

## Ordinary Meeting

**Meeting Date:** Monday, 14 August, 2023

**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra

## Attachments (Under Separate Cover)

### Index

#### 13. Reports

CL23.264 Modification Application No. DS21/1353 - 76 West Cr Culburra Beach -  
Lot 298 DP 11892

Attachment 1 Report to Council - Ordinary Meeting 28 March 2022 .....2

CL23.265 Development Application - DA22/2368 - 1072 Bendalong Road Conjola  
- Lot 1 DP1071258

Attachment 1 Planning Report S4.15 Assessment .....17

Attachment 2 Draft Development Consent .....57

**CL22.153 Modification Application No. DS21/1353 – 76  
West Cr, Culburra Beach – Lot 298 DP 11892**

**DA. No:** DS21/1353/4

**HPERM Ref:** D22/67554

**Department:** Development Services  
**Approver:** James Ruprai, Director - City Development

**Attachments:** 1. Draft Notice of Determination - Refusal  
2. Section 4.15 Assessment Report (under separate cover)  
3. Applicant's Covering Letter (under separate cover)

**Description of Development:** S4.55(1A) Modification Application seeking to delete Condition 19 from the development consent relating to the construction of kerb and gutter across the frontage of the site.

**Owner:** C Phillips & S Vidler  
**Applicant:** C Phillips

**Notification Dates:** 20<sup>th</sup> October to 5<sup>th</sup> November 2021

**No. of Submissions:** One (1) by way of objection.

**Purpose / Reason for consideration by Council**

Modification Application No. DS21/1353 was called in for determination by the Ordinary Council at the Development and Environment Committee Meeting held on 5 October 2021 [MIN21.708].

**Recommendation**

That Modification Application No. DS21/1353 for a s4.55(1A) Modification seeking to delete Condition 19 from Development Consent No. DA20/1809 lodged over Lot 298 DP 11892 at 76 West Cr, Culburra Beach be determined by way of refusal.

**Options**

1. Refuse the Modification Application in accordance with the recommendation.

Implications: The modification would not be approved, and Condition 19 would remain within the development consent. The applicant can, however, apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court (LEC) against Council's decision.

2. Approve the Modification Application.

Implications: Council would need to provide grounds on which to support the proposal, that is, provide reasons to support the development, having regard to section 4.15 considerations – noting that the Council assessment did not find any planning grounds in support the removal of this condition.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and delegate to the Chief Executive Officer to action.

**Location Map**



Figure 1: Aerial Photography – Subject Site

**Background**

Proposed Development

Development Application No. DA20/1809 was approved under delegation on 7 October 2020 for 'Relocation of Dwelling to create Detached Dual Occupancy' ('the consent'). It is also noted for completeness that Torrens Title subdivision of the approved dual occupancy is approved under Development Consent No. SF10849 (dated 19/02/2021).

An application to modify the consent was submitted by the applicant in accordance with the provisions of section 4.55(1A) of the Environmental Planning and Assessment (EP&A) Act 1979.

The application proposes to delete condition 19 of the consent. Condition 19 presently states as follows:

**Road Design Standards**

*Concrete integral kerb and gutter with either a minimum 30mm thick 10mm asphaltic concrete on a primer seal or 2 coat bitumen seal with 14mm & 7mm aggregate surfaced shoulder (to match the existing seal) and associated drainage must be designed across the frontage of the proposed new lot(s).*

- a) *The kerb and gutter must have a standard upright profile.*
- b) *The alignment must be 3.5m from the boundary on Wollumboola Lane and 7.0m from boundary on the West Cr frontage.*

- c) *The shoulder crossfall to the lip of the gutter must be no less than 2% and no greater than 5%. A minimum width of 1m is to be constructed adjacent to the lip of the gutter to facilitate compaction of the new pavement.*
- d) *The shoulder seal is to overlap the existing pavement by a minimum of 300mm with the existing seal to be saw cut and the exposed pavement is to have a tack coat or prime seal if finished with AC.*
- e) *The kerb and gutter must have a minimum grade of 0.5% and the longitudinal design must extend a minimum of 30 metres each end of the development and at least 60m if the grade is <0.5% or ≥ 0.3%. This is to ensure the proposed works will be compatible with the existing longitudinal pavement grade and allow future extension of the kerb without unnecessary modification of existing works.*
- f) *The road shoulder pavement must be designed in accordance with Council's Engineering Design Specifications section D2.04.*
- g) *The road table drain either side of the proposed development is to be reconstructed as required to match the K&G and to prevent ponding of water, including any adjustment or reconstruction of nearby driveways.*
- h) *Subsoil drainage is to be provided behind the kerb line where an outlet to existing underground drainage (or other alternative suitable to Council) is available. Subsoil drainage is to be placed on the high side of the road or both sides if the cross-fall is neutral.*

*Where roadway widening (shoulder construction) is not required, the thickness of the pavement for the new kerb and gutter maybe designed using an adopted CBR of 3.0. If a higher CBR value is used, it must be determined by geotechnical testing in accordance with Council's Engineering Design Specification.*

This condition was recommended for inclusion in the consent by Council's Development Engineer as a standard engineering condition as it is a requirement for both dual occupancy development and subdivision of land under Shoalhaven Development Control Plan (DCP) 2014 Chapters G11, G13 and G21. This requirement has been consistently applied in accordance with the DCP 2014.

#### **Subject Land**

The site is described as Lot 298 DP 11892 and is located at No. 76 West Crescent, Culburra Beach. (See Figure 1.)

#### **Site & Context**

The development site:

- Is located at the corner of West Crescent (to the south) and Wollumboola Lane (to the east).
- Contains an existing single storey dwelling located in the southern part of the site adjacent to West Crescent.
- Contains a new single storey dwelling which is placed on the northern part of the site following an approval for 'Relocation of Dwelling to create Detached Dual Occupancy' given as part of DA20/1809 and CC20/1797.  
Note: An Occupation Certificate cannot be issued until all conditions of consent, including Condition 19 the subject of this application, have been satisfied.
- Is zoned R2 Low Density Residential in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014 (see Figure 2 - Zoning Map).
- Has a total area of 992.74m<sup>2</sup>.
- Adjoins properties zoned R2 Low Density Residential and RE1 Public Recreation pursuant to the SLEP 2014.



- Is located within a predominantly residential area, with surrounding properties consisting largely of detached dwellings and dual occupancy developments.

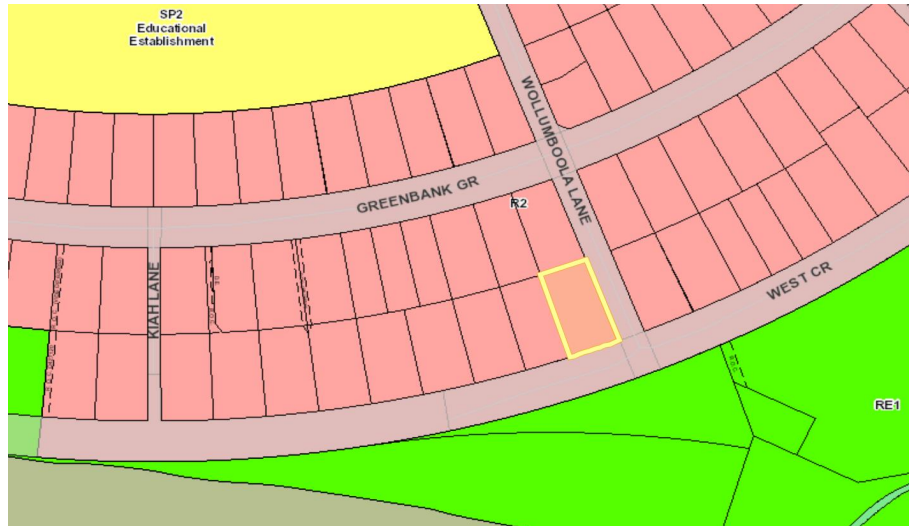


Figure 2: Shoalhaven LEP 2014 Zoning Map

### History

The following provides a history of approvals issued in relation to the subject development and actions / events relating to the subject application:

Action / Event	Date
Development Approval No. DA20/1809 issued for the development (Relocation of Dwelling to create Detached Dual Occupancy) by Shoalhaven City Council.	7 October 2020
Construction Certificate Approval No. CC20/1797 issued by Shoalhaven City Council.	19 October 2020
Modification Application No. DS21/1353 lodged with Shoalhaven City Council seeking consent for deletion of Condition 19.	29 September 2021
Application called in for determination at the Ordinary Council Meeting at a Meeting of the Development and Environment Committee.	5 October 2021
Referral response provided by Development Engineer advising that they do not support the proposed deletion of Condition 19. Specifically, the following comments were provided:  <i>Both dual occupancy development and subdivision of land require the construction of kerb and gutter under DCP Chapters G11, G13 and G21. This has been consistently applied since implementation of DCP 2014 and any exceptions are a rarity. Developers undertaking dual occupancy development and/or subdivision and their consultants are generally aware of this requirement and factor it into the cost of development.</i>  <i>The subdivision at 98 Greenbank Grove is referenced as evidence of a precedent, however this was approved prior to the implementation of DCP2014 under previous provisions which exempted kerb and gutter on the frontage of the lot containing the existing dwelling. A more recent dual occupancy approved at 34 Greenbank Grove at the corner of Black Swan Way did require</i>	18 October 2021

<p>full frontage construction of kerb and gutter.</p> <p>The area has precedent of kerb and guttering nearby (kerb and gutter on Greenbank Grove including kerb returns into Wollumboola Lane) which is likely to continue with future redevelopment.</p> <p>There is also evidence of stormwater flow and containment issues (such as previous construction of an informal kerb outside the subject property, and recent photographic evidence of stormwater ponding in the road reserve outside the property) which would be improved through the provision of kerb and gutter. Concern has been flagged regarding the discharge of flow from the end of the constructed gutter on West Cres, however the approval requires table drains to be reshaped to accept the flow from the kerb and gutter and levels would prevent any runoff impacting on adjoining properties. It is also noted that a relatively short section of kerb and gutter would not excessively increase peak stormwater flows during a large storm event where the existing grassed table drains would be saturated.</p> <p>The requirement for kerb and gutter has been correctly applied in accordance with Council's policies. The deletion of the condition is not supported.</p> <p>It is also noted there are currently construction-ready approved engineering design plans for the kerb and gutter for this development, demonstrating its constructability and ability to comply with Council's standards and the implemented conditions of consent.</p>	
<p>Completion of notification undertaken in accordance with Community Consultation Policy.</p>	<p>5 November 2021</p>

## Issues

### 1. Applicant Reasons for the proposed modification & Council response

The following provides a summary of the applicant's reasons for submission of the application and Council's responses to the items raised:

#### a) Environmental impact:

*The proposed modification would have no negative environmental impact. The engineer's report prepared by civil engineers Allen, Price Scarratts calculates that the DA will not increase peak stormwater flows compared to the existing structure on the block prior to development. Indeed, removing the condition for concrete kerb and gutter would have a positive environmental impact. Kerb and gutter near the lake would concentrate polluted run-off from the road and channel it directly into the lake, rather than allowing it to disperse and filter through the sandy soil at the side of the road as it currently does. The Lake Wollumboola Protection Society have expressed their opposition to kerb and gutter in this location for this reason as it would have a negative impact on the environment of the lake.*

Response: Concern has been flagged regarding the discharge of flow from the end of the constructed gutter on West Crescent, however the approval requires table drains to be reshaped to accept the flow from the kerb and gutter and levels would prevent any runoff impacting on adjoining properties. It is also noted that a relatively short section of kerb and gutter would not excessively increase peak stormwater flows during a large storm event where the existing grassed table drains would be saturated.

The requirement for kerb and gutter has been correctly applied in accordance with Council's policies.

b) Detrimental to character of area

*The whole area of West Crescent and Wollumboola Lane where the property is located enjoy a natural grassed edge to the roadway without kerb and gutter. This natural aesthetic fits well with the untouched and unspoiled lakeside environs. Forcing one property in the middle of this to install concrete kerb and gutter would stand out – but not in a good way. It would be an eyesore that detracts from the character of the area.*

**Response:** Council undertook a site inspection of the property and surrounding environments of West Cr and Wollumboola Ln on Thursday 24<sup>th</sup> February 2022 (refer TRIM Ref. No. D22/79471).

The site inspection revealed that the southern side of the length of Greenbank Gr has kerb and gutter, and extensive kerb and guttering exists on both the south-western and south-eastern corners of the intersection of Wollumboola Ln and Greenbank Gr located approximately 50m from the site.

Figure 3 provides a site photo and Figure 4 an aerial photo of kerb and gutter within the immediate vicinity of the site on Wollumboola Lane and Greenbank Gr.



**Figure 3.** Photo looking south towards Wollumboola Ln intersection with Greenbank Gr, showing wide of extent of kerb and guttering within the vicinity of the site (site at the end of the laneway on the right of photo)



*Figure 4. Aerial photo indicating parts of the immediate street network with existing kerb and gutter provision (Source: Nearmap).*

It is further noted that many of the properties within the immediate vicinity of the subject site are capable of further redevelopment for dual occupancy (both attached and detached) development or Torrens Title subdivision in their own right, meeting the relevant zoning and minimum lot size requirements under Shoalhaven Local Environmental Plan (LEP) 2014.

Any application for dual occupancy or subdivision of these lots lodged under the current planning controls would also include a requirement for kerb and guttering and collectively contribute to the delivery of kerb and gutter within the locality.

*c) Stormwater impact on adjacent properties*

*There is no stormwater drain on West Crescent. So, water caught by any kerb & gutter installed on West Crescent will simply be diverted downhill to adjacent properties – potentially creating damage to their verge.*

Response: The following excerpt (Figure 5) from Council's GIS system indicates the location of Council's existing drainage system (shown in green). The excerpt also demonstrates that the construction of the kerb and gutter at the corner of West Cr and Wollumboola Ln as required by Condition 19 would link in with the existing drainage system in Wollumboola Ln and crossing West Cr.





*Figure 5. Location of property (outlined in blue) in relation to existing stormwater drainage line (in green)*

As stated above, the approval also requires table drains to be reshaped to accept the flow from the kerb and gutter, where the constructed levels would prevent any runoff impacting on adjoining properties. This is also consistent with the construction ready kerb and gutter plans already submitted by the applicant and approved as part of the Construction Certificate issued by Council (Application Ref No. CC20/1797).

The proposed arrangement as required by Condition 19 would improve the significant pooling of water which occurs within the road verge adjacent to the site during rain events under the current scenario (also demonstrated in the Figures 6 and 7):



*Figure 6. Site and road verge from perspective of Wollumboola Ln looking south (site to the right of photo)*



Figure 7. Site and road verge from perspective of West Cr looking north (site to the left of photo)

d) Disproportional cost

*Kerb and gutter is extremely expensive to install. Not to mention disruptive – it requires tearing up and rebuilding the edge of the roadway and building up nature strip to match the level of the kerb. The costs are vastly out of proportion to the modest budget of our small development with a budget of under \$200,000.*

**Response:** The standard approach taken as part of the assessment of all Development Applications across the Shoalhaven City Council area, is that the onus is on the developer to construct the infrastructure that is required for their development and to ensure their development complies with applicable Acts, plans and policies.

This approach is especially important when considering that Council's Policy No. POL12/65 – Asset Management Plan (accessible on Council's website at <https://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=POL12/65>) indicates that it would take 620 years before all Council's requirements regarding construction of kerb and gutter would be met if funded by Council under Council's current *Resourcing Strategy*. Council also notes that it receives repeated requests for kerb and gutter and that as a result of the backlog, funding levels have been traditionally low. POL12/65 further outlines that "All new developments/subdivisions include the provision of K&G (or grass swales) as consent conditions. So, population growth is not expected to increase demand". Should Council exclude certain areas of the LGA from requiring developers to provide the kerb and gutter for infill development which increases density, this will only serve to intensify the pressure on Council to provide kerb and gutter to existing residential areas of the LGA in the future.

As such, it is important that the community and Council are assisted by developers in providing the infrastructure which is triggered by their development.

e) Resident opposition

*The residents of West Crescent are opposed to kerb and gutter for the above reasons – particularly when there are little prospects of any more than one property on the street having concrete kerb and gutter in the foreseeable future.*



**Response:** The notification undertaken by Council between 20<sup>th</sup> October and 5<sup>th</sup> November 2021 resulted in one (1) submission being received, objecting to the applicant's proposed deletion of this condition. This indicates that there is interest from residents within the immediate surrounding locality in requiring the construction of kerb and gutter to address water pooling concerns within the road verge following rain events.

As noted earlier in this report, all properties within the immediate vicinity of the subject site are also capable of development either as dual occupancies under clause 4.1A of Shoalhaven LEP 2014 (being min. 500sqm for attached dual occupancy and 700sqm for detached dual occupancy) or for Torrens Title subdivision in their own right into 500m<sup>2</sup> lots under clause 4.1 of the LEP (refer Figure 8). Culburra Beach, like most of the Shoalhaven is experiencing accommodation pressures and this type of development is not uncommon, with multiple examples of recent dual occupancy and subdivision development applications within the locality of the site being lodged and under assessment and/or approved.



*Figure 8. Aerial photograph of the locality indicating the approx. lot sizes according to Council's records.*

As noted in POL12/65, Council has a programmed kerb and gutter strategy. Council's City Services Section have a works schedule that involves planned upgrades to the Culburra Beach Road network and demonstrates that Council's approach moving forward is to construct kerb and guttering over the long term within the locality to improve stormwater disposal for the safety of the community. A current project underway for kerb and gutter construction at Fairlands St, between Black Swan Way and Cross Street (to the west of Culburra Public School some 400m to the north west of the subject site) – a link to this information is available on Council's website: [Fairlands Street Culburra Beach - Shoalhaven City Council \(nsw.gov.au\)](https://www.fairlandscity.nsw.gov.au). The purpose of these upgrades is for kerb, gutter and footpath construction for School safety improvements. Owners of affected properties for this project were charged for proposed kerb and gutter as per Councils Kerb and Guttering – Charges Applicable Policy POL16/148. An excerpt of the plan showing these works is provided below at Figure 9:

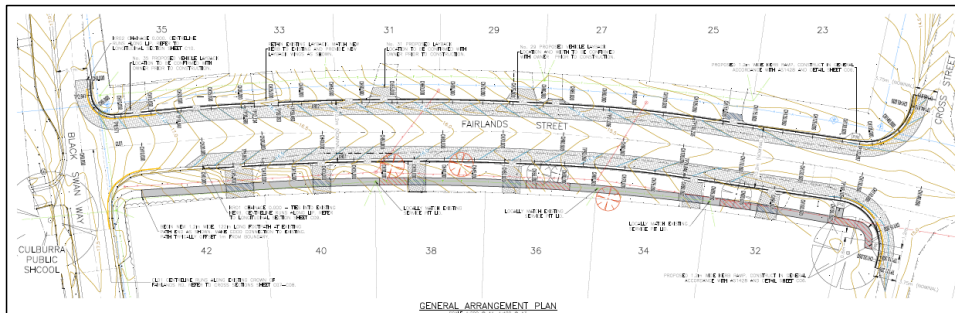


Figure 9. General arrangement plan for kerb and gutter/footpath – Fairlands St, Black Swan Way to Cross St Culburra Beach.

f) Existing precedents

*We questioned the requirement when it was added to the DA but were advised that council was unable make any exception for this development as it would set a precedent. We have since learned that there are already a number of existing precedents in the area of developments that have not had to meet this requirement. These include 98a & 98b Greenbank Grove, just around the corner from our property, on a road that, unlike ours, predominantly has kerb and gutter.*

**Response:** Both dual occupancy development and subdivision of land require the construction of kerb and gutter under DCP Chapters G11, G13 and G21. This has been consistently applied in accordance with DCP 2014. Developers undertaking dual occupancy development and/or subdivision and their consultants are generally aware of this requirement and factor it into the cost of development.

The subdivision at 98 Greenbank Grove is referenced as evidence of a precedent, however this was lodged and approved prior to the implementation of DCP2014 under previous provisions which exempted kerb and gutter on the frontage of the lot containing the existing dwelling (SF10403, lodged 10/07/2014 and approved at Development Committee 19/01/2015). A more recent dual occupancy approved at 34 Greenbank Grove at the corner of Black Swan Way did require full frontage construction of kerb and gutter (DA16/2430 approved 13/04/2017).

The area has precedent of kerb and guttering nearby (kerb and gutter on Greenbank Grove including kerb returns into Wollumboola Lane) which is likely to continue with future redevelopment.

2. Planning Assessment matters

It is found that the proposed deletion of Condition 19 of the consent would result in the following non-compliances:

- a) Acceptable Solution A16.1 and Performance Criteria P16 of Chapter G21 of Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
- b) Is likely to result in adverse impacts upon the surrounding built environment. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)
- c) The granting of approval to the modification is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)

Acceptable Solution A16.1 and Performance Criteria P16 of Chapter G21 of Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)

The proposed deletion of the integral kerb and gutter construction requirements would result in non-compliance with A16.1/P16 of Chapter G21 – Car Parking and Traffic as follows:

*Part 6.6 – Construction Standards*

*A16.1 The construction of internal driveways, roads, car parks, service areas and works in the road reserve comply with Table 3.*

*Table 3 – Dual Occupancy Development*

- *Kerb and Guttering*
  - *Concrete kerb and gutter is to be provided to Council's specification for the full frontage of the development together with a concrete layback and footpath crossing.*
  - *In the case of corner allotments, kerb and gutter will be required on each road frontage of the development.*

Acceptable Solution 16.1 provides a clear description that concrete kerb and gutter is required to be constructed for the full length of the development together with a concrete layback. However, given the site is a corner allotment, the proposal is also required to provided kerb and guttering to each road frontage of the development,

Condition 19 of the development consent has been implemented in accordance with the requirements of Acceptable Solution A16.1 of Chapter G21. Removal of the condition would result in non-compliance with the Acceptable Solution.

*P16 The construction of internal driveways, roads, car parks, service areas and works in the road reserve is of a suitable standard according to land use type.*

Noting that the DCP is a guideline and is to be applied flexibly, the deletion of the kerb and gutter is effectively an alternative solution. Whilst Council can consider alternatives, the proposed deletion of the requirement for kerb and gutter is also considered to be non-compliant with the listed Performance Criteria given:

- The works within the road reserve would no longer be constructed to the suitable standard required under Table 3 for the relevant land use type.
- The works would also result in non-compliance with other provisions of Council's Development Control Plan which also reflect the requirement for kerb and guttering such as A65.4, A113.1, and Section 6.2.3 of Chapter G11 – Subdivision of Land.

Noting that the proposal is non-compliant with both the Acceptable Solution and Performance Criteria, the proposal is not supported.

Is likely to result in adverse impacts upon the surrounding built environment. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)

The proposed deletion of the requirement for kerb and guttering has the potential to result in adverse impacts to the surrounding built environment.

The impacts to the surrounding built environment would in particular relate to Council's infrastructure and assets including constructed road (Wollumboola Ln) given the potential for deterioration in the condition of Wollumboola Ln, noting the large ponding of water which presently occurs in the pre-kerb and gutter condition during heavy rain events.

The submission received objecting to the deletion of the condition, also reflects Council's concern in relation to this matter.

The granting of approval to the modification is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)

The proposed deletion of the requirement for kerb and guttering would not be within the public interest for the following reasons:

- The additional runoff generated by the additional dwelling, which is already placed on the land, has created a water hazard within the road reserve area – as depicted in the photographs taken as part of Council's site inspection and as depicted in the objection received during the notification period.
- The hazardous pooling of water is likely to result in the deterioration of the condition of Wollumboola Ln outside the site were the requirement for kerb and guttering to be removed.
- Any requests by the owner of the land down the track for repairs to the road are likely to then fall in the hands of Council to fund.
- The removal of the requirement for kerb and guttering would not be consistent with the established kerb and guttering located on the corners of the properties fronting the northern part of Wollumboola Ln and recent determinations issued by Council such as 34 Greenbank Grove.
- The removal of the requirement for kerb and guttering would not be consistent with Council's existing Works Schedule and Council's Policy No. POL12/65 – Asset Management Plan.

#### **Planning Assessment**

The Modification Application has been assessed under s4.15(1) and s4.55(1A) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

#### **Consultation and Community Engagement:**

One (1) public submission was received in relation to Council's notification of the modification application, objecting to the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent to neighbouring and surrounding property owners. The notification was for a two-week period between 20<sup>th</sup> October and 5<sup>th</sup> November 2021.

Key issues raised as a result of the notification are provided below. It is noted that the objection largely relates to kerb and gutter requirements along Wollumboola Lane, not the West Cres frontage of the site.

##### **a) Water Hazard**

*Since they now have roof guttering that disperse now on the edge of the road it has created a large water hazard every time it rains.*





Figure 10. Photographs provided by objector of Wollumboola Ln in a rain event

#### Comment

Photographs provided by the applicant (Figure 10) and taken by Council as part of the site inspection confirm a water hazard does exist following the placement of the additional dwelling on the land during rain events – therefore necessitating the construction of the kerb and gutter as required by Condition 19.

#### b) Potential for Deterioration of Road Reserve

*This will continue to create damage to the existing road.*

#### Comment

This reflects Council's concerns and demonstrates the potential ongoing impacts upon the surrounding built environment, as it relates to Council's public infrastructure.

#### **Financial Implications:**

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW. Further, there is a potential that Council would eventually have to fund capital works associated with kerb and guttering within the locale, including in the location of the proposed development, should the removal of Condition 19 be supported.

#### **Legal Implications**

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued the matter would be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

#### **Summary and Conclusion**

A review of the applicant's request for the deletion of Condition 19 of Development Consent No. DA20/1809 has found that the reasons given are not reasonable or signify extenuating or unique circumstances to warrant the exception of the subject site from Council's planning


controls and policy on the matter. Exception from the controls would not achieve a better outcome; would set an undesirable precedent for future infill development within the Local Government Area (LGA); and transfer the ultimate costs associated with kerb and gutter provision onto Council, contrary to current Council policy.

As the modification application is not considered capable of support it is recommended the proposal be refused for the reasons outlined below:

1. The modification is non-compliant with Acceptable Solution A16.1 and Performance Criteria P16 of Chapter G21 of the Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
2. The modification is likely to result in adverse impacts upon the surrounding built environment. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)
3. The modification would result in the proposal not being suitable for the site. (Section 4.15(1)(c) of Environmental Planning and Assessment Act, 1979)
4. Having regard to the above matters, the granting of approval to the modification is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<b>Section 4.15 Assessment Report</b> <i>Environmental Planning &amp; Assessment Act 1979</i>
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**Conflict of interest declaration**

I have considered the potential for a conflict of interest under the Code of Conduct and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

*Note: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the Manager.*

Assessing Officer	Senior Development Planner		
Delegation Level Required	Called in by Council		
Variations Proposed	<input type="checkbox"/> Clause 4.6 exception <input type="checkbox"/> DCP departure		
Councillor Representations	Councillor	Date	TRIM Reference
	Clr Evan Christian	22/05/2023	D23/157728
<b>Recommendation</b>			
That Council call in DA22/2368 for a new RFS station on Bendalong Road due to the public interest.			
CL23.168 Title: Notice of Motion - Call in - DA22/2368 - New RFS Station - 1072 Bendalong Rd Conjola - Lot 1 DP 1071258 Meeting: Ordinary Meeting Date: 22 May 2023			
Report Recommendation	<b>Approval – Conditional Development Consent</b>		

DA Number	DA22/2368
PAN	PAN-287309
Property Address	1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258
Proposal	Construction of a NSW Rural Fire Service Station including driveway access, carparking, tree removal works and the use of part of Bendalong Road reserve as an asset protection zone
Applicant(s)	Shoalhaven City Council - Zoran Micevski
Owner(s)	SCC – D22/531068 (subject land and adjoining road reserve)
Owner's consent provided?	No

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Date Lodged	21-Dec-2022
Fees paid	Yes - D22/527264
Inspection date	4/05/2023
Date clock stopped	21/02/2023
Date clock started	27/06/2023
Related Application in Portal?	<input checked="" type="checkbox"/> Concurrence and/or external agency referral – <b>CNR-51004</b> <input type="checkbox"/> Section 68 - no <input type="checkbox"/> Section 138 - no <input type="checkbox"/> Construction Certificate - no
Number of submissions	30 <i>Note: where submissions are received Council must give notice of the determination decision to all submitters.</i>

### 1. Detailed Proposal

The proposal includes:

- Removal of vegetation (for building, access, parking area and APZ),
- Construction of a new rural fire station building, comprising a four-bay vehicle storage building, attached office and amenities building, surrounding concrete driveways, carparking and manoeuvring areas with single access from Bendalong Road.
- The proposal will include a 26 m bushfire asset protection zone (APZ) (15m inner protection area (IPA) and 11m outer protection area (OPA).
- Building to be constructed of colourbond roof, with colourbond & fibre cement cladding, Plans indicate of dark grey colour. Some vegetation between the building and the road is to be retained, and some landscaping also proposed. Building will be setback 13.2m from road boundary.



Figure 1: Proposed Development – 3D perspective

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1  
DP 1071258

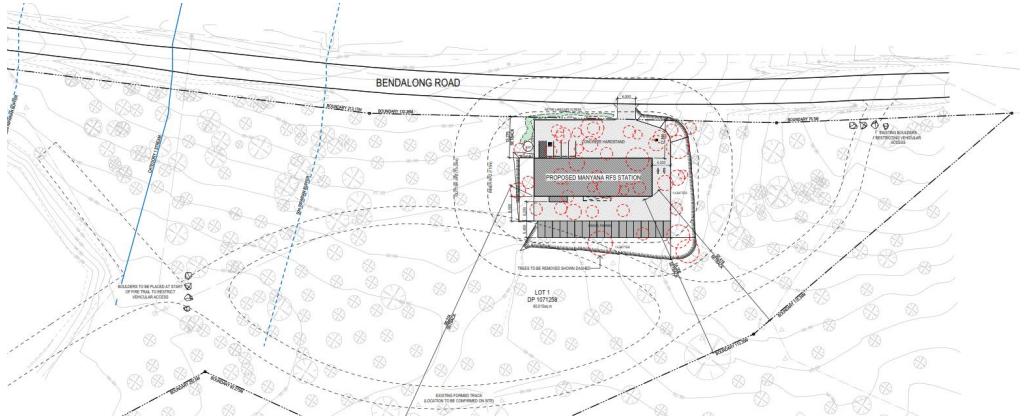


Figure 2: Proposed Development - site plan

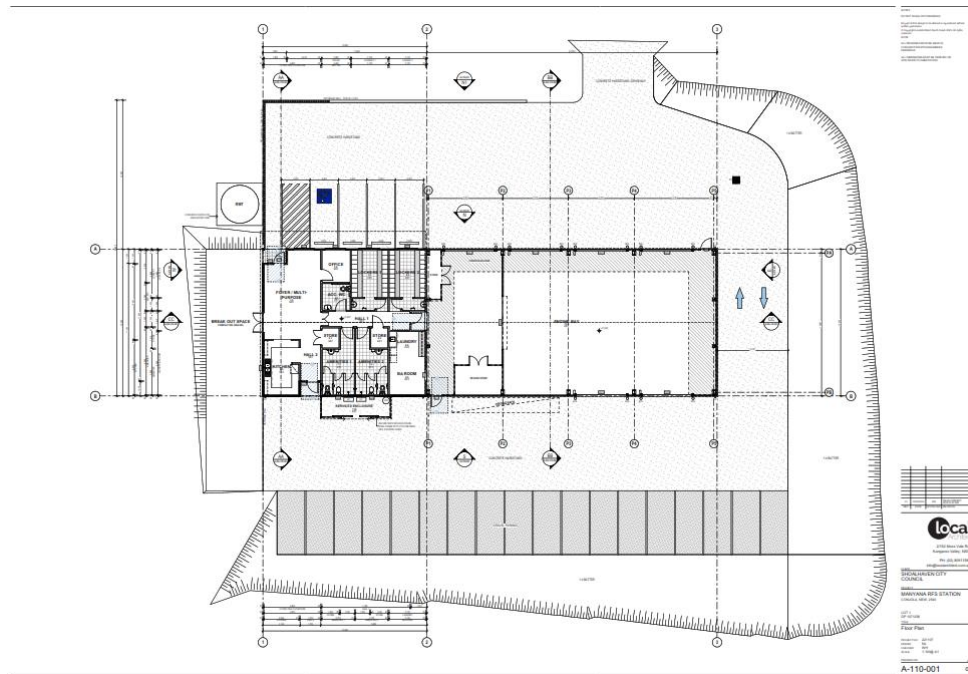


Figure 3: Proposed Development – floor plan

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1  
DP 1071258

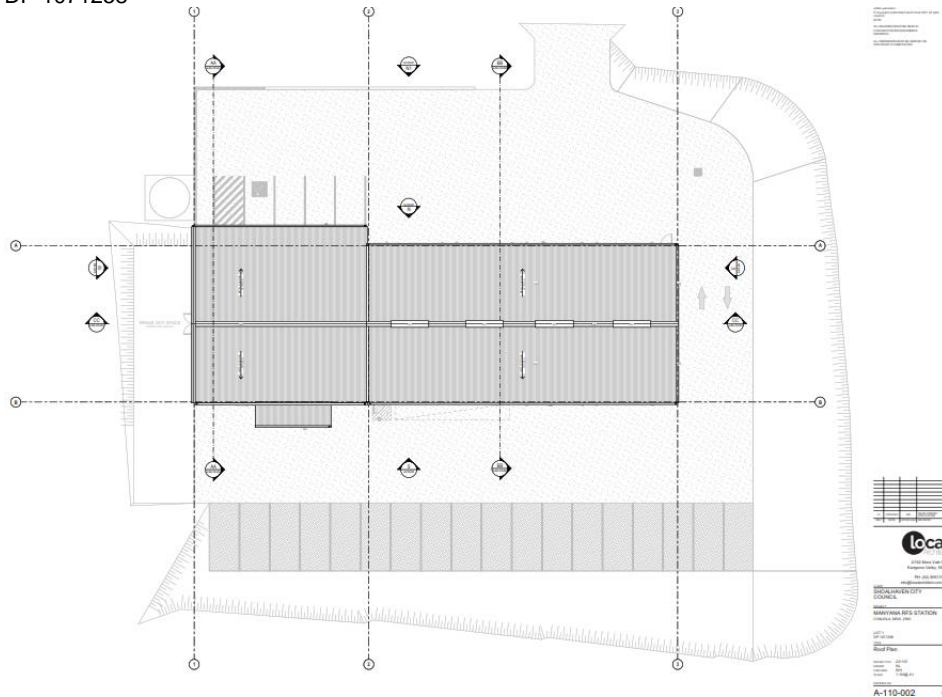


Figure 4: Proposed Development – roof plan

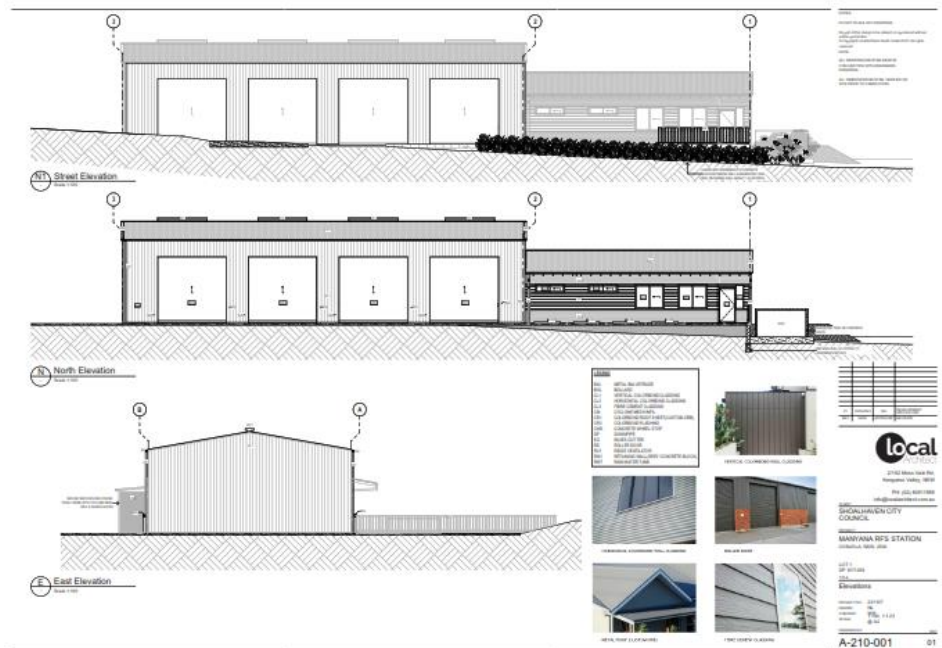


Figure 5: Proposed Development - elevations north & east

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1  
DP 1071258

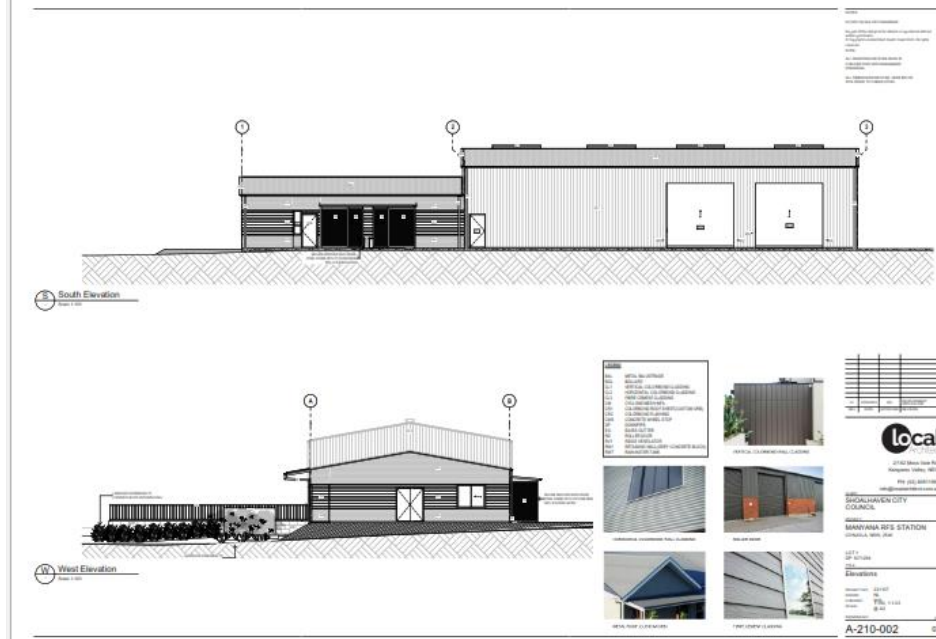


Figure 6: Proposed Development - elevations south & west

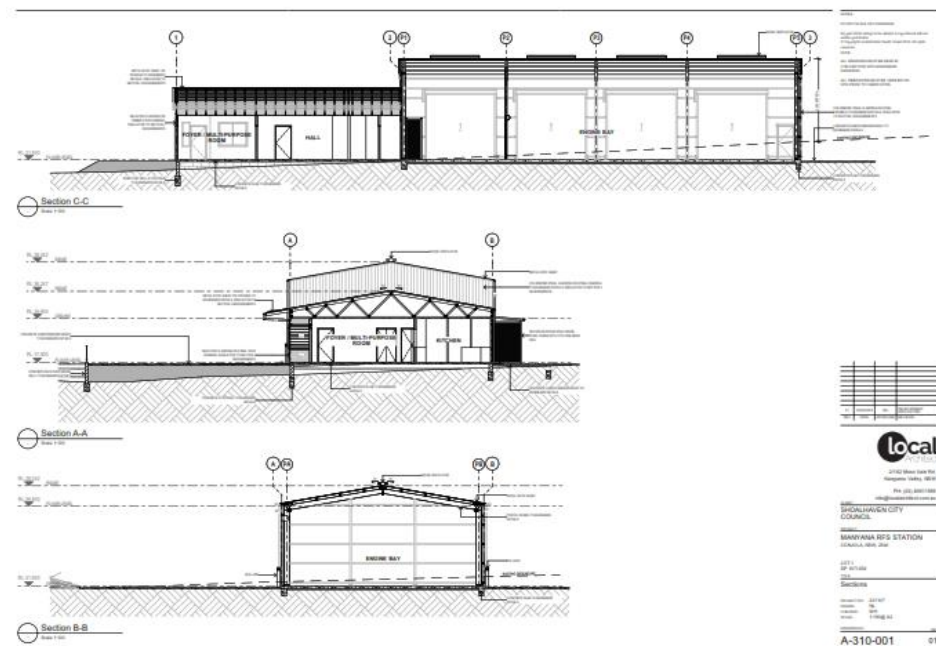


Figure 7: Proposed Development – sections

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Relevant documents:

Trim Ref:	Document	Author	Reference	Date
D23/162192	Odour assessment	ENRS	ENRS2674 Rev 1	April 2023
D23/252242	Architectural Plans	Local Architect	221107 Rev 01 & 02 (7 sheets)	25/05/2023 & 10/05/2023
	Title sheet	Local Architect	A-001-001 Rev 02	25/05/2023
	Site plan	Local Architect	A-100-001 Rev 02	25/02/2023
	Floor plan	Local Architect	A-110-001 Rev 01	10/05/2023
	Roof plan	Local Architect	A-110-002	10/05/2023
	Elevations	Local Architect	A-210-001	10/05/2023
	Elevations	Local Architect	A-210-002	10/05/2023
	Sections	Local Architect	A-310-001	10/05/2023
D23/252238	Flora & Fauna Assessment	EcoLogical	V4 21HNG_20287	23/06/2023
D23/252237	Letter – site justification	SCC	25365E (D23/216629)	08/06/2023
D23/253922 (not to be stamped)	Letter – Applicant	Edmiston Jones	20-0068	27/06/2023
D22/531070	Waste Management Plan	Edmiston Jones	(not referenced)	20/10/2022

Notes:

1. Civil plans submitted 2022, (Westlake & Punnett, Drawing No.21603/C01 Rev 1, dated 05/08/2022, 21603/C02, 216/C03, 216/C04, Rev 3 dated 08/09/2022,) have not been updated to reflect amended architectural plans. Therefore not included in plans to be approved, as revised civil plans required prior to construction.
2. SEE (D22/531082) dated 21/09/2022 ref 21/03, prepared with regard to original plans – not revised as per revised plans, therefore not included in 'stamped' documents.
3. Bushfire Assessment Report Certificate (D22/531076) dated 11/10/2022 by David Cannon of SET consultants prepared with regard to original plans – not revised as per revised plans, therefore not included in 'stamped' documents.
4. Estimate of cost of works is \$2345,107.00 – (D22/531067), and that was for original proposal, which has been reduced in size. Therefore, proposal is NOT Regional DA



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

## 5. Subject Site and Surrounds

### Site Description

The subject land is located on the southern side of Bendalong Road, to the north of Manyana and to the west of Bendalong. The site is part of the Sewage Treatment Plant. The land has a total area of 6ha.

Land Type: Public Land File No: 27440 Legal Doc: LD2898  
Owner: SHOALHAVEN CITY COUNCIL Title: FREEHOLD  
Crown Reserve: Council Reserve:  
Common Name: NORTHERN WASTEWATER TREATMENT PLANT

Classification	Management Plan	Aquisition	Sale/Disposal	Agreements	Purpos
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Classification	Method	Date
Operational Land	04.1513	23/11/2004

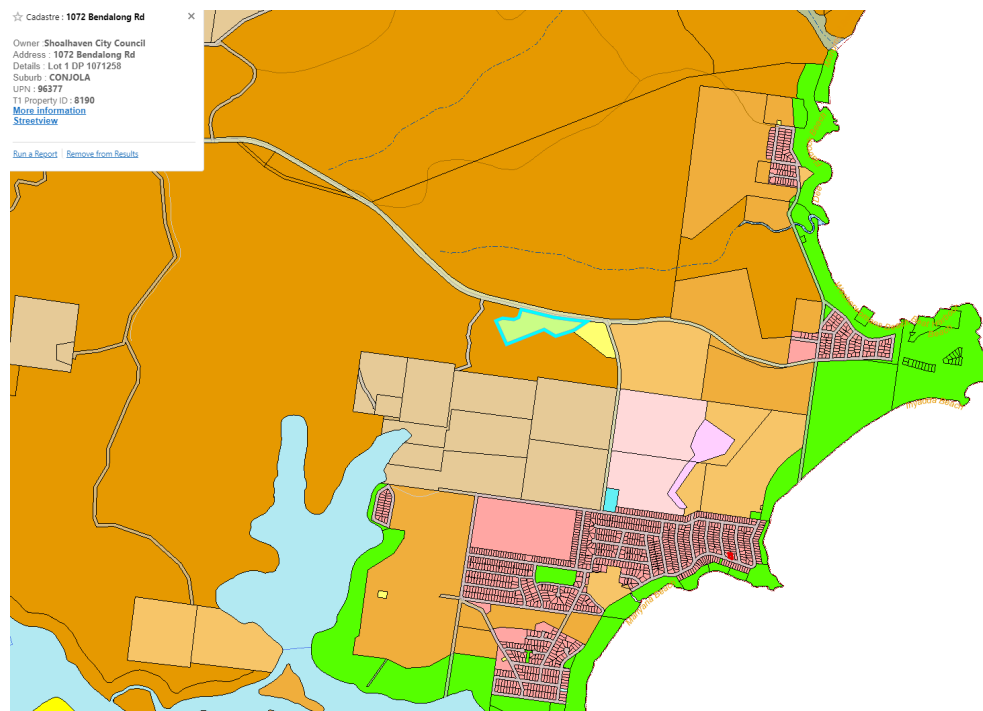


Figure 8– Locality Plan

The subject site has a frontage to Bendalong Road. The site contains the existing Sewage Treatment Plant on the western side of the land. There is also an existing padmount station at the north-west side of the lot. The eastern side of the land is vegetated. See also survey plan below, and submitted Flora and Fauna report (D22/531081).

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1  
DP 1071258



Figure 9 – Aerial Image

The land falls from the NE corner of the site to the South, the majority of the land falls to the north (to the road).

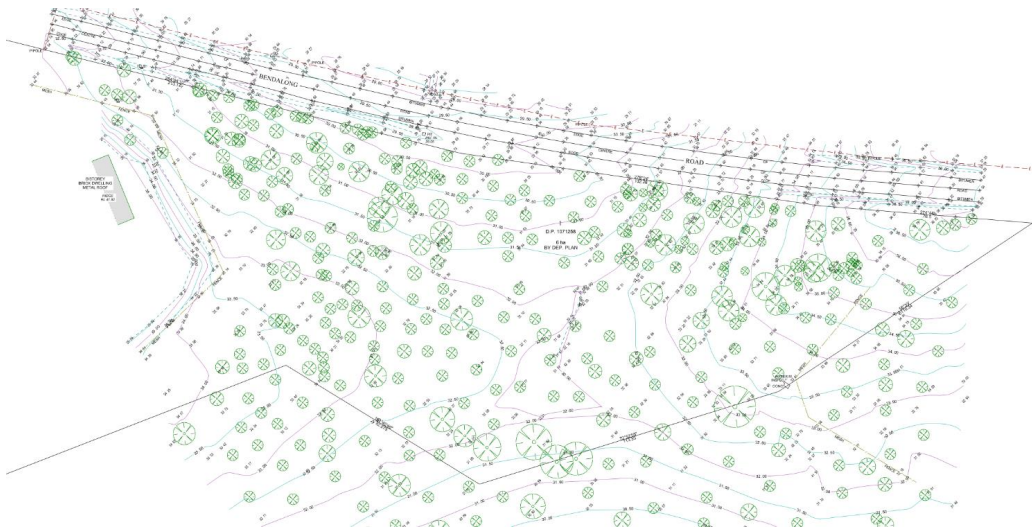


Figure10 – Survey Plan



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258



Figure 3: Survey effort

Figure 11 – FF survey study area.

The land is surrounded by large vegetated parcels of land, including National Park, with a recycling centre to the east.

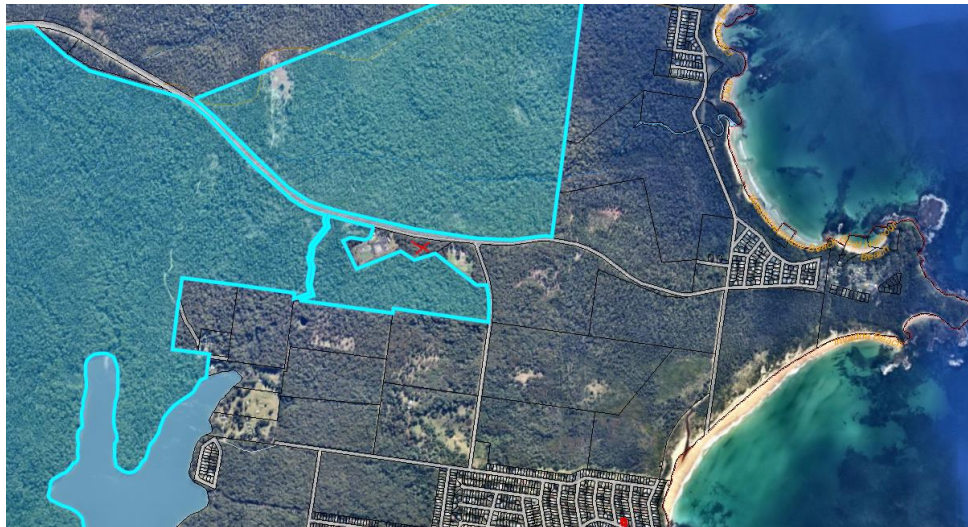


Figure 12 – arial image showing surrounding land

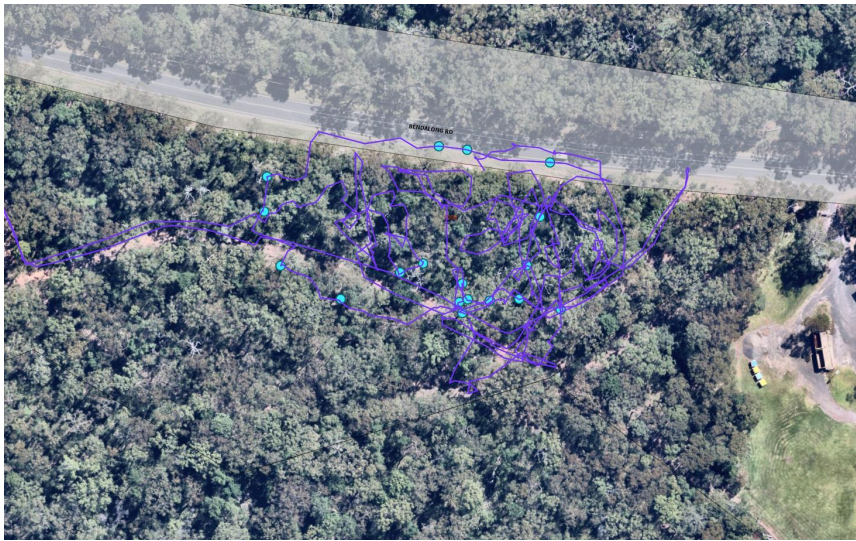
Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

#### **Site Inspection Observations**

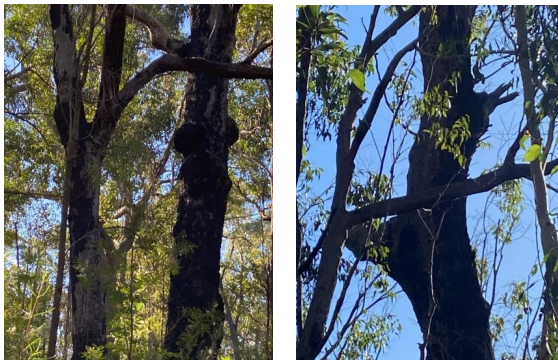
A site visit was conducted by Councils Biodiversity Coordinator on the 4<sup>th</sup> May between 11.00am and 3.00pm.

Refer to site visit notes in referral – D22/23435.

*The boundaries of the APZ Outer Protection Area were located and existing tracks adjoining the study area were located and inspected to assess condition and connection to Bendalong Road. The vegetation and fauna habitat descriptions, PCT classification, flora species lists and hollow bearing tree mapping included within the ELA assessment were validated. As the threatened orchid species *Pterostylis ventricosa* is currently in flower (4 plants observed in flower St Georges Basin 2 May) a targeted survey for this species was conducted including transects across the site at distance of 5 – 10m including closer inspection of more open areas within the ground layer that offer more opportunity for the species. Survey tracks were recorded using a hand held GPS.*



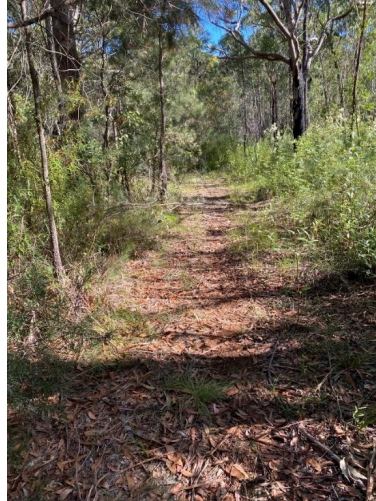
Hollow bearing trees with large hollows to the east of the proposed APZ to be retained





Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1  
DP 1071258

Native vegetation within and adjoining exiting fire trails



A mix of native and exotic grasses within the road verge including native species *Themeda australis* (Kangaroo Grass) in the foreground and *Andropogon virginicus* (Whiskey Grass) behind.



#### **Deposited Plan and 88B Instrument**

There are identified restrictions on the use of the land, however, they are located further to the west of the land than where the proposed bushfire station is proposed to be sited. As such the existing restrictions would not limit or prohibit the proposed development.

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Type	Sub Type	Gazetted Date	Misc No
ACQUISITION Lot 1 DP 1071258 acquired. Property Comments: For the purpose of providing sewerage services	MISCELLANEOUS	17/06/2005	
EASEMENT See DP 1128623 Property Comments:	PADMOUNT SUBSTATION		
EASEMENT See DP 1128623 Property Comments:	UNDERGROUND CABLES		

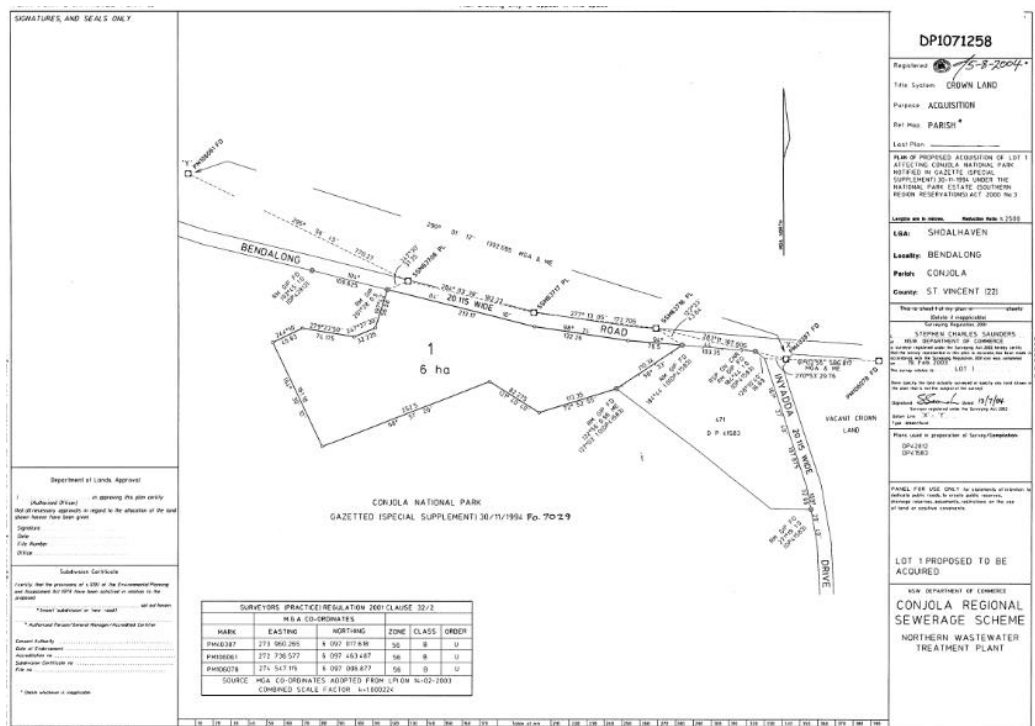


Figure 13: Deposited Plan

## 6. Background

### Pre-Lodgement Information

No prelodgement advice re: DA preparation/submission.

The applicant's letter of 08/06/2023 that addresses site justification, outlines the series of events that led to the lodgement of this application, including:

- Council's endorsement for the construction of a RFS station at Manyana & Bendalong



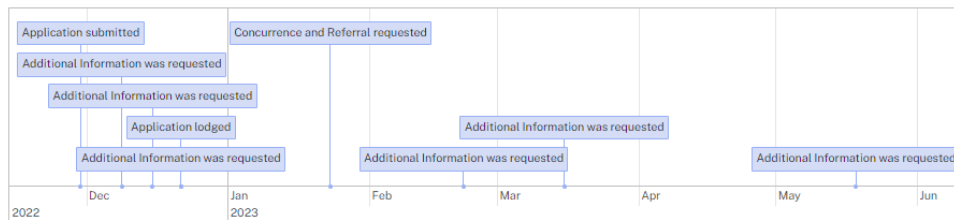
Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

- Business case prepared for the proposed RFS station
- Successful funding approval for the proposal
- Considered site selection, (this site as well as others considered);
- Site selection – impact on sewer treatment plant
- Site selection - consideration of habitat / minimise impact

**Post-Lodgement Information**

Reference number	Milestone	Date
1	Application submitted	29/11/2022
2	Additional Information was requested	08/12/2022
3	Additional Information was requested	15/12/2022
4	Application lodged	21/12/2022
5	Additional Information was requested	21/12/2022
6	Concurrence and Referral requested	23/01/2023
7	Additional Information was requested	21/02/2023
8	Additional Information was requested	15/03/2023
9	Additional Information was requested	18/05/2023

**Timeline**



Date	Action	Reference
21/12/2022	DA lodged	
	RFI issued <ol style="list-style-type: none"> <li><b>Owners Consent</b> - Provide revised owners consent form which provides Applicant details which are consistent with the NSW Panning Portal Form (i.e. Company is Shoalhaven City Council).</li> <li><b>Notification Plan</b> - The notification plan set is required to be revised to include a full site plan which shows the full extent of the development site.</li> <li><b>Existing Fire Trails</b> – Council notes that the submitted architectural plans and civil plans depict existing vegetation located within the fire trails. In this regard, please provide written confirmation that no physical works (including tree</li> </ol>	D22/531462

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	removal works) are proposed to the existing fire trails shown on the plans. <b>4. Swept Paths</b> – Provision of swept paths showing the method of ingress and egress from the development for fire trucks.	
	Request for extension of time to reply to RFI	D23/531304
23/12/2023	RFI extension granted until 18/01/2023 & request for grant deadline info	D23/533468
17/01/2023	Add info received , revised plans	D23/16990
	Email to admin to issue referrals & notification	
23/01/2023	Referrals issued	
08 to 23 Feb 2023	Notified to adjoining & nearby property owners & advertised & sent to CCB	D23/37614 D23/27156 D23/40116
21/02/2023	RFI issued	D23/63222
22/02/2023	RFS response	D23/66371
15/03/2023	RFI issued	D23/97358
11/04/2023	Advice from applicant – revised proposal being prepared	D23/136635
28/04/2023	Odour report submitted	D23/162044
11/05/2023	Meeting with app	
16/05/2023	Revised plan submitted	D23/193042
18/05/2023	RFI	D23/197028
22/05/2023	DA called in by Council	CL:23.168
26/06/2023	Add info submitted – plans, revised FF report & site justification letter	D23/252226
27/06/2023	Add info submitted – amended applicant details, and letter from current app	D23/253894
27/06/2023	Email to admin – re-referrals & update portal applicant details	
	Re-referred to EAO & development Eng	
10/07/2023 17/07/2023 25/07/2023	EAO referral followed-up	
12/07/2023	Dev Eng - Referral received	D23/255951



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

31/07/2023	Biodiversity re-referral received	D23/255955
02/08/2023	Assessment report, draft determination & draft report to Council - referred for peer review	

### Site History and Previous Approvals

No previous DAs show up on the GIS overlay, however, there is an existing Sewer Treatment Plant on this site.

The land was acquired by Crown for purposes of a Wastewater Treatment Plant as part of the Conjola Regional Sewerage Scheme. The land is held in freehold ownership by SCC, classified as Operational Land.

UTE: 96377  Ordinary Title - (Active) Property ID: 8190  NonRat

Assessment: 03204.64400

Description: Lot 1 DP 1071258 Area: 6 000 ha

Address: 1072 Bendalong Rd, CONJOLA 2539 [ [Origin of Road & Locality name](#) ] Ward: 3

Parish: CONJOLA County: ST. VINCENT Ext Ref:

Property Name:

#### Council Land Register

Land Type: Public Land File No: 27440 Legal Doc: LD2898  
Owner: SHOALHAVEN CITY COUNCIL Title: FREEHOLD  
Crown Reserve: Council Reserve:  
Common Name: NORTHERN WASTEWATER TREATMENT PLANT

Classification Management Plan Acquisition Sale/Disposal Agreements Purpose Files Notes

Classification	Method	Date	Category
Operational Land	04.1513	23/11/2004	

## 7. Consultation and Referrals

Internal Referrals	
Referral	Comments
Building Surveyor D22/23033	Plans to be corrected to remove indicative boundary (no subdivision proposed).  <i>Council has not received a CC application and therefore a detailed BCA assessment has not been undertaken. The proposal has included access for people with a disability (designated accessible carparking bay, unisex accessible facility, and ambulant wc's). From the RL's of the parking aisle and ground floor, it appears a compliant accessible pathway from the parking bay to the building entry is achievable.</i>  Recommended conditions provided, also relevant to revised plans.
EAO D22/23435 <i>Initial (1<sup>st</sup>) referral response</i>	EAO reviewed proposal, submitted documentation and undertook site inspection.  ELA stated the proposal does not trigger the Biodiversity Offsets Scheme (BOS) under the BC Act as; <ul style="list-style-type: none"> <li>the native vegetation clearing threshold for the subject land (0.5 ha) is not exceeded. ELA conclude the proposal involves the removal of up to 0.4538 ha of Plant Community Type (PCT) 3267 Shoalhaven Foothills</li> </ul>

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p>Turpentine Forest. ELA have also assessed the cleared road verge as 0.02ha however have not included this due to the grassland not being dominated by native species. This area has native species throughout therefore must be included within the area clearing threshold assessment. This brings native vegetation to removal to 0.4738ha (below the threshold of 0.5ha)</p> <ul style="list-style-type: none"> <li>• No areas of Biodiversity Values mapping will be affected;</li> <li>• The FFA finds the proposal will not have a significant impacts according to the Tests of Significance for BC Act listed threatened species occurring or likely to occur on site.</li> </ul> <p>Points of contention raised in the Manyana Matters submission by ecologist Brendan Ryan have been considered in making this review of the proposal and FFA.</p> <p>Council generally concurs with the field survey and classifications and descriptions provided by ELA. The HBT mapping appears accurate. As stated by ELA all trees with medium or large hollows are outside the development footprint and appear to be able to be retained where these occur within the APZ.</p> <p>EAO recommended revised plans addressing several be submitted addressing:</p> <ul style="list-style-type: none"> <li>• Management of informal parking areas.</li> <li>• Managed use of the APZ and fire trails.</li> <li>• Justification of why the proposal cannot be positioned on another site in Bendalong would need to be given to meet the requirements of Clause 7.5 Terrestrial Biodiversity to avoid impacts to a habitat corridor.</li> <li>• Mapping is required to show the interaction between the 50m buffer to the Category 1 riparian area and the proposed APZ</li> </ul> <p>And,</p> <ul style="list-style-type: none"> <li>• The Test of Significance for <i>Cryptostylis hunteriana</i> needs to be revised to be in accordance with the definition for local population given within the NSW DPE Test of Significance Guidelines. ELA assess the 4 <i>C hunteriana</i> as part of a larger surrounding population without survey or detail on records within habitat adjoining the Study Area. Without this further information the records within the study area should be assessed as the local population.</li> <li>• No reference site assessment or verification of local flowering is given in the FFA for the targeted survey conducted for <i>Genoplesium baueri</i>. This needs to be included in order for Council to accept the findings of this survey and the conclusion that this species is unlikely to occur on the site.</li> </ul>
2 <sup>nd</sup> referral response D23/255955	<p><i>This review is focussed on amended plans and further information provided to support the DA for the construction of a new Rural</i></p>

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p><i>Fire Service (RFS) station at 1072 Bendalong Road, Conjola (Lot 1 DP 1071258).</i></p> <p><i>The initial Biodiversity review requested further information and amendments to the design to avoid and minimise impacts. Being a highly constrained site justification of the site for this project was requested in order to demonstrate the applicant has applied the avoid/minimise decision making hierarchy as required by the Clause 7.5 of the SCC LEP – Terrestrial Biodiversity.</i></p> <p>An assessment of revised plans/documents against requested information was undertaken.</p> <p>Each of the requested changes or additional information have been satisfied and accepted.</p> <p>Mitigation measures from the flora and fauna assessment by ELA incorporated into recommended conditions.</p>
<p>EHO D22/23443</p>	<p>Proximity to a sewerage treatment plant – odour concerns. <i>The applicant has not considered the odour in their application/report, a minimum basic odour assessment required to be provided to support the application.</i></p> <p>Basic odour assessment (as requested) by ENRS was submitted 28/04/2023 – (D23/162192).</p> <p>That report concluded that “<i>based on the available data reviewed in this assessment, no constraints have been identified for the proposed development due to existing odour sources in the area.</i>”</p> <p>That report also included a number of recommendations, including</p> <ul style="list-style-type: none"> <li>• <i>The CSM identified two (2) pAECs or potential odour sources which should continue to be monitored during the proposed development and construction works. Should the adjacent sites be subject of any changes to their operations or works which may generate odour, further odour assessment should be considered; and</i></li> <li>• <i>Should any change in Site conditions or incident occur which causes a potential environmental impact, a suitable environmental professional should be engaged to further assess the Site and consider requirements for any additional assessment.</i></li> </ul>
<p>Development Engineer D22/23448 <i>Initial referral response (1<sup>st</sup>)</i></p>	<p><b>Earthworks</b></p> <p><i>Cut/fill earthworks are proposed for the development. Retaining walls have been shown on the plans. The tallest of these walls is 1.7m in height per the elevations, at the northwest corner of the lot, retaining the carpark/manoeuvring area.</i></p> <p><i>Given the space around the development, there is no engineering concern with the ability to construct and maintain a suitably designed wall – however the DAO should consider the visual impact of a high retaining wall at a potentially visible, street facing front corner of the building.</i></p>



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p><b>Roads, Access &amp; Parking</b></p> <p><i>Four parking spaces (inclusive of one accessible space) are provided on site in addition to the parking in the building for fire appliances. There is no guidance in DCP G11 or the RTA Guide to Traffic Generating Development as to parking numbers required for an RFS station.</i></p> <p><i>Therefore, a site and use-specific justification should be provided, detailing the anticipated number of staff, volunteers and other potential vehicular access required during operation of the station.</i></p> <p><i>Given the nature of the frontage road, there may be limited safe opportunities for vehicles to pull off the road and park despite there being no parking restrictions.</i></p> <p><i>The SEE states that overflow parking is available within the sealed forecourt area and adjacent fire trails.</i></p> <p><i>It is anticipated that the nature of the development and operation should be able to be managed to ensure that volunteers and other visiting vehicles can park such that they do not detrimentally impact safety to Bendalong Rd and the operation of the station (such as impacting manoeuvring for fire appliances).</i></p> <p><i>No driveway long section has been provided.</i></p> <p><b>Stormwater Drainage</b></p> <p><i>A stormwater drainage plan has been submitted. Stormwater is to be conveyed to the road table drain, which is proposed to be upgraded back to the existing low point, where a culvert (not in Council's GIS) conveys water beneath Bendalong Rd. This is generally acceptable.</i></p> <p><i>OSD is proposed in a rainwater tank accepting roof water. The extensive hardstand driveway and carpark/forecourt areas are not detained. This may limit the effectiveness of the OSD as not all contributing hardstand drains through the tank.</i></p> <p><i>Subject to submission of an acceptable driveway long section, suggested conditions of consent provided.</i></p>
2 <sup>nd</sup> referral D23/255951	<p><b>Easement / 88B / DP Check</b></p> <p><i>There are no easements on the property per the information in Council's GIS.</i></p> <p><b>Earthworks</b></p> <p><i>Cut/fill earthworks are proposed for the development. Retaining walls are proposed however appear to be substantially reduced in height from the previous proposal. No heights are annotated on the plans, however scaling section AA shows a height of approximately 1.2m.</i></p> <p><i>Extensive batters are proposed – environmental impacts e.g. clearing to facilitate batters to be assessed by others.</i></p>

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p><i>Given the space around the development, there is no engineering concern with the ability to construct and maintain a suitably designed wall.</i></p> <p><b>Roads, Access &amp; Parking</b></p> <p><i>Four parking spaces (inclusive of one accessible space) are provided in front of the building, with additional gravel overflow parking area located to the rear. There is no guidance in DCP G11 or the RTA Guide to Traffic Generating Development as to parking numbers required for an RFS station. However, if parallels are drawn with similar use types – for instance general industry for the engine bay, office for the office/multi-purpose room/kitchen, the number of spaces on site is well in excess of DCP requirements.</i></p> <p><i>Given the nature of the frontage road, there may be limited safe opportunities for vehicles to pull off the road and park despite there being no parking restrictions.</i></p> <p><i>The SEE states that overflow parking is available within the sealed forecourt area and adjacent fire trails. This was based on the old layout, the new layout does provide additional on site parking with 18 gravel spaces proposed behind the building.</i></p> <p><i>It is anticipated that the nature of the development and operation should be able to be managed to ensure that volunteers and other visiting vehicles can park such that they do not detrimentally impact safety to Bendalong Rd and the operation of the station (such as impacting manoeuvring for fire appliances).</i></p> <p><i>A driveway long section has been provided and appears acceptable.</i></p> <p><b>Stormwater Drainage</b></p> <p><i>A stormwater drainage plan has been submitted for the original layout, but has not been revised since. Stormwater is to be conveyed to the road table drain, which is proposed to be upgraded back to the existing low point, where a culvert (not in Council's GIS) conveys water beneath Bendalong Rd. This is generally acceptable. It would however appear more economical to discharge to the existing low point on site which runs to the existing culvert crossing Bendalong Rd.</i></p> <p><i>OSD was proposed in a rainwater tank accepting roof water. The extensive hardstand driveway and carpark/forecourt areas are not detained. This may limit the effectiveness of the OSD as not all contributing hardstand drains through the tank. Unless the tank can be sited in such a way to accept runoff from the hardstand areas (i.e. below the surface level of the carpark), the OSD strategy is unlikely to work. However conditions can be applied to ensure this is considered prior to CC.</i></p> <p><i>Suitable and appropriate conditions of consent recommended.</i></p>
City Services – Natural Services – tree management officer D23/23530	<p>(Trees in road reserve)</p> <p><i>Trees on road verge at the access to proposed Rural Fire Service (RFS) building site. Trees identified as mixed species including but not limited to Eucalyptus pilularis, Corymbia gummifera,</i></p>

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p><i>Syncarpia glomulifera, Casuarina sp and Acacia sp. Trees are of semi-mature to prime of life age.</i></p> <p><u>Recommended condition -</u>  <i>Trees within the road verge may be removed to allow the construction of access to the site, subject to an Environmental Officer review of the environmental impacts of this proposal. Trees outside the area of the proposal must be protected in accordance with the Australian Standards 4970-2009 Protection of Trees on Development Sites. Tree Protection Zones (TPZ) must be clearly identified and fenced as indicated in the AS 4970-2009.</i></p>
City Services – Works & Services – Property (Any DA on Council land) D23/23544	<p>The proposed APZ is in accordance with Council's 'Creation of an Asset Protection Zone (APZ) over Council Owned or Managed Land Policy'. A deferred commencement consent / condition was recommended relating to requiring a Bushfire Asset Protection Zone easement over Council land. However, this would be an easement over the subject land (owned by Council) for bushfire asset management purposes over the subject property. In this instance these conditions are not considered warranted or beneficial in achieving this outcome and have not been included on the consent.</p>
City Services – Road Asset Mgt D23/23551	<p><i>Concern raised as to the driveway entry onto Bendalong Road to be expanded by way of shoulder widening allowing service vehicles to exit and enter the facility safely in the case of emergency and day to day operations. This is noted on drawing D23 16980 or DA/02 showing swept path of vehicles turning into oncoming traffic.</i></p> <p>See Development Engineer review comments and recommended conditions.</p>
City Services – Waste D23/23602	<p>Waste management plan provided is suitable for the development.</p> <p>Standard conditions recommended.</p>
Shoalhaven Water D23/23613	<p>Standard condition – requiring application for Development Notice.</p>

External Referrals	
Referral	Comments
NSW RFS D23/66371	<p>No objection to proposal.</p> <p>Recommended conditions consistent with PBFP 2019 provided, 22 Feb 2023, prior to most recent plans, however RFS have advised "that where a minor amendment to the above-noted documents is proposed, Council may use its discretion to determine whether the minor amendment warrants further assessment by the NSW RFS". The amendments are for a slight reduction in floor area, however the proposal is still consistent</p>

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	with general recommendations from Bushfire Assessment by David Cannon, and recommended RFS conditions. Recommended conditions suitable for inclusion in determination.
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**Integrated Development – n/a**

## 8. Statutory Considerations

### Environmental Planning and Assessment Act 1979

#### Section 4.14 Consultation and development consent – certain bush fire prone land

<i>Is the development site mapped as bush fire prone land?</i>	Yes
<i>Is there vegetation within 140m of the proposed development that would form a bush fire hazard as identified in Planning for Bush Fire Protection?</i>	Yes
The bush fire assessment report identifies that the proposed development conforms to the relevant specification and requirements of Planning for Bush Fire Protection 2019 and has been prepared by a suitably qualified consultant. Suitable NSW RFS recommended conditions of consent have been provided. – D23/66371	

### Biodiversity Conservation Act 1979

<i>Does the application include works or vegetation removal within the <a href="#">Biodiversity Values mapped area</a>?</i>	Yes										
<i>Does the application involve clearing of native vegetation above the area clearing threshold?</i> <table border="1"> <thead> <tr> <th>Minimum lot size associated with the property</th><th>Threshold for clearing, above which the BAM and offsets scheme apply</th></tr> </thead> <tbody> <tr> <td>Less than 1 ha</td><td>0.25 ha or more</td></tr> <tr> <td>1 ha to less than 40 ha</td><td>0.5 ha or more</td></tr> <tr> <td>40 ha to less than 1000 ha</td><td>1 ha or more</td></tr> <tr> <td>1000 ha or more</td><td>2 ha or more</td></tr> </tbody> </table> <p>The area threshold applies to all proposed native vegetation clearing associated with a proposal, regardless of whether this clearing is across multiple lots. In the case of a subdivision, the proposed clearing must include all future clearing likely to be required for the intended use of the land after it is subdivided.</p> <p>If the land on which the proposed development is located has different minimum lot sizes the smaller or smallest of those minimum lot sizes is used to determine the area clearing threshold.</p>	Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply	Less than 1 ha	0.25 ha or more	1 ha to less than 40 ha	0.5 ha or more	40 ha to less than 1000 ha	1 ha or more	1000 ha or more	2 ha or more	Refer to Biodiversity Unit referral comments for assessment of this issue
Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply										
Less than 1 ha	0.25 ha or more										
1 ha to less than 40 ha	0.5 ha or more										
40 ha to less than 1000 ha	1 ha or more										
1000 ha or more	2 ha or more										
<i>Will the proposed development have a significant impact on threatened species or ecological communities, or their habitats, according to the</i>	No Refer to Biodiversity Unit referral										

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

test in <a href="#">section 7.3</a> of the <i>Biodiversity Conservation Act 2016</i> (i.e. 'test of significance')?  <i>Note: Consideration should be given to the site's proximity to NPWS land (see <a href="#">guidelines</a>) and other natural areas, as well as any area that may contain threatened species, vulnerable or endangered ecological communities or other vulnerable habitats.</i>	comments for assessment of this issue
<i>If the application exceeds the Biodiversity Offsets Scheme Threshold (i.e. if yes to <b>any</b> of the above), has the application been supported by a Biodiversity Development Assessment Report (BDAR)?</i>	Refer to Biodiversity Unit referral comments for assessment of this issue

#### **Fisheries Management Act 1994**

The proposed development will not have an adverse impact on the matters for consideration under Part 7A of the *Fisheries Management Act 1994*.

#### **Local Government Act 1993**

<i>Do the proposed works require approval under Section 68 of the Local Government Act 1993?</i>	Yes
<i>Does the application include an application under <a href="#">Section 68</a> of the Local Government Act 1993 for water supply, sewerage and stormwater drainage work?</i>  <i>Note: Section 68 applications are shown as a related case to the PAN in the NSW Planning Portal.</i>	No

#### **9. Statement of Compliance/Assessment**

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

#### **(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land**

##### **i) Environmental Planning Instrument**

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*. The following planning instruments and controls apply to the proposed development:

<b>Environmental Planning Instrument</b>
State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
State Environmental Planning Policy (Industry and Employment) 2021



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Environmental Planning Instrument
State Environmental Planning Policy (Planning Systems) 2021
State Environmental Planning Policy (Resilience and Hazards) 2021
State Environmental Planning Policy (Resources and Energy) 2021
State Environmental Planning Policy (Transport and Infrastructure) 2021
Shoalhaven Local Environmental Plan 2014

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 3 Koala Habitat Protection 2020

Question	Yes	No
1. Does the subject site have a site area >1ha or does the site form part of a landholding >1ha in area?	<input checked="" type="checkbox"/>	Proceed to Question 2
2. Is the land 'potential koala habitat'? <i>Note: 'potential koala habitat' are areas of native vegetation where trees of the types listed in Schedule 2 of the SEPP (feed tree species) constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.</i>	<input type="checkbox"/>	Proceed to Question 3
3. Is the land 'core koala habitat'? <i>Note: 'core koala habitat' is an area of land with a resident population of koalas, evidenced by attributes such as breeding females, being females with young, and recent sightings of and historical records of a population.</i>	<input type="checkbox"/>	Proceed to Question 4

Refer also to submitted flora and fauna report that specifically addresses this matter.

#### **State Environmental Planning Policy (Planning Systems) 2021**

Pursuant to schedule 6 of this SEPP, the proposal does NOT constitute regionally-significant development, whilst Council is the owner of the site, the proposal has the capital investment value of \$2,345,107.00. As such, the SRPP is the consent authority for the DA.

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

##### **Chapter 2 Coastal Management**

The subject land is NOT mapped as "coastal wetlands" "proximity area for coastal wetlands", "coastal vulnerability area", "coastal environment area" or "coastal use area" under the SEPP.

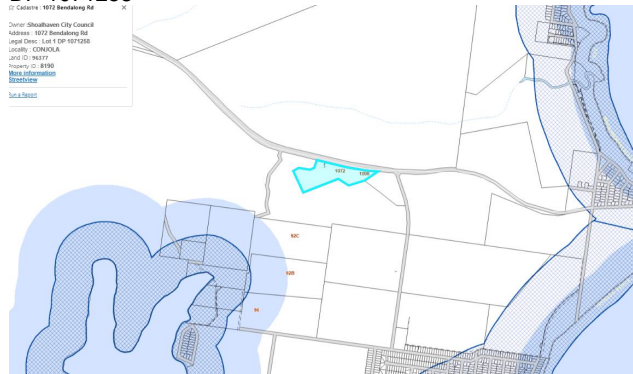
Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1  
DP 1071258


Figure 14 - SEPP2021 – Resilience &amp; Hazards Mapping

## Chapter 4 Remediation of Land

Question	Yes	No
1. Does the proposal result in a new land use being a residential, educational, recreational, hospital, childcare or other use that may result in exposure to contaminated land?	<input type="checkbox"/> Proceed to Question 2	<input checked="" type="checkbox"/> <b>Assessment under SEPP 55 and DCP not required.</b>
2. Are there any previous investigations about contamination on the land?	<input type="checkbox"/> Detailed investigation required.	<input checked="" type="checkbox"/> Proceed to Question 3
3. Was the site previously used or is the site currently used for an activity listed in Table 1 of the Managing Land Contamination Planning Guidelines?	<input type="checkbox"/> Detailed investigation required.	<input checked="" type="checkbox"/> Proceed to Question 4
4. Are there any land use restrictions on the land relating to possible contamination (e.g. notices issued by EPA or other regulatory authority)?	<input type="checkbox"/> Detailed investigation required.	<input checked="" type="checkbox"/> Proceed to Question 5
5. Did the site inspection suggest that the site may have been associated with any activities listed in Table 1 of the Managing Land Contamination Planning Guidelines or were any potential sources of contamination observed on site?	<input type="checkbox"/> Detailed investigation required.	<input checked="" type="checkbox"/> Proceed to Question 6
6. Are there any identified sources of contamination on land immediately adjoining the subject site which could affect the subject land?	<input type="checkbox"/> Detailed investigation required.	<input checked="" type="checkbox"/> Proceed to Question 7

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Question	Yes	No
7. Does Council have sufficient information to be satisfied that the proposed land use will not expose contaminants that might be present in soil or groundwater?	<input checked="" type="checkbox"/> Proposal satisfactory with regard to SEPP55 and DCP requirements	<input type="checkbox"/> Detailed investigation required.

## **State Environmental Planning Policy (Transport and Infrastructure) 2021**

### **Chapter 2 Infrastructure**

Considerations	Comments
<b>Electricity Transmission or Distribution network</b>	
<i>Part 2.3 Division 5 Subdivision 2 – Development likely to affect an electricity transmission or distribution network</i>	The proposal does not involve work within proximity to an overhead electricity power line. The application was <b>not</b> referred to Endeavour Energy for comment with no objection being raised subject to advice. Referral comments have been taken into consideration.
<b>Railway Corridors – n/a</b>	
<b>Classified Roads - n/a</b>	
Schedule of classified roads has been checked <a href="https://www.transport.nsw.gov.au/system/files/media/documents/2023/classified-roads-schedule.pdf">https://www.transport.nsw.gov.au/system/files/media/documents/2023/classified-roads-schedule.pdf</a>	

### **Division 6 Emergency services facilities and bush fire hazard reduction**

#### **2.51 Development permitted with consent**

- (1) Development for the purpose of an emergency services facility may be carried out with consent in a prescribed zone by or on behalf of the NSW Rural Fire Service or an emergency services organisation that is not a public authority.
- (2) Development for the purpose of an emergency services facility may be carried out with consent by or on behalf of a public authority (other than the NSW Rural Fire Service) on any land.
- (3) Development to which subsection (2) applies may only be carried out on land reserved under the [National Parks and Wildlife Act 1974](#) if it is authorised by or under that Act.

The proposed development is permissible with consent under the Transport and Infrastructure SEPP being an emergency services facility within a prescribed zone (SP2) by or on behalf of the NSW RFS.

## **State Environmental Planning Policy (Industry and Employment) 2021**

### **Chapter 3 Advertising and Signage**

Not applicable -no signage is proposed.

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

#### **Shoalhaven Local Environmental Plan Local Environmental Plan 2014**

##### **Land Zoning**

The land is zoned SP2 – Infrastructure (Sewage Treatment Plant) under the *Shoalhaven Local Environmental Plan 2014*.

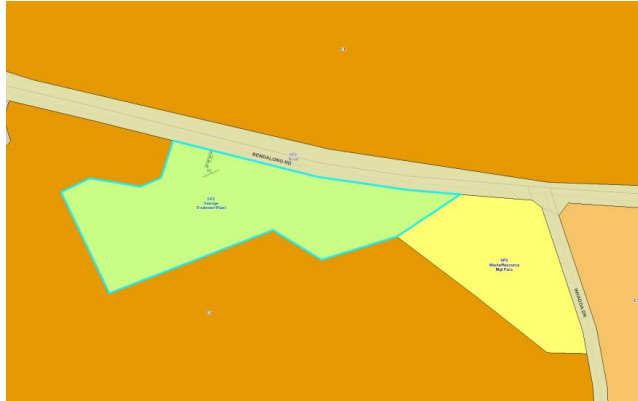


Figure 15 - SLEP 2014 – zoning extract

##### **Characterisation and Permissibility**

The proposal is best characterised as an **emergency services facility** under *Shoalhaven Local Environmental Plan 2014*.

**emergency services facility** means a building or place (including a helipad) used in connection with the provision of services by an emergency services organisation, including a police station and related training facilities.

The SP2– Infrastructure zone permits the following development with consent:

*Aquaculture; Roads; The purpose shown on the [Land Zoning Map](#), including any development that is ordinarily incidental or ancillary to development for that purpose*

The purpose identified on the land zoning map is 'sewage treatment plant'. While the proposal is not permitted within the zone under the SLEP 2014, The development is permissible under s2.51 of SEPP (Transport and Infrastructure) 2021 as addressed above.

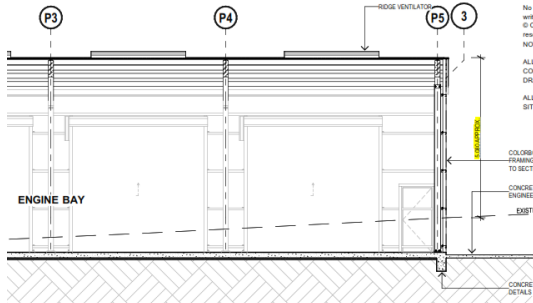
##### **SP2 – Infrastructure (Sewage Treatment Plant) Zone Objectives**

Objective	Comment
To provide for infrastructure and related uses.	The proposal will provide infrastructure for the community.
To prevent development that is not compatible with or that may detract from the provision of infrastructure.	The development is compatible with the existing sewage treatment plant The proposal is consistent with the objectives of the zone.





Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

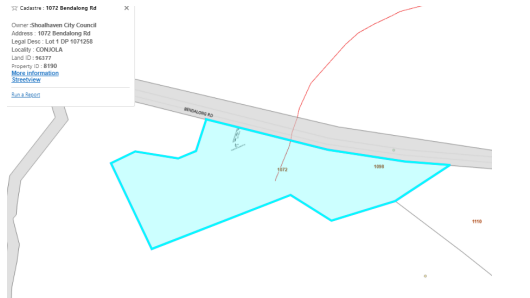
#### Applicable Clauses

Clause	Comments	Complies/ Consistent
<b>Part 4 Principal development standards</b>		
<b>4.3</b> Height of buildings	<p>No specific mapped height, therefore 11m is maximum permissible height.</p> <p>Proposed development is under 11m.</p> 	complies
<b>4.6</b> Exceptions to development standards	None proposed	n/a
<b>Part 5 Miscellaneous provisions</b>		
<b>5.12</b> Infrastructure development and use of existing buildings of the Crown	<p><b>5.12 Infrastructure development and use of existing buildings of the Crown</b></p> <p>(1) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under <a href="#">State Environmental Planning Policy (Transport and Infrastructure) 2021</a>, Chapter 2.</p> <p>(2) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.</p>	Complies
<b>Part 7 Additional local provisions</b>		

## Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

<p><b>7.1 Acid sulfate soils</b></p>	 <p><i>Figure 16 – ASS soils - Class 5</i></p> <p>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p> <p>Proposed excavation works will not exceed 5m.</p>	<p>Complies – can be addressed via conditions if any unexpected finds</p>
<p><b>7.2 Earthworks</b></p>	<p>Earthworks are proposed in the form of cut/fill for site preparation for the proposed building/carpark. This can be dealt with via standard conditions</p>	<p>Complies</p>
<p><b>7.3 Flood planning</b></p>	<p>Not within mapped Flood affected areas</p>	<p>n/a</p>
<p><b>7.5 Terrestrial biodiversity</b></p>	<p>Terrestrial Biodiversity Map Sheet BIO_015E –</p>  <p><i>Figure 17 – Terrestrial Biodiversity mapping</i></p> <p>The subject land is mapped as having biodiversity – significant vegetation and biodiversity – habitat corridor.</p>	<p>Refer to Biodiversity referral comments – D23/255955.</p>
<p><b>(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—</b></p> <p>(a) whether the development is likely to have</p>		<p>Refer to Flora &amp; Fauna Assessment V4 – D23/252238, letter of justification D23/252237 &amp; Biodiversity referral comments – D23/255955.</p>

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and	As per the SEE (p23), the development proposal considered the provisions of Clause 7.5 and advise that <i>"the proposal has been modified to avoid higher biodiversity values in the subject land and does not substantially and remove or prevent habitat connectivity through the subject land and surrounding areas."</i>	b) whether the development is likely to have (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
c) whether the development is likely to have— (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and		d) whether the development is likely to have (iv) any adverse impact on the habitat elements providing connectivity on the land, and
(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.		
7.6 Riparian land and watercourses	 <p><b>Figure 18 – Watercourse mapping</b></p> <p>There is a watercourse mapped over the subject land.</p> <p>The development is clear of the mapped watercourse.</p>	Complies
7.11 Essential services	There are services to the site, which are able to be extended to the proposed development	Complies
7.12 Council infrastructure development	The land is an environmentally sensitive area, hence DA is required	Complies
7.15 Development in the vicinity of extractive industries and <b>sewage treatment plants</b>	<p><b>7.15 Development in the vicinity of extractive industries and sewage treatment plants</b></p> <p>(1) <i>The objective of this clause is to protect the operational environment of certain industries operating on the land to which this clause applies.</i></p>	An odour assessment accompanied the DA which found the site suitable for the

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p>(2) <i>This clause applies to land identified as “Extractive Industry” and “Sewage Treatment Plant” on the <a href="#">Buffers Map</a>.</i></p> <p>(3) <i>Development consent must not be granted to the carrying out of development on land to which this clause applies unless the consent authority has—</i></p> <p>(a) <i>made an assessment of the impact of noise, odour and other emissions from any industry carried out on that land, and</i></p> <p>(b) <i>considered the potential impact of noise, odour and other emissions associated with that industry on any activities that will be associated with the development, and</i></p> <p>(c) <i>considered any opportunities to relocate the development outside that land, and</i></p> <p>(d) <i>has considered whether the development would adversely affect the operational environment of that industry.</i></p>	<p>proposed development.</p> <p>The proposal will not adversely impact the operational environment of the sewage treatment plan.</p>
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**ii) Draft Environmental Planning Instrument**

The proposal is not inconsistent with any [Draft Environmental Planning Instruments](#).

**iii) Any Development Control Plan**

**Shoalhaven Development Control Plan 2014**

Chapter 2 General and Environmental Considerations	
<b>Potentially Contaminated Land</b>	The subject site is not identified as potentially contaminated land
<b>European Heritage</b>	The subject site is not identified as containing any items of historical significance and is not located within a Conservation Area.
<b>Aboriginal Cultural Heritage</b>	The subject site is not identified as containing any items of Aboriginal heritage and is not identified as Cultural Lands. Standard condition to be included, in case of unexpected finds during construction.
<b>Crime Prevention Through Environmental Design</b>	<p>The proposed development is not considered to create a risk or increase risk of crime within the locale.</p> <p>The proposed development does not trigger a formal crime risk assessment or referral to NSW Police Local Area Command.</p>

Generic DCP Chapter
<a href="#">G1: Site Analysis, Sustainable Design and Building Materials</a>



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

A suitable site analysis plan and schedule of proposed materials has been submitted as part of the application and is deemed acceptable.

**G2: Sustainable Stormwater Management and Erosion/Sediment Control**

Has the application been supported by appropriate erosion and sediment control details?

Recommended conditions of consent will require erosion and sediment control measures be provided

Has the application been supported appropriate stormwater drainage details?

See excerpt of Development Engineer comments below

Refer to Development Engineers referral comments:

**Stormwater Drainage**

A stormwater drainage plan has been submitted for the original layout, but has not been revised since. Stormwater is to be conveyed to the road table drain, which is proposed to be upgraded back to the existing low point, where a culvert (not in Council's GIS) conveys water beneath Bendalong Rd. This is generally acceptable. It would however appear more economical to discharge to the existing low point on site which runs to the existing culvert crossing Bendalong Rd.

OSD was proposed in a rainwater tank accepting roof water. The extensive hardstand driveway and carpark/forecourt areas are not detained. This may limit the effectiveness of the OSD as not all contributing hardstand drains through the tank. Unless the tank can be sited in such a way to accept runoff from the hardstand areas (i.e. below the surface level of the carpark), the OSD strategy is unlikely to work. However conditions can be applied to ensure this is considered prior to CC.

Question	Yes	No
1. Is the application for alterations and additions attached to an existing building?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Proceed to Question 2
2. Can stormwater be drained to the street via gravity?	<input checked="" type="checkbox"/>	<input type="checkbox"/> Proceed to Question 3

**G3: Landscaping Design Guidelines**

Existing/proposed landscaping is considered appropriate.

**G4: Tree and Vegetation Management**

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Have any trees proposed to be removed been clearly shown on the site plan (where required)?	Yes
<b>G5: Biodiversity Impact Assessment</b>	
Is the proposal biodiversity compliant development?	Yes, refer also to Biodiversity referral comments.
Has the application been supported by a flora and fauna impact assessment (where required)?	Yes
<b>G7: Waste Minimisation and Management Controls</b>	
Has the application been supported by an appropriate waste minimisation and management plan?	Yes
<b>G21: Car Parking and Traffic</b>	
<p><i>NOTE: Council resolved on 30/10/18 to waive additional carparking requirements for a change of use in a shopping centre area. Assess the parking that would otherwise be required and enter the data into the spreadsheet (D18/394992) for later reporting to Council.</i></p> <p>Refer to Development Engineer referral comments – D23/255951.</p> <p><i>Four parking spaces (inclusive of one accessible space) are provided in front of the building, with additional gravel overflow parking area located to the rear. There is no guidance in DCP G11 or the RTA Guide to Traffic Generating Development as to parking numbers required for an RFS station. However, if parallels are drawn with similar use types – for instance general industry for the engine bay, office for the office/multi-purpose room/kitchen, the number of spaces on site is well in excess of DCP requirements.</i></p> <p><i>Given the nature of the frontage road, there may be limited safe opportunities for vehicles to pull off the road and park despite there being no parking restrictions.</i></p> <p><i>The SEE states that overflow parking is available within the sealed forecourt area and adjacent fire trails. This was based on the old layout, the new layout does provide additional on site parking with 18 gravel spaces proposed behind the building.</i></p> <p><i>It is anticipated that the nature of the development and operation should be able to be managed to ensure that volunteers and other visiting vehicles can park such that they do not detrimentally impact safety to Bendalong Rd and the operation of the station (such as impacting manoeuvring for fire appliances).</i></p>	
<b>G26: Acid Sulphate Soils and Geotechnical (Site Stability) Guidelines</b>	
To be addressed with standard conditions	

<b>Area Specific DCP Chapter</b>
Nil applicable

**iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

There are no planning agreements relevant to this application.

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

**iv) Environmental Planning and Assessment Regulation 2000**

The proposal ensures compliance with the applicable requirements within the Regulations subject to recommended conditions of consent.

**Illawarra Shoalhaven Regional Plan 2041**

*During the preparation of this Regional Plan the region experienced drought, floods, an unprecedented bushfire season that impacted 80 per cent of Shoalhaven LGA and the COVID-19 pandemic. These events will have lasting impacts on the economy, infrastructure, social systems, the natural environment and the wellbeing of people and communities across NSW. (p5)*

As stated in this Plan, (p44) the NSW Government has invested more than \$45 million to assist the Shoalhaven community and businesses to recover following devastating bushfires over the 2019-20 summer. Resilience NSW has been established to drive world-leading disaster preparedness and recovery for the NSW community.

And, “hazards can disrupt road and rail networks and interrupt access to essential services including water, sewerage, power, telecommunications and digital connectivity, as was seen on the south coast in the 2019-20 bushfires. Residents, tourists, towns and communities can become isolated for extended periods. Visiting tourists may not be aware of the dangers and emergency procedures. Increased heat, drought and bushfire events associated with climate change are expected to result in more frequent and severe air pollution episodes and increased health risks (p51).

And, (p52) “Major hazards due to bushfires, catchment flooding and coastal processes are expected to be exacerbated by climate change including increasing likelihood of catastrophic bushfire conditions, changes to flood-producing rainfall and sea level rise”.

This proposal is a direct result of the NSW Government assistance to Shoalhaven Communities, as such the proposed development is consistent with the Illawarra Shoalhaven Regional Plan 2041.

**Shoalhaven Contribution Plan 2019 & Section 64 Contributions**

Is the development site an “ <a href="#">old subdivision property</a> ” identified in Shoalhaven Contributions Plan 2019?	No
Is the proposed development considered to increase the demand for community facilities in accordance with the <a href="#">Shoalhaven Contributions Plan 2019</a> ?	No
Is the proposed development considered to increase the demand for on water and sewer services (i.e. s64 Contributions)	Shoalhaven Water Development Application Notice yet to be issued

**Conflicts of Interest Policy – Dealing with DAs lodged by Council staff, Councillors and Council PPL22/149**

[displaydoc.aspx \(nsw.gov.au\)](#)

Adoption date: 20/09/2022

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

This policy applies to council-related development and where an applicant is a staff member or Councillor.

Three key criteria -

1. Assessment and determination of an application for council-related development - Refer to Table1 for controls, (as below) which confirms compliance
2. Development applications lodged with the council that are council-related development are to be referred to the CEO for a conflict-of-interest risk assessment.
3. If Council staff are the applicant (in this instance, Council project, not personal project), the stated principles to be adhered to – refer to Table 2 (as below) for Assessment Principles which confirms compliance.

This application has been referred to the CEO .

**Table 1 – Assessment & Determination Criteria**

Category of DA where Council is both Applicant and Landowner, or where Council has an interest on the land	Assessment	Determination	Comment
<b>Minor DA</b> Minor DAs refers to development that is small-scale, routine operational and/or non-controversial. The determination of "minor" shall be made after consideration of the following criteria, at the discretion of the Director City Development: - The estimated value of the works to be undertaken. - The potential impact on surrounding residential amenity associated with the proposed development. - The consistency of the proposed works with an existing Council Management Plan or strategy. - Whether the proposal involves any substantial variations from existing Council policy; and - Whether the proposal will lead to any financial benefit for Council. Examples include replacement amenities block, internal refurbishment of a building. Less than 5 lot subdivision.	<ul style="list-style-type: none"> <li>• Assessment must be by Council staff not involved in the application and peer reviewed by immediate supervisor.</li> <li>• A management statement to be prepared and exhibited with DA, unless it is of a kind referred to in Part 2, (5) (2) of the Policy</li> </ul>	Determination under delegated authority. (Other than for development on community land under section 47E s. of the Local Government Act 1993.)	Not considered to fit criteria of 'minor' DA
<b>Routine DA</b> (not minor) or other form of DA that takes place within Council's industrial estates or on Council reserves and complies with zoning, land use provisions and Council policies, with no substantial or numerous submissions. Examples include, a 5-lot subdivision, a new amenities block, alterations and addition to existing buildings. A new fire station.	<ul style="list-style-type: none"> <li>• Assessment by Council staff not involved in the application and peer reviewed by senior member of staff.</li> <li>• Assessment by external independent</li> </ul>	Determination under delegated authority by Senior staff, (Other than for development on community land under section 47E of the Local Government Act 1993.)	This is a new fire station – under this policy this is a "routine DA", however this DA has been called in by Council, due to public interest



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<p>town planning consultant (in accordance with Council's Purchasing Policy) may be required, if determined by the Director, City Development.</p> <ul style="list-style-type: none"> <li>• Management statement to be prepared and exhibited with DA.</li> <li>• Potential referral to Risk &amp; Audit Committee</li> </ul>		<p>raised in submissions.</p> <p>Management statement has been prepared and made viewable – D23/301029</p>
<p><b>Major DA</b> Major DAs refer to development that is large-scale, significant and/ or controversial. The determination of "major" shall be made after consideration of the following criteria, at the discretion of the Chief Executive Officer / [Director City Development]: - The estimated value of the works to be undertaken. - If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021. - The potential impact on surrounding residential amenity associated with the proposed development. - The consistency of the proposed works with an existing Council Management Plan or strategy. - Whether the proposal involves any substantial variations from existing Council policy; and - Whether the proposal will lead to any financial benefit for Council. Examples include: Coastal protection works, new industrial estates, new community facilities and libraries.</p>	<ul style="list-style-type: none"> <li>• Engage external independent town planning consultant (in accordance with Council's Purchasing Policy), to:</li> <li>• Management Statement to be prepared and exhibited with DA.</li> <li>• For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit and Risk Committee.</li> </ul>	<ul style="list-style-type: none"> <li>• Report to council for determination.</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is &gt;\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021. Regional applications must be independently assessed.</li> </ul>	<p>This is a 'routine DA', except for interest that has been raised in submissions.</p> <p>The DA has been called in by Council.</p> <p>CIV, not &gt;\$5mill, not a Regional DA</p>

Table 2 – Assessment Principles

Principle to be adhere to	Comment
The assessing officer is to ensure that all processes undertaken during the assessment of any DA are in accordance with Council's policies, procedures, and legislative requirements.	All processes have been undertaken to ensure compliance with Council's policies, procedures, and legislative requirements.- Complied

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

The applicant is not to be given any special, preferential treatment nor discriminated against.	Application has been processed without special treatment or discrimination - Complied.
Trim containers are to be 'blocked' where a staff member or a Council officer as delegate /applicant for a Council application is applicant / owner.	DA and sub-containers have been blocked. Complied

**(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality**

Head of Consideration	Comment
Natural Environment	<p>The proposed development will not have a significant adverse impact on the natural environment.</p> <p>Councils Biodiversity Team have considered the FF report, the concerns raised by the Community, including submission by Manyana Matters, revised FF report, and justification letter submitted by the applicant.</p> <p>The impact of the development, with regard to the Biodiversity Conservation Act has been considered.</p> <p>Recommended conditions of consent to ameliorate impact on threatened species have been provided.</p>
Built Environment	The proposed development will not have a significant adverse impact on the built environment.
Social Impacts	The proposed development will not have a negative social impact in the locality.
Economic Impacts	The proposed development will not have a negative economic impact in the locality.

**(c) Suitability of the site for the development**

The site is suitable for the proposed development.

- The development is permissible with Council consent within the zone.
- The proposal supports the local zoning objectives.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Local Environmental Plan 2014*.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Development Control Plan 2014*.
- The intended use is compatible with surrounding/adjoining land uses.

**(d) Submissions made in accordance with the Act or the regulations**

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications to adjoining/nearby property owners and local CCB groups – Manyana Matters 7 Conjola Community Assn.

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

The notification period being from **8 February 2023** to **23 February 2023**

A total of **30** submissions were received by Council, **objecting** (1) and **supporting** (29) the proposal.

Concern expressed by many of those in support of the proposal that representation made by CCB, not on behalf of the whole community.

The issues raised in submissions are outlined in the brief summary below:

Summary of Public Submissions		
Trim Ref:	Issues Raised	Comment
D23/132471	<ul style="list-style-type: none"> <li>Alleged flaws in FF report / BOS calculation</li> <li>Alternative site recommended</li> <li>Community consultation delay</li> </ul>	<ul style="list-style-type: none"> <li>Refer to revised FF report &amp; Biodiversity Team's referral comments</li> <li>Refer to applicant's justification letter, outlining lack of alternative site</li> <li>DA not notified upon lodgement, but upon receipt of replies to RFIs – standard practice</li> </ul>
D23/163119 D23/174251	<ul style="list-style-type: none"> <li>Existing location too small</li> <li>Will serve to combine the 2 existing stations</li> <li>Support for new fit for purpose fire shed</li> </ul>	Consistent with applicant's justification
D23/172491	<ul style="list-style-type: none"> <li>Location between the villages and dual access</li> <li>Fast track requested- to provide much needed infrastructure to protect people, property and local FF</li> </ul>	Consistent with applicant's justification
D23/175073 D23/197637/ (copies D23/197643 / D23/201186) P Byrne	<ul style="list-style-type: none"> <li>New facility needed – health &amp; well-being of RFS members</li> <li>Existing facility too small for equipment and vehicles, inadequate storage</li> </ul>	Consistent with applicant's justification
D23/175981	<ul style="list-style-type: none"> <li>New fire station overdue</li> <li>2019/20 operating conditions more difficult due to existing site/set up</li> <li>Central location – quicker response times to highway and village</li> <li>Site away from residents</li> </ul>	Consistent with applicant's justification
D23/176039	<ul style="list-style-type: none"> <li>Most suitable site, no available alternative site</li> </ul>	Consistent with applicant's justification

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

D23/208833	<ul style="list-style-type: none"> <li>Concerned about delays</li> </ul>	
D23/185199 D23/185297	<ul style="list-style-type: none"> <li>Existing facilities too small</li> <li>New modern station needed/overdue</li> <li>Concerned about delays</li> <li>best available site</li> </ul>	Consistent with applicant's justification
D23/185291	<ul style="list-style-type: none"> <li>Ideal site for response times &amp; away from residents</li> <li>Up to date facilities for fire fighters needed</li> <li>Concerned about delays</li> </ul>	Consistent with applicant's justification
D23/187531	<ul style="list-style-type: none"> <li>Grant funding received, need to build</li> <li>Old sheds – health concerns</li> <li>Site carefully selected</li> </ul>	Consistent with applicant's justification
D23/189618	<ul style="list-style-type: none"> <li>Most suitable site</li> <li>Funding at risk of being lost</li> <li>Threat of more dry years, critical that infrastructure be built ASAP</li> <li>New shed &amp; facilities needed</li> </ul>	Consistent with applicant's justification
D23/195894	<ul style="list-style-type: none"> <li>New fire station urgently needed</li> <li>WHS need for new fire station</li> </ul>	Consistent with applicant's justification
D23/201183	<ul style="list-style-type: none"> <li>Ideal location</li> <li>Funding at risk</li> <li>Away from residents</li> <li>Existing facilities inadequate</li> </ul>	Consistent with applicant's justification
D23/211502	<ul style="list-style-type: none"> <li>Essential for our fire fighters need a larger fire station</li> </ul>	Consistent with applicant's justification
D23/211514	<ul style="list-style-type: none"> <li>Concerned about next fire season</li> <li>Support for local fire fighters</li> <li>Site seems most suitable</li> </ul>	Consistent with applicant's justification
D23/211681	Support expressed	
D23/212901	<ul style="list-style-type: none"> <li>Appropriate location</li> </ul>	Consistent with applicant's justification
D23/212919	<ul style="list-style-type: none"> <li>Existing fire station – health issues</li> </ul>	Consistent with applicant's justification



Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

	<ul style="list-style-type: none"> <li>New station – community safe &amp; protection</li> <li>Concerned about delays</li> </ul>	
D23/213198 D23/215862	<ul style="list-style-type: none"> <li>Existing shed no longer fit for purpose, new facility need to serve the 5 villages</li> <li>Central location – quicker responses</li> <li>Better community engagement on main road</li> <li>No alternative and time is critical</li> <li>Use fits land zone</li> <li>Impacts can be managed</li> <li>Price of not building – risk of people's lives &amp; their assets</li> <li>Funding at risk</li> </ul>	Consistent with applicant's justification
D23/213405 (copy D23/217244)	<ul style="list-style-type: none"> <li>Current RFS station at Cunjurong Point inadequate</li> <li>Modification of design to co-exist with flora</li> <li>BOS – road reserve regrowth due to lack of maintenance</li> <li>Impacts can be managed and mitigated</li> <li>Funding at risk</li> <li>Urgency requested</li> </ul>	Consistent with application and amended FF report
D23/213412	<ul style="list-style-type: none"> <li>Use fits land zone -essential infrastructure</li> <li>New station already promised</li> <li>Funding at risk</li> </ul>	Consistent with application
D23/214043	Support expressed	
D23/214275	Best available strategic location	Consistent with application
D23/214300	New building needed	Consistent with application
D23/216092	"This community is desperately in need of the new fire station being approved without delay"	Consistent with application
D23/218588	Support expressed	

**(e) The Public Interest**

The public interest has been taken into consideration, including assessment of the application with consideration of relevant policies and process. Overall, the proposal is considered to be in the public interest.

**10. Delegations**

Section 4.15 Assessment Report - DA22/2368 PAN-287309 1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258

Are any clause 4.6 exceptions proposed?	No
Are any DCP performance-based solutions proposed?	No

**Guidelines for use of Delegated Authority**

In this case, nil performance-based solutions.

Given that the application has been called in by Council, the application must be determined by the Council.

**11. Recommendation**

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that DA22/2368 be approved subject to appropriate conditions of consent.



Bridge Rd, Nowra NSW 2541 | 02 4429 3111  
Deering St, Ulladulla NSW 2539 | 02 4429 8999

Address all correspondence to

The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia  
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au     

## NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION DEVELOPMENT CONSENT

Environmental Planning and Assessment Act, 1979  
**DA22/2368**

### TO:

Matthew Crangle  
Project Manager  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2540

being the applicant(s) for **DA22/2368** relating to:

**1072 Bendalong Rd, CONJOLA - Lot 1 DP 1071258**

### APPROVED USE AND OR DEVELOPMENT:

Construction of a NSW Rural Fire Service Station including driveway access, carparking, tree removal works and the use of part of Bendalong Road reserve as an asset protection zone

### DETERMINATION DATE:

**xx August 2023**

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

### CONSENT TO OPERATE FROM:

**xx August 2023**

### CONSENT TO LAPSE ON:

**xx August 2028**

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

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

### DETAILS OF CONDITIONS:

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

## PART A: GENERAL CONDITIONS

### 1. General

The consent relates to Construction of a NSW Rural Fire Service Station including driveway access, carparking, tree removal works and the use of part of Bendalong Road reserve as an asset protection zone as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Architectural Plans	221107 Rev 01 & 02 (7 sheets)	Local Architect	25/05/2023 & 10/05/2023
Title sheet	A-001-001 Rev 02	Local Architect	25/05/2023
Site plan	A-100-001 Rev 02	Local Architect	25/02/2023
Floor plan	A-110-001 Rev 01	Local Architect	10/05/2023
Roof plan	A-110-002	Local Architect	10/05/2023
Elevations	A-210-001	Local Architect	10/05/2023
Elevations	A-210-002	Local Architect	10/05/2023
Sections	A-310-001	Local Architect	10/05/2023
Flora & Fauna Assessment	V4 21HNG_20287	EcoLogical	23/06/2023
Site Justification Letter	25365E (D23/216629)	SCC	08/06/2023
Odour assessment	ENRS2674 Rev 1	ENRS	April 2023
Waste Management Plan	(not referenced)	Edmiston Jones	20/10/2022

*Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.*

### 2. Prescribed Conditions

The development must comply with the [Prescribed Conditions of Development Consent](#), *Environmental Planning and Assessment Regulation 2021*, as applicable.

### 3. Occupation / Use

The development must not be occupied or used before an Occupation Certificate has been issued by the Principal Certifier. If an Occupation Certificate is not required, the use must not commence until all conditions of development consent have been met or other satisfactory agreements have been made with Council (i.e. a security).

### 4. Shoalhaven Water - Certificate of Compliance

A Certificate of Compliance must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Notice of Requirements and prior to the issue of an Occupation Certificate, Subdivision Certificate or Caravan Park Approval, as the case may be.

Determination Notice - Page 3 of 17 - DA22/2368

5. **Bushfire - Asset Protection Zone**

The conditions of the s4.14 referral and recommended conditions issued by the NSW Rural Fire Service, Reference No: DA20230125000343-Original-1, dated 22 February 2023 are included as conditions of this consent and must be complied with.

6. **Native Vegetation and Habitat**

The removal and/or disturbance of native vegetation and habitat on the property, including canopy trees, understorey, and groundcover vegetation must be undertaken strictly in accordance with the approved plans.

7. **Retention of Vegetation within the Approved Asset Protection Zone**

Trees and other vegetation must be retained within the Asset Protection Zone (APZ) where it complies with the prescriptions for Planning for Bushfire Protection 2019 APZ guidelines.

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

NIL

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

8. **Construction Certificate**

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

9. **Appointment of Principal Certifier**

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

10. **Notice of Commencement**

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

11. **Toilet Facilities - Temporary**

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

- a) be a standard flushing toilet connected to a public sewer, or
- b) have an onsite effluent disposal system approved under the *Local Government Act 1993*, or
- c) be a temporary chemical closet approved under the *Local Government Act 1993*.

12. **Run-off and Erosion Controls**

Before any site work commences, the Principal Certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the NSW Department of Housing



Determination Notice - Page 4 of 17 - DA22/2368

manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time).

**13. Works within the Road Reserve**

Before undertaking any works within an existing road reserve, the developer must obtain the consent of Council under *section 138 of the Roads Act, 1993*.

The following details must be submitted to Council as part of the application:

- a) Any civil works design required by this consent.
- b) Evidence of the contractor's Public Liability Insurance to an amount of \$20 million.
- c) Name and contact information of the person responsible for all relevant works.
- d) A Traffic Control Plan prepared, signed and certified by a person holding the appropriate Transport for NSW (TfNSW) accreditation.
- e) Where the Traffic Control Plan requires a reduction of the speed limit, a 'Application for Speed Zone Authorisation' must be obtained from the relevant road authority.

**14. Dilapidation Report**

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

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

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

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

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

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

**15. Ecologist - Engagement**

Before the commencement of vegetation removal, a suitably qualified ecologist must be engaged to guide and supervise the clearing work and protection of environmental features on the site. Evidence of engagement must be submitted to Council, before clearing commences.

Determination Notice - Page 5 of 17 - DA22/2368

**16. Identification of Vegetation to be Retained**

Before the commencement of vegetation removal, the developer must identify the extent of the Asset Protection Zone including both the Inner Protection Area and Outer Protection Area. The project ecologist must identify and mark trees that may be retained within the Asset Protection Zone prioritising hollow bearing trees and healthy specimens for retention.

**17. Tree and Vegetation Protection**

Before the commencement of vegetation removal, the following requirements must be met to the satisfaction of the Certifier:

- a) The Asset Protection Zone Inner Protection Area must be fenced with temporary security fencing to protect retained native vegetation and habitat beyond this limit during building works.
- b) The outer protection area must be clearly marked with parra-webbing or similar visible material to prevent APZ clearing beyond this point.
- c) The dripline of trees to be retained within the Asset Protection Zone must be clearly identified and protected with temporary barrier fencing in accordance with AS 4970: Protection of trees on development sites.
- d) Temporary fencing must be retained until all work are complete.

**18. Pre-clearance Survey**

Before the commencement of clearing work, a thorough pre-clearance survey of vegetation to be removed must be conducted by the engaged project ecologist. The project ecologist must determine the presence of fauna within habitat features to be impacted, including, but not limited to, terrestrial habitat features such as fallen logs, large rocks, hollows and nests or dreys. Vegetation removal must not commence if any threatened fauna are confirmed to be nesting (such as hollow inspection, collection of nesting material) or showing signs of breeding activity. Subsequent pre-clearance surveys are to be undertaken following the completion of the nesting/breeding event, until it is confirmed that the site is clear of nesting/breeding activity.

**19. Environmental Protection Measures – Adequate Installation**

Shoalhaven City Council must inspect and certify in writing that tree protection measures are in place before any work on site can commence.

**20. Bush fire asset protection zones**

Before any site work commences, the boundaries of the asset protection zone must be surveyed and marked on the ground by a registered surveyor.

**21. Erosion and Sediment Control**

Prior to the commencement of any works, erosion and sediment control measures must be implemented by the contractor and inspected and approved by the Certifier prior to the commencement of any other site works. The erosion and sediment measures must be maintained for the life of the construction period and until runoff catchments are stabilised.

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

**22. Evidence**

Determination Notice - Page 6 of 17 - **DA22/2368**

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

**23. Long Service Levy**

Prior to the issue of a Construction Certificate any long service levy payable under the [Building and Construction Industry Long Service Payments Act 1986](#) and prescribed by the [Building and Construction Industry Long Service Payments Regulation 2022](#) must be paid or, where such a levy is payable by instalments, the first instalment of the levy must be paid. Council is authorised to accept payment. Proof of payment must be submitted to the Certifying Authority.

**24. Exterior Materials**

Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the Construction Certificate.

**25. Section 68 Application**

Prior to the issue of a Construction Certificate, an application to carry out water supply works, sewerage works, and stormwater drainage works must be obtained from Council under section 68 of the *Local Government Act 1993*.

**26. Retaining Walls - Design**

Prior to the issue of a Construction Certificate for approved retaining walls exceeding 0.6m in height above ground level (existing) and/or within 1m of a property boundary, detailed design plans must be prepared and submitted to the Certifier for approval. The retaining walls must satisfy the following:

- a) For retaining walls exceeding 0.6m in height above natural ground level (existing) a professional engineer has certified the retaining walls as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load; and
- b) For retaining walls less than 0.6m in height above natural ground level (existing) the Certifier must be satisfied that the retaining walls are structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load.

Retaining walls, footings and drainage must be contained wholly within the development site.

Construction within a registered easement is prohibited.

Retaining walls not shown on the approved plan must meet the criteria for Exempt retaining walls and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, or be approved by way of Complying Development prior to construction and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**27. Existing Infrastructure**

Before the issue of a construction certificate, all infrastructure, existing and proposed, is to be shown accurately on the engineering plans including longitudinal sections with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure. Any required alterations to infrastructure will be at the developer's expense.

**28. Soil and Water Management Plans (SWMP)**

Determination Notice - Page 7 of 17 - **DA22/2368**

Before the issue of a construction certificate, a Soil and Water Management Plan must be prepared by a Professional Engineer, (as defined in the National Construction Code) to the satisfaction of the Certifier.

All implemented measures must:

- a) not cause water pollution as defined by the [Protection of the Environment Operations Act](#) (POEO).
- b) be maintained at all times.
- c) not be decommissioned until at least 70% revegetation cover has been established.

**29. Stormwater Drainage Design Standards**

Before the issue of a construction certificate, certified engineering design plans, specifications, and DRAINS model (or approved alternative) must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The stormwater drainage design must comply with the following:

- a) Major and minor drainage systems in accordance with Council's Engineering Design Specifications - Section D5 - Stormwater Drainage Design and utilising Australian Rainfall and Runoff (ARR, 2019) Guidelines.
- b) The minor and major systems must be designed for a 10% AEP and 1% Annual Exceedance Probability (AEP) rainfall events, respectively.
- c) Stormwater must be conveyed to the existing culvert crossing on Bendalong Road to the west of the site, including any upgrades required to the table drain on Bendalong Rd required to convey flows to the existing culvert crossing.

**30. On-Site Detention – Development**

Before the issue of a Construction Certificate, details of on-site detention must be provided on the Construction Certificate plans and approved by the Certifier. On-site detention must be provided:

- a) Per certified engineering design plans and specifications prepared by a professional engineer, (as defined in the National Construction Code) or surveyor. The on-site stormwater detention (OSD) design must be designed such that stormwater runoff from the site for design storm events up to and including the 1% AEP does not exceed the pre-developed conditions

**31. Car Parking Design Standards**

Before the issue of a Construction Certificate, certified engineering design plans and specifications must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The car parking and access design must comply with the following:

- a) AS2890.1 and AS2890.6.
- b) Manoeuvring and truck parking areas constructed with a concrete pavement designed and constructed for a minimum traffic loading of  $1 \times 10^6$  ESA, or as required for the traffic loadings anticipated within the development.
- c) Overflow parking spaces constructed with an all-weather gravel pavement comprising a compacted road base pavement of minimum 200mm thickness.
- d) Bordered in accordance with Council's Standard Drawings by concrete kerbing, except where surface runoff is concentrated, in which case concrete integral kerb and gutter must be constructed.

Determination Notice - Page 8 of 17 - DA22/2368

**32. Landscape Plan**

Before the issue of a Construction Certificate, a Landscape Plan must be submitted to Shoalhaven City Council's Biodiversity Team for approval in writing. The Landscape Plan must:

- a) Be prepared in accordance with Shoalhaven Development Control Plan: Chapter G3 Landscaping Design Guidelines.
- b) Only use 'local' species identified on Shoalhaven City Council's Native Planting List for Bendalong, available on Council's website.
- c) Show the species, planting location and identify planting densities.
- d) Comply with Planning for Bush Fire Protection 2019.

**33. Light Spill**

Before the issue of a construction certificate plans must show that proposed external lighting avoids excessive light spill into retained habitats beyond the Asset Protection Zone Inner Protection Area by light alignment, light shielding or similar.

**34. Identification of Environmental Features**

Before the issue of a construction certificate, environmental features to be retained must be shown on the approved construction plans.

**35. Vegetation Management Plan / Environmental Management Plan**

Before the issue of a construction certificate, a Vegetation Management Plan must be prepared by a suitably qualified person for the (retained vegetation) and be submitted to the Council for approval.

The plan must address as a minimum:

- a) Site description.
- b) Identify links to legislation, other plans, and documents.
- c) Identify proposed management zones on the subject site.
- d) Determine aims, quantifiable objectives, activities to meet objectives and the performance criteria for each zone.
- e) Prepare a project work plan, schedule, and budget.
- f) Define monitoring and reporting methods for the proposed management zones.
- g) The plan must also include (however not be limited to):
  - i. Vegetation removal must be conducted between March and October outside the flowering period for *Cryptostylis hunteriana*.
  - ii. Boulders must be installed in accordance with the approved plans sufficient to permanently restrict vehicle access to informal roads in retained native vegetation to allow native vegetation to restore.
  - iii. Permanent posts must be installed to delineate the extent of the APZ Outer Protection Area to limit the area of APZ maintenance.
  - iv. Signage must be installed to advise no vehicle access or parking beyond the hardstand as this is habitat for threatened plant species

The Vegetation Management Plan is to be submitted to Shoalhaven City Council's City Development directorate (Biodiversity Team) for approval in writing before the issue of a construction/subdivision works certificate.

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



Determination Notice - Page 9 of 17 - DA22/2368

NIL

#### PART F: DURING WORKS

##### 36. Vegetation Removal Protocol

During building works, to protect wildlife occurring within the site, all clearing works are to be supervised by a suitably qualified ecologist experienced in wildlife handling and rescue. The following vegetation removal protocol is to be adhered to:

- a) Before starting each morning, all vehicles and mechanical plant must be inspected for wildlife prior to operation.
- b) Vegetation is to be removed using a staged approach to allow wildlife to naturally flee the area. Stage 1 is to remove ground and shrub layer vegetation. On a subsequent day, canopy trees can then be removed as Stage 2.
- c) All vegetation to be removed must be inspected for wildlife prior to removal. Works must cease until fauna has cleared or been removed from the site.
- d) If any wildlife is disoriented or injured during clearing works, works must stop immediately, and the engaged ecologist is to advise and responsibly rescue and relocate the animal(s).
- e) Trees must be felled taking care to avoid impact to retained trees and native vegetation.

Within 10 days of completing clearing work, the engaged ecologist must provide to Council written evidence of any fauna detected during clearing.

##### 37. Hollow-bearing Tree Removal Protocol

During building works, the following hollow-bearing tree removal protocol is to be adhered to:

- a) Hollow bearing trees (HBT's) approved for removal must be identified and clearly marked prior to works commencing by a suitably qualified ecologist.
- b) Pre-clearance surveys are required to be conducted by the project ecologist prior to each stage of clearing.
- c) Stage 1: All ground and shrub layer vegetation is to be removed in accordance with the approved plans.
- d) Stage 2: Canopy trees that do not contain hollows are to be removed in accordance with the approved plans.
- e) Stage 3: HBTs approved for removal are to be checked for resident fauna prior to felling by a suitably qualified and licenced ecologist experienced in wildlife handling and rescue.
  - i. If nesting is present, the ecologist must advise on the best approach to minimise impact/works must cease for threatened species nesting or breeding.
  - ii. If fauna is residing, but not nesting within a hollow, the ecologist must either return at an appropriate time when the animal has vacated and block the hollow to prevent re-entry, or provide sound advice on how to appropriately remove the hollow without causing harm to residing wildlife.
  - iii. Once it is confirmed that there is no roosting or nesting occurring within the hollow (or as advised by the ecologist), the hollow-bearing tree must be gently nudged with felling equipment prior to felling to encourage safe fauna evacuation. Hollow-bearing sections must be carefully lowered to the ground so as not to injure native fauna. Once the tree has been felled the hollows are to be inspected again for fauna and relocated in an appropriate location determined by the ecologist. The tree must be felled carefully in sections to allow the rescue of native fauna.
  - iv. If animals are injured, they will need to be assessed and either taken to the nearest veterinary clinic or placed into care with South Coast Wildlife Rescue.
- f) Within 10 days of completing clearing work, the engaged environmental consultant must provide to Council written evidence of any fauna detected during clearing.

Determination Notice - Page 10 of 17 - DA22/2368

**38. Vegetation/ Environmental Management Plan – During Works**

During building works, all activities must be undertaken in accordance with the approved Vegetation/Environmental Management Plan.

This must include (however is not limited to):

- a) Vegetation removal must be conducted between March and October outside the flowering period for *Cryptostylis hunteriana*.
- b) Boulders must be installed in accordance with the approved plans sufficient to permanently restrict vehicle access to informal roads in retained native vegetation.
- c) Permanent posts must be installed to delineate the extent of the APZ Outer Protection Area to limit the area of APZ maintenance.

Signage must be installed to advise no vehicle access or parking beyond the hardstand as this is habitat for threatened plant species.

**39. Parking and Storing of Building Equipment and Materials**

During building works, the parking of machinery and vehicles or the storing of building or landscaping materials, soil, spoil, or rubbish must be restricted to cleared roadside areas or within the fenced Asset Protection Zone Inner Protection area. Areas of retained native vegetation beyond the Inner Protection Zone must be managed as an exclusion zone during works to protect surrounding threatened species habitat.

**40. Hours for Construction**

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

**41. Aboriginal Objects Discovered During Excavation**

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

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

Work may recommence in the affected area(s) if Heritage NSW advises that additional assessment and/or approval is not required (or once any required assessment has taken place or any required approval has been given).

The Heritage NSW must be advised of the discovery in accordance with section 89A of the [National Parks and Wildlife Act 1974](#).

**42. Archaeology Discovered During Excavation**

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- a) All work must stop immediately in that area.
- b) Work may recommence in the affected area(s) if Heritage NSW advises that additional assessment and/or approval is not required (or once any required assessment has taken place or any required approval has been given).

Determination Notice - Page 11 of 17 - DA22/2368

- c) In accordance with the *Heritage Act 1997*, the Heritage NSW must be advised of the discovery.

**43. Tree Removal**

Trees approved for removal must be felled into the development area carefully so as not to damage trees to be retained in or beyond the development footprint.

Any hollow-bearing trees must be felled carefully in sections utilising handheld tools to allow the rescue of native fauna. Hollow-bearing sections must be carefully lowered to the ground so as not to injure native fauna.

**44. Maintenance of Site and Surrounds**

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

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

**45. Waste Management Plan**

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

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

**46. Earthworks and Excavation**

- a) Approved 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.
  - ii. Must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property.

Determination Notice - Page 12 of 17 - **DA22/2368**

- b) Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-642-78544-2) published by Safe Work Australia in October 2018

**47. Acid Sulfate Soils - Unexpected Finds**

If acid sulfate soils are encountered during excavation and/or construction works all work must cease and Shoalhaven City Council notified immediately. The extent of acid sulfate soil must be evaluated by a qualified environmental consultant with experience in the assessment of acid sulfate soils and a preliminary assessment provided to Council. Council will determine an appropriate response, including if an Acid Sulfate Soils Management Plan is required to be prepared and implemented, before works can recommence.

**48. Contamination - Unexpected Finds**

- a) If unexpected contaminated soil and/or groundwater is encountered during any works all work must cease, and the situation must be promptly evaluated by an appropriately qualified environmental consultant. The contaminated soil and/or groundwater must be managed under the supervision of the environmental consultant, in accordance with relevant NSW Environment Protection Authority (EPA) Guidelines.
- b) If unexpected contaminated soil or groundwater is treated and/or managed on-site; an appropriately qualified environmental consultant must verify that the situation was appropriately managed in accordance with relevant NSW EPA guidelines prior to recommencement of works. The verification documentation must be provided to the satisfaction of the Certifier and Shoalhaven City Council prior to the recommencement of any works.
- c) If contaminated soil or groundwater is to be removed from the site, it must be transported to an appropriately licensed waste facility by an NSW EPA licensed waste contractor in accordance with relevant NSW EPA guidelines including the Waste Classification Guidelines (2014).

*Note: An appropriately qualified environmental consultant will have qualifications equivalent to CEnvP "Site Contamination" (SC) Specialist - by Certified Environmental Practitioner or 'Certified Professional Soil Scientist' (CPSS CSAM) by Soil Science Australia (SSA).*

**PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**49. Compliance**

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e. a security).

**50. Colours and Materials**

The development must be constructed in accordance with the approved schedule of colours and building materials and finishes.

**51. Section 68 of the Local Government Act**

All the conditions under the approval of Section 68 of the Local Government Act 1993 are to be complied with prior to the issue of an Occupation Certificate.

**52. Repair of Infrastructure**

Before the issue of an occupation certificate:

Determination Notice - Page 13 of 17 - DA22/2368

- a) any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of council, and at no cost to council, or
- b) if the works in (a) are not carried out to council's satisfaction, council may carry out the works required and the costs of any such works must be paid as directed by council and in the first instance will be paid using the security deposit required to be paid under this consent.

**53. Retaining Walls – Certification**

Before the issue of an Occupation Certificate, certification must be provided to the Certifier prepared by a professional engineer, (as defined in the National Construction Code), certifying that retaining walls within 1m of the property boundary or exceeding 1m in height above ground level (existing) are constructed in accordance with the approved engineering design plans. The Certifier must be satisfied that all retaining walls have been constructed in accordance with the relevant retaining wall plans and specifications, and in accordance with the requirements of any other conditions of this consent.

**54. Works in the Road Reserve - Evidence of Completion**

Before the issue of a full Occupation Certificate, the developer must provide the Certifier with a Completion of Works in Road Reserve Letter provided by Council, confirming compliance with the requirements of section 138 of the *Roads Act 1993*.

**55. Works as Executed - Stormwater Drainage**

Before the issue of an Occupation Certificate, a Works as Executed Plans and certification must be submitted to the Council by a licenced plumber/ registered surveyor / professional engineer (as defined in the National Construction Code) certifying compliance of all drainage works with the approved design plans and the National Construction Code.

The Works as Executed be shown in red on a copy of the approved plans. This plan must verify locations & sizes of all pipelines.

Where the system includes an underground tank, a certificate of structural adequacy must be prepared and provided by a professional engineer (as defined in the National Construction Code).

**56. Before the issue of an Occupation Certificate, the developer must:**

- a) provide a certificate from a professional engineer, (as defined in the National Construction Code) to verify the structural adequacy of the on-site detention facility and that the facility has been constructed in accordance with the approved Construction Certificate plans.
- b) create a restriction on use under the Conveyancing Act 1919 over the on-site detention system naming the authority having the power to release, vary or modify the restriction referred to as Shoalhaven City Council and provide it to the Certifier as follows:
  - i. the registered proprietor of the lot burdened must not make or permit or suffer the making of any alterations to any on-site stormwater detention system on the lot(s) burdened without the prior consent in writing of the authority benefited.

*The expression 'on-site stormwater detention system' must include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to those structures.*

**PART H: PRIOR TO THE ISSUE OF A SUBDIVISION / STRATA CERTIFICATE**



Determination Notice - Page 14 of 17 - DA22/2368

NIL

## PART I: ONGOING USE OF THE DEVELOPMENT

### 57. Light Spill

External lighting is to avoid excessive light spill into retained habitats beyond the Asset Protection Zone Inner Protection Area by light alignment, light shielding or similar.

### 58. Grasses when Adjoining Bushland – Asset Protection Zone

During the ongoing use of the development exotic perennial grasses listed on the Final Determination of the NSW Scientific Committee for the key threatening process *Invasion of native plant communities by exotic perennial grasses*, shall not be sown within the Asset Protection Zone (APZ) unless a suitable physical barrier is placed in the ground (within / edge of the APZ area) to stop the spread of exotic grasses into sensitive bushland.

### 59. Ongoing implementation of the Vegetation Management Plan

During the ongoing use of the development, activities must be in accordance with the approved Vegetation Management Plan. Owners and occupiers shall comply with the actions and requirements of the approved Vegetation Management Plan.

### 60. Overland Stormwater Flow, Redirecting and/or Concentrating Stormwater

All excavation, backfilling and landscaping works must not result in:

- a) any change to the overland stormwater flow path on your property and or a neighbouring property. If any change to the overland flow path occurs on a property, the stormwater runoff shall be collected and directed to a legal point of discharge.
- b) the redirection and/or concentration of stormwater flows onto neighbouring properties.

### 61. Maintenance of wastewater and stormwater treatment device

During occupation and ongoing use of the building, all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) must be regularly maintained to remain effective and in accordance with any positive covenant (if applicable).

### 62. Fire Safety – Annual Statement

A building owner must ensure that an annual fire safety statement prepared by a competent fire safety practitioner is issued each year and that a copy of the statement is provided to the Shoalhaven City Council and the Commissioner of Fire and Rescue NSW. An [application form](#) is available on Council's website.

*Note: An annual fire safety statement is a declaration by, or on behalf of a building owner that a competent fire safety practitioner (CFSP) has:*

- a) assessed, inspected and verified the performance of each existing essential fire safety measure that applies to the building
- b) inspected the exit systems serving the building and found that the exit systems within the building do not contravene the provisions of Division 7 of Part 9 of the Environmental Planning and Assessment Regulation 2000

Determination Notice - Page 15 of 17 - **DA22/2368**

Failure to give Council an annual fire safety statement by the due date constitutes a separate offence for each week beyond that date for which the failure continues. Substantial penalties for non-compliance apply under the Environmental Planning and Assessment Act 1979.

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

**NIL**

#### **PART K: REASONS FOR CONDITIONS**

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

##### **Statutory requirements**

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

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

##### **Public notification**

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2021* and Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies (POL 16/230).

##### **Submissions**

Any submissions received during the public notification period are available on [DA Tracking](#)

##### **Community views**

Issues and concerns raised by the community in submissions have been considered in the assessment of the application and, where appropriate, conditions have been included in the determination to mitigate any impacts.

##### **Suitability of the Site**

The application has been approved because the development proposal is considered to be suitable for the site.

The relevant public authorities and the water supply authority have been consulted and their requirements met, or arrangements made for the provision of services to the satisfaction of those authorities.

The increased demand for public amenities and services attributable to the development has been addressed by the requirement to pay contributions in accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and Council's Contribution Plan 2019. Contributions under Section 307 of the *Water Management Act 2000* have been applied as required.

##### **Impacts of the Development**

## Determination Notice - Page 16 of 17 - DA22/2368

The application was considered to be suitable for approval. Conditions have been imposed to ensure that:

- a) the development will not result in unacceptable adverse impacts on the natural and built environments.
- b) the amenity and character of land adjoining and in the locality of the development is protected.
- c) any potential adverse environmental, social or economic impacts of the development are minimised.
- d) all traffic, car parking and access arrangements for the development will be satisfactory.
- e) the development does not conflict with the public interest.

**PART L: RIGHTS OF REVIEW AND APPEAL****Determination under Environmental Planning and Assessment Act, 1979**

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

**Review of Modification Decision**

An application for a review under section 8.3 of the Act is to be made within the prescribed period.

**Approvals under Local Government Act, 1993**

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within the prescribed period.

**PART M: GENERAL ADVICE**

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

Determination Notice - Page 17 of 17 - DA22/2368

**Disability Discrimination Act 1992**

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "*Design for Access and Mobility*".

**Disclaimer –Conveyancing Act 1919 – Division 4 – Restrictions on the Use of Land**

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under Clause 1.9A of *Shoalhaven Local Environmental Plan 2014* agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

**DBYD Enquiry - 'Dial Before You Dig'**

In order to avoid risk to life and property it is advisable that an enquiry be made with "Dial Before You Dig" on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) prior to any excavation works taking place to ascertain the location of underground services. You must also contact your Local Authority for locations of Water and Sewer Mains.

**Existing and proposed Swimming Pool/ Spa Barrier**

Existing and proposed swimming pools or spas on the premises must comply with the provisions of the *Swimming Pools Act 1992*, *Swimming Pools Regulation 2018* and comply with all the relevant Australian Standards.

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

**City Development**