

Australand Corporation (NSW) Pty Ltd  
PO Box 4148  
SHELLHARBOUR NSW 2529

## NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION

*Issued under the Environmental Planning and Assessment Act 1979 Section 4.18*

Being the applicant of Development Application No. DA0200/2021 (PAN-88621) for consent to the following development:

**BULK EARTHWORKS AND SURCHARGE PRE-LOADING - SHELL COVE  
PRECINCT H**

**LOT 9004 & LOT 9005 DP 1254656**

**BOOLLWARROO PARADE, SHELL COVE NSW 2529**

**Determination date of consent:** 19 May 2022

**Note:** This Approval will lapse 5 years from the date of consent.

In accordance with section 4.16 of the Act the Development Application has been determined by the GRANTING OF CONSENT SUBJECT TO THE CONDITIONS DESCRIBED BELOW.

This development consent has been divided into different parts according to where, during the development process, each condition may be most relevant. Some conditions may be appropriate to more than one part. All conditions must be complied with.

Madeline Cartwright  
**Principal Planner – Development Assessment  
Authorised Assessment Officer**

On behalf of Melissa Boxall, Acting Chief Executive Officer

## PART A – ADMINISTRATIVE CONDITIONS

### 1. Subdivision Works Certificate & PCA Notification

**Before any site works or use is commenced**, the person having the benefit of the development consent must:

- a. Obtain a Subdivision Works Certificate from Shellharbour City Council or other accredited certifier, and
- b. Appoint a Principal Certifying Authority.

### 2. Prescribed Conditions

This development consent is subject to the prescribed conditions made under the *Environmental Planning & Assessment Regulation 2000*.

### 3. Development in Accordance with Plans and Documents

The development must be in accordance with the following approved Development Application plans and documents as endorsed by Council's stamp. Where there is an inconsistency between the approved plans/documentation and conditions of consent, the conditions of consent take precedence to the extent of the inconsistency.

Name of Plan/Document	Prepared By	Drawing/Document No./Revision	Drawing/Document Date
Cover Sheet and Drawing List/Notes	Maker Engineering	ISC00223-01 - C000 rev. 4 & C001 rev. 4	25.01.2022
Key Plan	Maker Engineering	ISC00223-01-C002 rev. 4	25.01.2022
General Arrangement Plans	Maker Engineering	ISC00223-01-C010 rev. 4 and C011 rev. 4	25.01.2022
Phase 2 Contour Plan	Maker Engineering	ISC00223-01-C012 rev. 4	25.01.2022
Bulk Earthworks Plan	Maker Engineering	ISC00223-01-C020 rev. 4	25.01.2022
Bulk Earthworks Sections	Maker Engineering	ISC00223-01- C021 rev. 4, CO22 rev. 4 C023 rev. 4	25.01.2022
Civil Details	Maker Engineering	ISC00223-01-C036 rev. 4	25.01.2022
Soil and Water management plan and details	Maker Engineering	ISC00223-01- C185 rev. 4 C186 rev. 4	25.01.2022
Soft Soil Treatment Design	SMEC	3001886-R10.Rev02	21.04.2021
Raising Design Levels	SMEC	3001886-R11	11.03.2021
Geotechnical Investigation Report	Golder Associates	-	04.1987
Biodiversity Development Assessment Report	Eco Logical	18738-21WOL V1	31.05.2021
Statement of Environmental Effects	SLR	660.30008-R01 v. 0.1	04.2021
Acid Sulphate Soils management Plan	SMEC	3001886	06.04.2021

#### **4. Compliance with Notations on Drawings**

Works must comply with any notations highlighted on the approved plans and specifications.

#### **5. Limit of Consent**

This consent relates only to the proposed earthworks and surcharging as shown in the Bulk Earthworks Plan drawing number ISC00223-01-C020 rev. 4, by Maker Engineering dated 25.01.2022 and does not guarantee, or imply, consent of any other currently proposed or future proposed works over the subject site.

#### **6. Easements**

Structures must not encroach onto any easement.

### **PART B - PRIOR TO ISSUE OF SUBDIVISION WORKS CERTIFICATE**

#### **7. Soil and Water Management Plan (SWMP)**

Prior to the issue of the Subdivision Works Certificate, the applicant must submit of a Soil and Water Management Plan for approval by Manager Subdivision Development at Shellharbour City Council. The SWMP must clearly identify site features, constraints and soil types together with the nature of the proposed land disturbing activities and also specifies the type and location of erosion and sediment control measures. In addition rehabilitation techniques that are necessary to deal with such activities should be referred to.

The SWMP must take into account the requirements of Landcom's publication Managing Urban Stormwater - Soils and Construction (2004) thus ensuring the following objectives are achieved, namely:

- a. minimise the area of soils exposed at any one time,
- b. conserve topsoil for reuse on site,
- c. identify and protect proposed stockpile locations,
- d. preserve existing vegetation and identify revegetation techniques and materials.
- e. control surface water flows through the development construction site on a manner that:
  - i. diverts clean run-off around disturbed areas.
  - ii. minimises slope gradient and flow distance within disturbed areas.
  - iii. ensures surface run-off occurs at non-erodible velocities.
  - iv. ensures disturbed areas are promptly rehabilitated.
- f. trap sediment on site to prevent off site damage. Hay bales are not to be used as sediment control devices. To ensure regular monitoring and maintenance of erosion and sediment control measures and rehabilitation works until the site is stabilized (includes landscaping).
- g. specifies measures to control dust generated as a result of construction activities on site.
- h. temporary sediment ponds must be fenced where the batter slope exceeds 1 vertical to 5 horizontal,
- i. design scour protection for the 10 year ARI event at all inlet and outlet structures.

- j. including measures to prevent the tracking of sediment off the site.
- k. the SWMP also needs to take into account current and predicted weather patterns during the time of works (i.e. La Nina conditions) and be of a standard to withstand these conditions.

The measures required in the Soil and Water Management Plan must be implemented prior to the commencement of works.

## **8. Initial Geotechnical Report**

A geotechnical report, prepared by a suitably qualified and experienced geotechnical engineer must be submitted to the Manager Subdivision Development at Shellharbour City Council for approval prior to the issue of the Subdivision Works Certificate.

The report must cover, but not be limited to the following:

- a. extent and stability of proposed embankments including those acting as retarding basins,
- b. recommended Geotechnical testing requirements,
- c. level of geotechnical supervision for each part of the works as defined under AS 3798 - 2007 Guidelines on Earthworks for Commercial and Residential Developments or subsequent amendments,
- d. an analysis of the level of risk to existing adjacent structures/buildings including the scenario of a construction contractor using vibratory rollers anywhere within the site the subject of these works. In the event that vibratory rollers could affect adjacent structures/buildings, high risk areas must be identified on a plan and indicate that no vibratory rollers shall be used within that zone,
- e. the impact of the installation of services on overall site stability and recommendations on short term drainage methods, shoring requirements and other remedial measures that may be appropriate during installation,
- f. the recommended treatment of any unstable areas within privately owned allotments;
- g. requirement for subsurface drainage lines,
- h. overall assessment of the engineering plans for the proposed development and their suitability in relation to the site's geotechnical characteristics.
- i. All recommendations in report no. 3001886-R10 Rev02 & 3001886-R11 Soft Soil Treatment Design, and Raising Design Levels -Precinct H, prepared by SMEC on 21 April 2021 and 11 March 2021, are to be followed during construction.

## **9. Long Service Levy**

The Long Service Levy must be paid prior to the issue of the Subdivision works Certificate.

Note: This is a levy imposed by the NSW Government and administered by the Long Service Payments Corporation for the purpose of long service payments to building and construction workers.

## **10. Construction Environmental Management Plan (CEMP)**

A CEMP must be prepared and submitted including but not limited to:

- a. Waste Management
- b. Construction Noise: Measures are required in the CEMP to minimise the impact of construction noise according to the EPA Interim Construction Noise Guideline.

- c. Dust: Measures are required in the CEMP to limit dust.
- d. Contaminated Lands: Unexpected Finds protocol to be included in the CEMP.
- e. Cultural heritage: Stop work protocol to be included in the CEMP for any potential heritage items found during excavation or other works.
- f. Management of Fuels and Chemicals.
- g. Sand washing and beach nourishment plan.

## **11. Biodiversity Offset Obligations**

Prior to the issue of any subdivision works certificate and any impacts on biodiversity (as defined in 6.3 of the Biodiversity Conservation Act 2016), it is a requirement to retire credits as prescribed in the Biodiversity Development Assessment Report (Ecological Australia, 2021), evidence of credit retirement must be submitted and approved by Council in the form of a Credit Retirement Report issued by the Department of Planning and Environment. A private certifier cannot assume the role of the consent authority in confirming compliance with biodiversity offset conditions and obligations.

Variation rules as per 6.4 of the *NSW Biodiversity Conservation Regulation 2017* may be used once the proponent has demonstrated reasonable steps to obtain the requisite like-for-like credits, and formally requests the variation to Council for the use of the ordinary offset rules. Evidence that the applicant has demonstrated reasonable steps must be consistent with section 6.4 and 6.5 of the BC Regulation and the Ancillary Rules: Biodiversity conservation actions, published under clause 6.5 of the BC Regulation or the payment under section 6.30 of the Act of an amount into the Biodiversity Conservation Fund determined in accordance with the offsets payment calculator to satisfy the requirement to retire biodiversity credits.

Evidence of credit retirement must be submitted and approved by Council, in the form of a section 6.33 Statement Confirming Payment into the Biodiversity Conservation Trust prior to any Construction Certificate and any impacts on biodiversity (as defined in 6.3 of the *NSW Biodiversity Conservation Act 2016*). A private certifier cannot assume the role of the consent authority in confirming compliance with biodiversity offset conditions and obligations.

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

### **12. Site Meeting**

A site meeting with Council's engineer, the Applicant and the Contactor must be held not less than 7 days prior to the commencement of work on site.

### **13. Soil and Water Management Plan**

The measures required in the Soil and Water Management Plan approved by the Certifying Authority must be implemented prior to commencement of works and maintained throughout the construction phase of development and operational lifetime of the soft sediment surcharge.

### **14. Dilapidation Report**

It is the applicant's responsibility to notify Council of any existing damage to public areas in the vicinity of the development site through the submission of a Dilapidation Report. The report must be supported with suitable photographic records. This information must be submitted to Council prior to the commencement of work.

## **15. Site Management Plan**

Prior to the commencement of works, the applicant must submit to and obtain approval for a construction and site management plan from the Certifying Authority that clearly sets out the following:

- a. what actions are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like,
- b. the proposed method of loading and unloading excavation machines, building materials and formwork within the site,
- c. the proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period,
- d. sediment and erosion control measures as per Landcom's publication 'Managing Urban Stormwater - Soils and Construction (2004)' also known as the 'Blue Book' or subsequent revisions,
- e. how it is proposed to ensure that soil/excavated materials are not transported on wheels or tracks of vehicles or plant and deposited on the roadway, and
- f. the proposed method of support to any excavation adjacent to adjoining buildings or the road reserve. The proposed method of support is to be certified by an appropriately qualified and experienced engineer.

## **16. Construction Traffic Management Plan (CTMP)**

Prior to the commencement of works, a CTMP detailing vehicle routes, number of trucks, hours of operation, access arrangements, impact on pedestrians and traffic control must be submitted to and approved by the Certifying Authority.

All construction traffic is to access the site via Brigantine Drive, and no construction access is allowed from Boollwarroo Parade unless prior approval from Council.

It is the developer's responsibility to adequately inform/brief for construction workers, sub-contractors and supervisors to ensure that the Construction Traffic Management Procedures are adhered to at all times.

## **17. Protection of Native Fauna – Tree Removal Pre-clearance Survey**

A pre-clearance survey must be conducted by a qualified ecologist no more than three days prior to the commencement of vegetation clearing works. The purpose of this survey is to identify any roosting or nesting fauna (including drays) which are present within all trees proposed for removal. The ecologist must conduct a thorough inspection of all trees approved for removal and mark those which are observed to contain roosting or nesting fauna. Any trees with active nests cannot be removed until fledglings have left the nest; any trees with other fauna temporarily present (e.g. roosting) cannot be removed until the fauna has left the tree.

## **18. Protection of Native Fauna – Tree Removal Timing**

Removal of vegetation must be timed so as not to coincide with critical life stages of native fauna, namely outside of spring and summer.

## **19. Protection of Native Fauna – Aquatic or Amphibious Fauna**

A pre-clearance survey must be conducted by the project ecologist prior to any vehicles or heavy machinery entering the site. The purpose of this survey is to identify any native aquatic or amphibious fauna that may be present in areas of standing water on the site. If any such fauna is found to be present on site, an appropriately qualified wildlife handler must be notified and attend the site in order to safely remove and relocate the fauna before any works can commence on the site.

## **20. Tree Protection Fencing**

Prior to commencement of works, tree protection fencing is to be installed to clearly demarcate which areas of vegetation is being removed and which is being retained, in order to prevent accidental removal of any vegetation planned for retention.

## **PART D - DURING CONSTRUCTION WORKS**

### **21. Contamination - Unexpected Finds Contingency**

Should any contamination or suspect material be encountered during site preparation, earth works, construction or any other stage of the development, then works must cease immediately and a suitably qualified consultant engaged to conduct a thorough contamination assessment.

In the event that contamination remediation is required, all works must cease and the Council must be notified immediately. The contamination assessment must be submitted to Council for Approval.

All recommendations provided in the contamination assessment must be followed as stipulated.

### **22. Flood Risk Signage**

During works signage is to be provided on site to warn people that the site may be subject to flooding and to follow the designated evacuation routes.

### **23. Cultural Heritage**

A stop work protocol must be included in the CEMP and implemented for any potential heritage items found during excavation including:

- a. cease work immediately if any Aboriginal objects are found/uncovered,
- b. secure the site, and
- c. inform NSW Heritage and Shellharbour Council's Aboriginal Liaison Officer immediately.

### **24. Grade interface at boundaries**

The earthworks must be completed to ensure the transition of grade is to match the natural grade at the all adjacent boundaries.

## **25. Acid Sulphate Soils Management**

The management of Acid Sulphate Soils is to be undertaken in accordance with the approved Acid Sulphate Soil Management Plan reference SMEC 3001886 dated 06.04.2021 throughout the construction works.

## **26. Lots and Site Filling**

All lot and site filling must be performed under level 1 Geotechnical supervision in accordance with AS 3798-2007 or subsequent amendments.

## **27. Hours of Work During Building Work**

Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or public holiday.

## **28. Maintenance of Soil and Water Management Plan (SWMP)**

The soil and water management controls must be maintained in good working order at all times during each stage of the development and checked for adequacy daily throughout the construction phase of the development and operational lifetime of the soft sediment surcharge. The controls must not be removed until the development is completed and the disturbed areas have been stabilised.

Maintenance must include but is not limited to ensuring:

- a. all sediment fences, sediment traps and socks are properly placed and are working effectively and,
- b. drains, gutters and roads are maintained clear of sediment at all times.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to allow soil or other pollutants to fall or be washed into any waters or be placed where it is likely to fall or be washed into any waters. Substantial penalties may be issued for any offence.

## **29. Storage of Materials**

Building materials and equipment must not be stored on the road reserve/footpath area.

## **30. Soft Soil Treatment Design**

The recommendations laid out on page 25 of the Soft Soil Treatment Design (SMEC, 2021c) are to be followed throughout the construction phase. This is to include the installation of piezometers for long-term monitoring of groundwater levels during the operational life of the proposal.

## **31. Imported Fill Material**

Any imported fill to be used on site must be either:

- a. VENM (virgin excavated natural material) classified as such in accordance with the Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), or ENM (excavated natural material) meeting the requirements of the Excavated Natural Material Exemption 2014, and compatible with the existing soil characteristics of the site;  
or



- b. Any other waste derived material the subject of a resource recovery exemption under Part 9, Clause 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014- The coal washery rejects exemption 2014 that is permitted to be used as fill material.

Excavated material from the site can only be reinstated if it is supported by National Association of Testing Authorities testing to confirm National Environment Protection Measure suitability for the proposed land use.

Any waste derived material which is the subject of resource recovery exemption and received by the development site must comply with the conditions of the EPA exemption and be accompanied by documentation as to the material's compliance with the exemption conditions, and this documentation must be provided to the principle Certifying Authority on request. Note Section 7.3 of the Coal Wash Rejects Exemption 2014 states the consumer can only apply coal washer rejects to land where it is not applied in or beneath water, including groundwater. With regard to this, coal wash must not be applied below the upper bank of any riparian area.

### **32. Protection of Native Fauna**

Measures to minimise risk to native fauna during construction must be implemented including:

- Inspecting in and around all vehicles and machines to ensure no native fauna is present prior to turning on or recommencing work; and
- For any injured wildlife a local vet or South Coast Wildlife Rescue on 0418 427 214 are contacted immediately.

### **33. Protection of Native Fauna – Tree Removal Protocols**

During removal of native vegetation, the following conditions are to be followed in order to prevent or mitigate impacts on native fauna:

- A qualified ecologist must be present during removal of native vegetation;
- WIRES must be contacted and notified of the works one day prior to tree removal;
- Immediately prior to the clearing of the vegetation the project ecologist must conduct an inspection of any suitable ground debris, shrubs and accessible hollows. These inspections must be conducted to determine, and collect if possible, any sheltering or nesting animals;
- All trees to be removed must be felled by a qualified arborist;
- WIRES must be contacted in the instance of injured wildlife;
- The project ecologist must provide Council with a letter report confirming that the procedures specified have been complied with, along with notes on any fauna encountered and the outcome of salvage.

### **34. Tree Protection**

Tree protection fencing is to remain in place throughout all stages of the development works. No vehicles, machinery, tools or equipment, fuels, chemicals or piles of waste, gravel, soil or other materials are to be located within the tree protection fencing or within the drip zone of any retained trees at any time during construction.

In the event that any of the trees not identified for removal are damaged, the project arborist is required to recommend remedial action so as to reduce any long term adverse effect on the tree's health. This remedial action must commence as soon as practically possible.

## **PART E - PRIOR TO OCCUPATION**

Not Applicable

## **PART F - PRIOR TO ISSUE OF COMPLIANCE CERTIFICATE**

### **35. Final Geotechnical Report**

A final geotechnical report prepared by a suitably qualified and experienced geotechnical consultant must be submitted to the Certifying Authority prior to the issue of Compliance Certificate. The report must include, but is not necessarily limited to:

- a. all earthwork operations;
- b. a fill plan showing extent and depth of fill;
- c. certification that all earthworks within the site have complied with the Subdivision Design Code. This must include appropriate test results, and test location diagram and date of testing;
- d. certification that all recommendations contained in geotechnical reports lodged in support of this development have been satisfied;
- e. the exact extent of any restricted building zones or any other restrictions affecting any of the allotments,
- f. identification of all land affected by landslip or instability constraints (if applicable) and
- g. verification that the pipe trench bedding and backfill complies with the requirements for HS3 bedding/backfill.

## **PART G - AFTER COMPLETION OF WORKS**

### **36. Revegetation and Embellishment**

The land area comprising of the existing Bollwarroo Road alignment and land eastward of the road shown on the approved plans for the purpose of earthworks and surcharging must be revegetated and embellished to a natural setting in the event the existing road alignment remains in place. A Revegetation and Embellishment Plan must be developed and approved by Council should it be required. This work is to be commenced within 12 months of any determination regarding the future subdivision of Precinct H.

## **PART H – OTHER APPROVALS**

Not applicable

## ***REASONS FOR THE IMPOSITION OF CONDITIONS***

1. To minimise any possible adverse environmental impacts of the proposed development.
2. To ensure that the amenity and character of the surrounding area is protected.

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3. To ensure that the design and siting of the development complies with the provisions of Environmental Planning Instruments and Council's Codes and Policies.
4. To ensure that the development does not conflict with the public interest.

### **Advisory Notes - General**

#### **Erection of Signs**

The principal contractor will need to have a sign (or signs) erected and maintained on the development site that provides their name and contact telephone number (during and outside work hours for the principal contractor), and stating that unauthorised entry to the site is prohibited.

A maximum penalty of 10 penalty units applies for failure to erect and maintain sign(s) detailing principal contractor identification.

#### **SafeWork NSW**

The requirements of SafeWork NSW must be satisfied at all times.

#### **Failure to Comply with Consent**

Failure to comply with any of the conditions of consent may result in a Penalty Infringement Notice being issued against the owner/applicant/builder. Substantially greater penalties may be imposed by the Court for non-compliance.

#### **Lapsing of Development Consent**

In accordance with Part 4, Division 4.9, section 4.53 of the *Environmental Planning & Assessment Act 1979*, the development approval lapses seven years after the approval date unless building, engineering or construction work relating to the building has physically commenced.

#### **Right to Appeal**

If you are dissatisfied with this decision, Part 8, Division 8.3, section 8.7 of the *Environmental Planning & Assessment Act 1979* gives you the right to appeal to the Land & Environment Court within twelve months after the date on which you receive this notice.

#### **Review of Determination**

If you are dissatisfied with this decision, Part 8, Division 8.2 of the *Environmental Planning & Assessment Act 1979* provides that you may request Council to review its determination. The request cannot be made after the time limit for making of an appeal under section 97 expires.

Division 8.2 of the *Environmental Planning & Assessment Act 1979* does not apply to:

- a. a determination to issue or refuse to issue a complying development certificate
- b. a determination in respect of designated development
- c. a determination in respect of integrated development
- d. a determination made by the Council under Division 4 in respect of an application made by the Crown.

#### **To Vary Development Consent**

The plans and/or conditions of this consent are binding and may only be varied upon application to Council under section 4.55 of the *Environmental Planning & Assessment Act 1979*. The appropriate fee shall accompany the application and no action shall be taken on the requested variation unless and until the written authorisation of Council is received by way of an amended consent.

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### **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](http://www.1100.com.au) <<http://www.1100.com.au/>> or telephone on 1100 before excavating or erecting structures (this is the law in New South Wales). 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.

### **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* (Commonwealth) 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 1800810443.

### **Development within Vicinity of a High Pressure Gas Main**

Contact Dial Before You Dig on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) <<http://www.dialbeforeyoudig.com.au/>> Proposed works in the vicinity of any high pressure gas main must be directed to:

Jemena Asset Management Pty Ltd  
PO Box 6507  
SILVERWATER NSW 2128

Attention: Land Services Department

### **Prescribed Payment System Tax Obligations**

You may have a taxation obligation under the Prescribed Payment System. For more information, contact the Australian Taxation Office on telephone 132866.

**END OF NOTICE**