour City Council
76 Cygnet Avenue
SHELLHARBOUR CITY CENTRE NSW 2529

Attention: Madeline Cartwright
By email: madeline.cartwright@shellharbour.nsw.gov.au

Notice Number 1639002
File Number DOC23/993358-37
Date 05-Dec-2024

Integrated Development DA0459/2023 – General Terms of Approval
Construction of Dry Boat Workshop, Maintenance & Office Building.
Issued pursuant to Section 4.46 Environmental Planning and Assessment Act 1979

I refer to the request to the NSW Environment Protection Authority (EPA) dated 14 November 2023, requesting advice for Concurrence and Referral application (CNR-62448) for a new Boat Maintenance Facility (BMF) (the proposal), located at the Shell Cove Boat Harbour. The proposal was lodged by Australand Corporation (NSW) Pty Ltd (the applicant) on behalf of Shellharbour City Council (Council).

Environment Protection Licence No. 12426 (EPL 12426) held by Marine Holdings Australia Pty Ltd (the licensee) covers the Shell Cove Boat Harbour (the premises), including the proposed BMF.

The EPA has requested additional information on the proposal on several occasions, with the most recent EPA request dated 2 August 2024. In response to that request, the applicant provided updated information on 17 October 2024. Considering the extended process to date, the EPA provided draft conditions to the applicant on 11 November 2024 and subsequently met with the applicant, Council and the licensee on 25 November to discuss those draft conditions. The EPA has considered all the updated information and determined that it is able to issue General Terms of Approval for the proposed application. The General Terms of Approval for the proposal are provided in Attachment B.

While the EPA has provided recommended conditions, they should be viewed in context with the summary in Attachment A.

These General Terms of Approval relate to the development as proposed in the documents and information currently provided to the EPA. If the development is modified either by the applicant prior to the granting of consent or as a result of the conditions proposed to be attached to the consent, it will be necessary to consult with the EPA about the changes before the consent is issued. This will enable the EPA to determine whether its General Terms of Approval need to be modified.

If you have any questions or wish to discuss this matter, further please contact Chris Kelly on 4224 4118.

Yours sincerely

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A handwritten signature in blue ink, appearing to read 'Greg Newman', is positioned above a horizontal dotted line.

Greg Newman

Unit Head

Environment Protection Authority

(by Delegation)

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Attachment A – General Terms of Approval

GENERAL

The development must be undertaken in accordance with the Protection of the Environment Operations (POEO) Act 1997 and associated regulations as well as EPA Environment Protection Licence (EPL) 12426.

Should the development be approved the applicant will be required to make a separate application to the EPA to vary the existing licence.

NOISE

The EPA has recommended licence conditions; however, they should be viewed in context with the summary provided below.

Significant exceedances of Noise Policy for Industry (NPfI – EPA, 2017) project noise trigger levels (PNTLs) have been predicted at constructed/approved receivers and vacant lots planned for development.

The EPA acknowledges that:

- this proposal was developed as part of a precinct planning approach which made residential receivers share the burden of noise mitigation.
- the proponent has considered feasible and reasonable at-source and path mitigation.
- even with these measures in place, significant residual impacts are predicted to occur at vacant lot locations planned for development; and at receivers that have been constructed; or had their DA approved.

Noise levels at the approved/constructed receivers (Lot 1021, Lot 1022, and the Nautilus Apartments) are predicted to exceed the PNTLs by 5dB but appear to have had at-property acoustic mitigation considered in their design.

- The NIA states that Lots 1021 and 1022 have conditions in their respective Notices of Determination which require mechanical ventilation to allow windows to be closed. This receiver-based treatment correlates with example treatment outlined in the NPfI for a marginal exceedance ($\geq 5\text{dB}$ above PNTL and $<$ recommended amenity noise level).
- The NIA states that a separate impact assessment for the Nautilus Apartments included a recommendation to include 10.38mm laminated glazing with 'acoustic' seals on external facades. While this correlates with example receiver-based treatment outlined in the NPfI for a moderate exceedance ($\geq 5\text{dB}$ above PNTL and $>$ recommended amenity noise level), the NIA does not identify, or provide, a statutory instrument which requires this construction. The EPA notes that this would also require mechanical ventilation to be effective (by allowing occupants to close windows), however this has not been identified in the NIA.

The EPA notes that while these receiver-based treatments appear appropriate, it can't confirm the effectiveness of the actual implementation. If at-receiver treatment is not appropriately conditioned or implemented, there is a risk the noise impacts may not be suitably mitigated.

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The NIA has also predicted significant exceedances (8-9dB above the PNTL) at properties that the EPA understands are yet to be granted development approval (Lot 6604 and Precinct H). While the EPA can't provide noise limits for receivers which have not had receiver-based mitigation finalised, we have provided conditions to regulate on-site activities. However, Council would need to ensure appropriate receiver-based controls (i.e. façade and glazing design, mechanical ventilation) are designed, conditioned, and implemented to ensure impacts to internal spaces are mitigated.

While the EPA has recommended conditions, it has identified the following considerations.

- Predicted noise levels assume that high impact activities are only used for a short period of time (e.g. pressure blasting for only 3 minutes out of every 15 minutes). If these activities occur for longer over any 15-minute period, there is a risk that noise from the premises will exceed the noise limits.
- Mechanical plant has not been included in the NIA. The EPA acknowledges that while mechanical plant noise can often be readily mitigated through appropriate design, without assessment we cannot appropriately consider its noise impact or risk in our advice.

It is recommended Shellharbour City Council:

- determine whether the significant residual impacts at lots planned for development allow the planning intent for the area to be achieved.
- effectively manage and condition at-receiver treatment for planned developments.
- confirm the implementation of mitigation at constructed receivers to ensure that noise impacts from the premises are appropriately controlled.

These will be key in controlling impacts, as the EPA does not have a role in ensuring that receivers are appropriately approved and constructed in a manner that makes them compatible with noise producing aspects of the Shell Cove development.

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Attachment B – General Terms of Approval

Administrative conditions

Information supplied to the EPA

Except as expressly provided by these general terms of approval, works and activities **must** be carried out in accordance with the proposal contained in:

- the development application DA0459/2023 submitted to Shellharbour City Council on 3rd November 2023 (including all appendices)
- the Environmental Impact Statement for the Boatyard, 15 Maritime Drive, Shell Cove (Project No. 2190158) by Ethos Urban dated 18th October 2023
- The Boatyard DA0459/2023 Response to Request for Further Information by Ethos Urban dated 25th March 2024 (including all appendices).
- The Boatyard - Boat Maintenance Facility DA Noise Assessment (NIA) (doc ref: 256688 AC42, dated 17 October 2024).

Fit and Proper Person

1. The applicant must, in the opinion of the EPA, be a fit and proper person to hold a licence under the Protection of the Environment Operations Act 1997, having regard to the matters in s.83 of that Act.

WATER

2. Except as may be expressly provided by a licence under the *Protection of the Environment Operations Act 1997* in relation of the development, Section 120 of the *Protection of the Environment Operations Act 1997* must be complied with in, and in connection with, the carrying out of the development.
3. The applicant must ensure the premises is designed to ensure there is separation between clean and contaminated water at all times.
4. The applicant must ensure that potentially contaminated stormwater at the premises is managed in a manner that will prevent pollution of waters.
5. Contaminated water from premises work areas, including but not limited to the jet wash area, wash bays and work bays, must be discharged to sewer, unless otherwise permitted by another general condition of approval. The applicant is responsible for obtaining any required discharge approvals from the relevant Authorities.
6. Unless otherwise agreed to in writing by the EPA, the applicant must ensure that sewage and greywater, that is associated with vessels at the premises, is discharged to sewer. The applicant is responsible for obtaining any required discharge approvals from the relevant Authorities.
7. The licensee must maintain and operate a First Flush Stormwater Collection and Treatment System to manage first flush rainwater and treat water generated through vessel maintenance activities on site. The system must comprise a first flush collection, wastewater collection, and water treatment system.

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8. All records of liquid waste pump out / collections must be kept by the licensee for 3 years and be made available to the EPA on request.

Stormwater/sediment control - Construction Phase

9. An Soil and Water Management Plan (SWMP) must be prepared and implemented. The plan must describe the measures that will be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction activities. The SWMP should be prepared in accordance with the requirements for such plans outlined in *Managing Urban Stormwater: Soils and Construction* (available from the Department of Housing).

Stormwater/sediment control - Operation Phase

10. A Stormwater Management Scheme must be prepared for the development and must be implemented. Implementation of the Scheme must mitigate the impacts of stormwater run-off from and within the premises following the completion of construction activities. The Scheme should be consistent with the Stormwater Management Plan for the catchment. Where a Stormwater Management Plan has not yet been prepared the Scheme should be consistent with the guidance contained in *Managing Urban Stormwater: Council Handbook* (available from the EPA).

NOISE

Construction Activities

Hours of Construction

11. Construction work at the premises must only be conducted on:
 - Monday to Friday between 7:00am to 6:00pm;
 - Saturday between 8:00am to 1:00pm; and
 - at no time on Sundays and Public Holidays.
12. This condition does not apply to the delivery of material outside the hours of operation described, if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification is provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.
13. All works and activities must be undertaken in a manner that will minimise noise and vibration impacts on noise sensitive receivers.
14. Where a noise limit has not been prescribed, all construction works occurring on the premises must be conducted in a manner that will not cause offensive noise.

Construction Noise and Vibration Management Plan

15. A quantitative Construction Noise and Vibration Management Plan (CNVMP) must be prepared by a suitably qualified person and provided prior to the commencement of construction works. The CNVMP should be approved by Council prior to commencement of construction. The CNVMP must also include the following details:

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- a. the specific construction equipment to be used and predicted noise impacts (including concurrent operation).
 - b. all reasonable and feasible noise mitigation and management measures to minimise noise impacts to the surrounding sensitive receivers, including where required, reductions at the source, mechanical plant substitution, quieter processes, plant isolation, engineered mitigation controls, controls at the receiver, and respite periods, and
 - c. the effectiveness of proposed controls to reduce noise impacts on sensitive receivers
16. All reasonable and feasible mitigation and management measures identified to minimise noise impacts to sensitive receivers must be adopted during construction activities.

Operational Activities

Hours of Operation

17. All operational activities at the premises must only be conducted between:
- 7 am to 6 pm Monday to Saturday; and
 - 8 am to 6 pm on Sundays and Public Holidays.
18. Work on Sundays and Public Holidays must not include high noise Workshop activities.
19. Work on Sundays and Public Holidays must not include high noise activities, other than the noise associated with: the process of launching or retrieval of vessels for the Dry Boat Storage; or travel lift operation.
20. All operations at the premises must be undertaken in a manner that will minimise noise and vibration impacts on noise sensitive receivers.

Limit Conditions

21. The sound insulation performance of the Dry Boat Storage, Washbay, and Workbay walls, roof, and roller doors must meet, at minimum, the transmission loss outlined in Table 24 of *The Boatyard - Boat Maintenance Facility DA Noise Assessment Reference: 256688 AC42 v7, dated 17 October 2024*.
22. All high noise activities, including but not limited to any power and pneumatic tools, hammering or similar high noise generating activity, undertaken within the BMF Workshop, Dry Boat Storage, and Workshops, must be conducted with roller doors closed where possible.
23. Any activities conducted outside at the premises must be undertaken in accordance with *Operating Conditions* within this advice.
24. Audible reversing beepers fitted to mobile plant at the premises must:
- be of the broadband alarm type (ie. “squawker” alarm) or similar; and
 - not be pulsed tonal alarm type (ie. “beeper” alarm); and
 - comply with any requirements of relevant Occupational Health and Safety legislation.

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25. Noise generated at the premises must not exceed the noise limits at the times and locations in the table below. The locations referred to in the table below are indicated by Figure 4 and Figure 5 of *The Boatyard - Boat Maintenance Facility DA Noise Assessment Reference: 256688 AC42 v7, dated 17 October 2024*.

Table 1

Location	Noise Limits in dB(A)
	Day
	L _{Aeq} (15 minute)
Lot 1021	47
Lot 1022	48
Nautilus Apartments	48

26. For the purposes of Table 1, day means the period from 7am to 6pm Monday to Saturday; and the period from 8am to 6pm Sunday and public holidays.
27. For the purposes of noise-enhancing meteorological conditions:
- The noise limits set out in Table 1 apply under the following meteorological conditions:
 - Stability Categories A, B, C and D with wind speeds up to and including 3m/s at 10m above ground level.
 - For those meteorological conditions not referred to in (a) of this condition, the noise limits that apply are the noise limits in Table 1 plus 5dB.
 - The meteorological conditions are to be determined from meteorological data obtained from the meteorological weather station identified as Bureau of Meteorology AWS at Kiama (Station ID: 068242)
 - Stability category shall be determined using the following method from Fact Sheet D of the *Noise Policy for Industry* (NSW EPA, 2017): Use of sigma-theta data (section D1.4).
27. To assess compliance with the L_{Aeq}(15 minutes) limits in Table 1 and the meteorological conditions above, the noise measurement equipment must be located:
- approximately on the property boundary, where any residence is situated 30 metres or less from the property boundary closest to premises; or where applicable,
 - in an area within 30 metres of a residence façade, but not closer than 3 metres where any residence on the property is situated more than 30 metres from the property boundary closest to the premises; or, where applicable,
 - at any other location identified in Table 1, or
 - at the reasonably most affected point at a location where there is no residence at the location.
28. A non-compliance of conditions Table 1 and the meteorological conditions will still occur where noise generated from the premises is measured in excess of the noise limit at a point other than the reasonably most affected point at the locations referred to in the condition to assess compliance.

NOTE: The reasonably most affected point is a point at a location or within an area at a location experiencing or expected to experience the highest sound pressure level from the premises.

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29. For the purpose of determining the noise generated from the premises, the modifying factor corrections in Table C1 in Fact Sheet C of the *Noise Policy for Industry* (NSW EPA, 2017) may be applied, if appropriate, to the noise measurements by the noise monitoring equipment.
30. Noise measurements must not be undertaken where rain or wind speed at microphone level will affect the acquisition of valid measurements.

Reporting Conditions

33. Unless otherwise agreed in writing by the EPA, attended noise monitoring must be undertaken in accordance with the assess compliance condition and must:
- occur at each location specified in Table 1;
 - occur within the first year of operation;
 - occur during day time operations as defined in the *Noise Policy for Industry* for a minimum of 1.5 hours;
 - occur for three consecutive operating days.
34. A noise compliance assessment report must be submitted to the EPA within 30 days of the completion of the monitoring. The assessment must be prepared by a competent person and include:
- an assessment of compliance with noise limits presented in Table 1 and the meteorological conditions; and
 - an outline of any management actions taken within the monitoring period to address any exceedences of the limits contained in Table 1 and the meteorological conditions; and
 - where exceedences of noise limits are identified the report must identify the cause and corrective and preventative actions implemented and/or proposed to ensure compliance with the noise limits

Note: Ongoing noise monitoring requirements will be determined based on the outcome of the initial noise compliance assessment report.

34. Subject to any express provision to the contrary in this licence, measurement and analysis of noise required by this licence must be done in accordance with the *Approved Methods for the Measurement and Analysis of Environmental Noise in NSW*.

Noise Management Plan

35. The EPA recommends that Council require the proponent to prepare and manage noise from the premises under a Noise Management Plan (NMP). The NMP should be prepared by a 'competent person' as defined in the *Approved methods for the measurement and analysis of environmental noise in NSW* (EPA, 2022), and describe, but not be limited to:
- hours of operation
 - identification and location of relevant sensitive receivers.
 - activities undertaken at the premises and a list of the specific mitigation measures (physical and operational) used to manage noise
 - how duty cycles for noisy activities (e.g. boat engine flushing, pressure blasting, grinding, and hammering) will be managed to minimise noise impacts

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- a system that allows for periodic assessment of Best Management Practice (BMP) and Best Available Technology Economically Achievable (BATEA) that has the potential to minimise noise levels from the facility,
- a chain of responsibility for management of noise and nomination of responsible persons and contact details.
- a procedure for management actions and responsibilities to avoid non-compliances and to respond to non-compliances, in the event of detected exceedance of noise limits.
- a complaints handling procedure, including operation of a telephone complaints line and action protocol.
- Measures for community consultation including site contact details,
- Noise monitoring and reporting procedures.
- a mechanism for periodic review of the plan, to be in consultation with the EPA.

Additions to Definition of Terms of the licence

- Noise Policy for Industry - the document entitled “*Noise Policy for Industry*” published by the NSW Environment Protection Authority in October 2017.
- Noise – ‘sound pressure levels’ for the purposes of noise conditions.
 - L_{Aeq} (15 minute) - the value of the A-weighted sound pressure level of a continuous steady sound that, over a 15 minute time interval, has the same mean square sound pressure level as a sound under consideration with a level that varies with time (Australian Standard AS 1055:2018 *Acoustics: description and measurement of environmental noise*).
 - L_{AFmax} – the maximum sound pressure level of an event measured with a sound level meter satisfying Australian Standard AS IEC 61672.1-2013 *Electroacoustics - Sound level meters - Part 1: Specifications* set to ‘A’ frequency weighting and fast time weighting.

OPERATING

36. Spray painting of vessels must be undertaken inside a workshop or building, unless the vessel is too large to fit inside any workshop or building on the premises.
37. Any grit blasting, sand blasting, pressure blasting, sanding or scraping works must be undertaken inside a workshop or building, unless the vessel is too large to fit inside any workshop or building on the premises.
38. Where a vessel is too large to fit inside any workshop or building on the premises, any outside repair works or outside spray painting must be completely enclosed using tarpaulins (or similar), and conducted:
 - i. in a manner that will prevent dust and airborne emissions; and
 - ii. over an impermeable, sealed area, and
 - iii. within a bund area that leads to a first flush collection and treatment system.
39. All doors providing access to a shed or building in which grit blasting, sand blasting, pressure blasting, scraping, sanding, or spray painting activities are being undertaken must remain closed while those activities are being undertaken. Any outside enclosed area at the BMF premises is to remain enclosed

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during grit blasting, sand blasting, pressure blasting, scraping, sanding, or spray painting activities to contain airborne debris.

Note: Doors providing access to a shed or building in which these activities are undertaken may remain open if these activities are not being undertaken at that time.

40. Antifoulant paint may only be applied to vessels using a roller, brush or airless spray application.

Note: Antifoul application using airless spray application outside of a shed or building must only be undertaken following encapsulation / screening using tarpaulins (or similar).

Note: Guidance information relating to the Organotin Chemical Control order and application of other antifouling paints is provided in the Fact sheet - *Applying Antifouling paints at marinas (NSW EPA, 2013)*.

41. The applicant must ensure all chemicals, fuels, lubricants and other material being stored on the premises, that may cause environmental harm, are contained within appropriately designed and constructed bund area(s) that meet the following requirements:

- a. Comply with any relevant Australian Standards relating to the storage and handling of the liquids and materials on the premises; and
- b. Have impervious flooring and walls; and
- c. Are maintained free of debris; and
- d. Any liquid collected within the bund must be managed and disposed of appropriately to maintain capacity.

43. The applicant must have regard to the provisions of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008*.

44. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

45. The surface areas of the hardstand used for vessel repairs and maintenance must be kept in a clean condition to prevent dust being blown or washed into waters

ODOUR

46. The applicant must comply with Section 129 of the *Protection of the Environment Operations Act 1997*.

47. The applicant must not cause or permit the emission of any offensive odour from the premises.

WASTE

48. All activities at the premises must be carried out in a manner that will prevent waste from polluting waters.

49. The applicant must provide facilities to ensure the collection storage and disposal of waste generated at the premises so that it does not pollute waters

50. The applicant must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at

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the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.

51. The applicant must assess, classify and manage any waste generated at the premises in accordance with the Waste Guidelines prior to dispatching the waste off site.