

ANTHONY



NEW SOUTH WALES

MINISTER FOR  
LAND AND WATER CONSERVATION  
MINISTER FOR AGRICULTURE

190875A

19 MAR 1998

General Manager  
Shellharbour City Council  
PO Box 155  
Shellharbour Square  
BLACKBUTT NSW 2529

Dear Sir

**Shell Cove Marina, Conditional Approval Pursuant to the  
Coastal Protection Act, Regulation, 1994**

I refer to Council's application seeking my concurrence to the proposed development activity at Shell Cove pursuant to the Coastal Protection Act, Regulation, 1994.

After considering Council's application, I have determined to grant conditional concurrence to the proposed activity under Section 41 of the Coastal Protection Act, 1979.

A copy of my determination and approval conditions are attached.

Also, I have enclosed a copy of the Assessment Report prepared pursuant to Clause 91 of the Environmental Planning and Assessment Act, Regulation 1994, for Council's information.

Further, I have informed the Hon E Page, Minister for Local Government of my decision.

Should you have any queries regarding the determination or the Clause 91 Report please contact Mr Brian Dooley of the Department of Land and Water Conservation's Wollongong office, on (02) 4226 8517.

Yours sincerely

**RICHARD AMERY MP  
MINISTER FOR AGRICULTURE  
MINISTER FOR LAND AND WATER CONSERVATION**

SHELLHARBOUR CITY COUNCIL	
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cc: GM

PC PB  
31/3

**Minister for Land and Water Conservation**  
**Determination of Proposed Entrance, Breakwater and Groynes to the**  
**Proposed Boatharbour and Marina at Shell Cove**

Under Section 41 of the Coastal Protection Act, 1979, and pursuant to the Coastal Protection (Non-Local Government Areas) Regulation 1994, I the Minister for Land and Water Conservation determine the activity referred to below in Schedule 1 by granting concurrence to the activity subject to the conditions and reasons therefore set out in Schedule 2.

The approval conditions will mitigate against any potential adverse environmental impacts that the activity may have.

In making this determination I have:

1. taken into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of this activity, specifically including matters relating to the development and its impact on the coastal zone as required under section 44 of the Coastal Protection Act, 1979.

This has been done as evidenced by the Clause 91 report.

2. considered the effect of the activity on:-
  - i. any conservation agreement entered into under the National Parks and Wildlife Act 1974 (NPWA) and applying to the whole or part of the land to which the activity relates.

No such conservation agreement exists.

- ii. any plan of management adopted under the NPWA for the conservation area to which the agreement relates.

There is no such plan of management.

- iii. any joint management agreement entered into under the Threatened Species Conservation Act 1995.

There is no such joint management agreement.

3. considered the effect of the activity on any wilderness area (within the meaning of the Wilderness Act 1987) in the locality in which the activity is intended to be carried on.

There is no wilderness area in the locality.

4. considered the effect of the activity on:

- i. critical habitat.

Critical habitat has not as yet been defined for the species found in the vicinity of the proposed development listed as endangered or threatened under the Threatened Species Conservation Act, 1995, or listed as protected under the Fisheries Management Act, 1994.

- ii. populations and ecological communities of threatened species, their habitats and whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats.

This has been investigated and, given the scale of change caused by the activity, there will be nil or negligible impact on these species.

- iii. any other protected fauna or protected native plants within the meaning of the National Parks and Wildlife Act 1974.

Six marine mammals, the leathery turtle and six coastal birds on the Schedule 12 lists of the National Parks and Wildlife Service occur in the area. However, all use these waters as part of far greater habitats or ranges, most of them moving through the area seasonally or infrequently. Given the scale of change caused by the activity in relation to the habitat ranges of the above fauna species it is considered there will be nil or negligible impact on these fauna.

**HON RICHARD AMERY  
MINISTER FOR AGRICULTURE  
MINISTER FOR LAND AND WATER CONSERVATION**

**Date:**

# SCHEDULE 1

- APPLICANT:** Shellharbour City Council
- ACTIVITY:** The carrying out of work in, on, over or under land involving the construction of a breakwater, two (2) groynes, dredging and beach nourishment.
- LAND:** Land below low water mark including land that is currently Crown Land.
- NOTE:** This approval becomes effective from the date of notification to the proponent.

## **SCHEDULE 2**

### **Conditions of Approval**

1. The development shall take place in accordance with the proposals set out in the EIS dated June 1995, the Applicant's submissions to the Commission of Inquiry (including their answers to questions), and as may be modified by the conditions of this consent and specifically:

i. the applicant shall ensure that all contractors working on the site are made fully aware of the relevant approval conditions and approved environmental management plans, and carry out relevant works accordingly;

2. No activities are to take place until:-

i. all other necessary approvals from relevant government authorities have been obtained for activities associated with the breakwater, groyne and dredging, including that for the release of water from the boatharbour entrance during construction;

ii. detailed construction drawings and a construction schedule in respect to development below low water mark have been approved by the Director General or nominee of the Department of Land and Water Conservation;

iii. a bank guarantee has been lodged with the Minister for Land and Water Conservation. The guarantee is to indemnify the Minister against the cost of implementing any works required to remedy default in the carrying out of the construction of the breakwater and groynes or any remedial works directed by the Minister relating to the breakwater and groynes. The bank guarantee shall be in the amount of \$1 million.

The bank guarantee shall be released by the Minister, on the advice of the Shell Cove Compliance Committee as follows:

(i) 50% of the amount upon practical completion of the entrance breakwater and groynes; and

(ii) the remaining 50% of the amount upon the expiration of six (6) months after practical completion of the construction of the breakwater and groynes;

iv. In the event that Shellharbour City Council acquires the subject land under the Land Acquisition (Just Terms Compensation) Act, 1991, then the Minister for Local Government shall replace the Minister for Land and Water Conservation in clause 2 (iii)

**3.** An Environmental Management Plan shall be prepared for the boatharbour entrance works by the applicant in consultation with and to the satisfaction of the Shell Cove Compliance Committee and the Department of Land and Water Conservation prior to construction starting. The Environmental Management Plan shall include:

**i.** an Acid Sulphate Soil Management Plan prepared by the Applicant in consultation with and to the satisfaction of the Environment Protection Authority and the Department of Land and Water Conservation. It shall provide details about:

- procedures during construction;
- mitigation measures;
- remedial measures;
- monitoring and testing program;
- contingency plans including the amount of neutralising agent to be stored on the site at any given time; and
- reporting requirements in the event of results not meeting standards;

**ii.** a Construction Program prepared by the Applicant in consultation with and to the satisfaction of the Department of Land and Water Conservation and it shall provide details relative to:

- timetabling;
- flora and fauna protection;
- marine environment protection;
- compliance standards;
- mitigation measures;
- steps to be taken to prevent accidental kills of endangered fauna;
- monitoring;
- remedial action;
- restoration and landscaping;
- emergency procedures;
- traffic management and route selection; and
- site familiarisation program;

**iii.** a Marine Environment Management Plan prepared by the Applicant in consultation with and to the satisfaction of New South Wales Fisheries and the National Parks and Wildlife Service. The plan shall provide details about:

- compliance standards;
- remedial actions which will include contingency planning ;
- mitigation measures;
- monitoring program;

The plan is to be based on the marine and water quality monitoring program outlined in Appendix 11 of the EIS and as modified by the Commission of Inquiry.

- iv. a Monitoring Program prepared by the Applicant in consultation with and to the satisfaction of the Department of Land and Water Conservation. The Program shall include a compilation of the monitoring programs identified in the above mentioned plans, set out in a report format and specifying:

- compliance standards;
- timetabling;
- method of testing and monitoring;
- contingency plans; and
- quality assessment program.

A monitoring report shall be presented to the Shell Cove Compliance Committee every six months and shall be publicly available;

- v. a Beach Nourishment/Rehabilitation Plan prepared by the Applicant in consultation with and to the satisfaction of the Department of Land and Water Conservation. It shall provide details about:

- the sand fillet to be created along the breakwater;
- the proposed works to the dune system;
- beach access;
- landscaping;
- mitigation measures;
- monitoring;
- triggers for beach nourishment to proceed;
- beach cleaning; and
- beach and surf patrolling.;

- vi. an Auditing Program prepared by the applicant in consultation with and to the satisfaction of the Shell Cove Compliance Committee. It shall provide details about:

- a program for the auditing of the construction and operation of the development;
- the use of an independent auditor; and
- report on whether works are being undertaken in accordance with all requirements;

4. All activities must be carried out in accordance with the provisions of the Environmental Management Plan which may be updated or amended prior to or during the course of construction subject to the approval of the Department of Land and Water Conservation.
5. During the course of harbour entry construction, in the event that any maritime relics are uncovered all work is to be stopped in that area and the Heritage

Office immediately informed for advice on procedures for continuation of the works.

**6. Reasons for Conditions**

To ensure that:-

- i.** the activity takes place in accordance with the proposals which have been through due process;
- ii.** the proposals are sufficiently detailed to satisfy the determining authorities that the activities will not unduly adversely affect the environment; and
- iii.** the detailed plans and proposals are adhered to.

It should be noted that in addition to this approval, and compliance with its conditions, all other authorities must be obtained, and in particular:-

- 1.** approvals from the Environment Protection Authority in relation to :
  - the Clean Air Act, 1961;
  - the Clean Waters Act, 1970;
  - the Noise Control Act, 1975;
  - the Marine Pollution Act, 1987;
- 2.** approvals from the National Parks and Wildlife Service in relation to:
  - the provisions of s90 of the National Parks and Wildlife Act, 1974. Under s90 of the Act it is an offence to knowingly damage or destroy Aboriginal relics without the prior permission of the Director-General of the NPWS.
- 3.** approvals from the New South Wales Waterways Authority in relation to:
  - the Rivers and Foreshores Act, 1948 (namely s23), and
  - the Maritime Services Act, 1935 (namely s13T);
- 4.** approvals from New South Wales Fisheries in relation to:
  - the Fisheries Management Act, 1994;
- 5.** approvals from the Department of Local Government in relation to:
  - the Crown Lands Act, 1989.