Shoalhaven City Council

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NOTICE OF DETERMINATION OF A MODIFICATION APPLICATION BY WAY OF CONSOLIDATED CONSENT

Application number	DA2024/1514 (Incorporating MA2025/1300)
Applicant	Allen Price Pty Ltd
Description of development	Construction of utility installations and mitigation measures in the form of sedimentation and erosion controls
Property	Culburra Road CULBURRA BEACH NSW 2540 - Lot 1 DP 1305809 *(modified by DA25/1300)*
Determination	Approval with Conditions
Date of determination	7 April 2025
S4.55 determination (MA2025/1300)	1 December 2025
Date from which the consent operates	7 April 2025
Date on which the consent lapses	7 April 2030

Under section 118 of the EP&A Regulations, notice is given that the above modification application has been determined by the granting of a modified development consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for Grant of Consent

a) The development proposal, subject to the recommended conditions is consistent with:
   i) the objects of the Environmental Planning and Assessment Act, 1979.
   ii) the aims, objectives and provisions of the applicable environmental planning instruments,
   iii) the aims, objectives and provisions of applicable development control plans
   iv) the aims, objectives and provisions of relevant Council policies.

b) The likely impacts of the proposed development are considered acceptable.

c) The site is suitable for the proposed development.

d) Any submissions received during the public notification period have been considered and issues and concerns raised by the community in submissions have been addressed in the assessment.

e) The proposed development does not conflict with the public interest.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Dictionary

The Dictionary at the end of this consent defines words and expressions for the purposes of this consent.

Person on behalf of the consent authority



Justin Lamerton
Senior Development Planner
City Development

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

CONDITIONS	REASON
1. Approved plans and supporting documentation Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.	To ensure ongoing compliance.

Approved Plans

Plan Number	Revision Number	Plan Title	Drawn by	Date of Plan
N25405-403 Sh. 1 of 2	P1	Proposed Utility Connections for Early Works Package	Allen Price & Scarratts Pty Ltd	04.07.2024
N25405-404 Sh. 2 of 2	P1	Proposed SWMP Mitigation Measures for Early Works Package	Allen Price & Scarratts Pty Ltd	04.07.2024

Approved Documents

Document title	Version number	Prepared by	Date of document
Arboricultural Impact Assessment Report	D5407 Final	Allied Tree Consultancy	June 2024
Waste Management Plan	-	Cowman Stoddart Pty Ltd	03.06.2024

In the event of any inconsistency between the approved plans and documents, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

2.	**Concept Approval – Compliance with Conditions *(modified by MA2025/1300)*** No works associated with the approved development are permitted to be undertaken until satisfactory evidence has been provided to Council that the relevant conditions as outlined within the most recent version of the Staging Plan approved by the Planning Secretary for the West Culburra development have been complied with.	To ensure that works are undertaken consist with the overarching Concept Approval
3.	**Existing Infrastructure** Any required alterations or damage to infrastructure will be at the developer's expense. *Note: It is recommended prior to the issue of a Construction Certificate, all infrastructure, existing and proposed, is to be shown accurately on construction plans with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure. This will reduce the potential for unexpected costs and expenses.*	To ensure existing infrastructure is accounted for and any damage to infrastructure is suitably repaired.
4.	**Prescribed Conditions** The development must comply with Part 4, Division 2, Subdivision 1, of the Environmental Planning and Assessment Regulation 2021, as applicable.	To ensure ongoing compliance.
5.	**Scope of Consent** The scope of this consent is limited to only the works proposed in this application, and it does not approve or imply approval of any existing unlawful works that may be present on the site.	To establish the scope of the development consent.
6.	**Shoalhaven Water – Compliance with Conditions** All conditions listed on the Shoalhaven Water Development Notice at each stage of work must be complied with as relevant to that stage. Written notification must be issued by Shoalhaven Water and evidence provided to the Certifier for each applicable stage.	To ensure compliance with Shoalhaven Water requirements.
7.	**Concurrence and Referral – Endeavour Energy** The advice issued by Endeavour Energy, Reference No: CNR-72228, dated 14 August 2024 are included as conditions of this consent and must be complied with.	To ensure compliance with external concurrence and referral advice.
8.	**Biodiversity – Habitat Modification and Vegetation Impacts** The 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 and documents. Vegetation disturbance must be undertaken in accordance with the following:	To protect biodiversity values.

	a) Works must not cause damage to trees to be retained in or beyond the development footprint. b) Any impacts to trees must be conducted carefully in sections utilising handheld tools to allow the rescue of native fauna. Disturbed areas must be carefully managed and/or lowered to the ground so as not to injure native fauna. c) Pruning or trimming of any trees to be retained must be undertaken in accordance with *AS 4373 Pruning of amenity trees.* d) The disturbance of native vegetation on the property beyond that approved within this consent is not permitted. If any wildlife is discovered during site works and is disoriented or injured, works must stop immediately. A suitably qualified wildlife handler is to be contacted to responsibly rescue and relocate the animal(s).	
9.	**Biodiversity – Tree and Vegetation Protection** Before the commencement of any tree disturbance works the following requirements must be met to the satisfaction of the Council: a) The project arborist must identify and physically mark environmental features to be retained as shown on the approved plans. b) The project arborist must identify the extent of work. c) A temporary protective barrier or similar visible material must be installed and retained until all work are complete. d) The dripline of trees to be retained must be clearly identified and protected with temporary barrier fencing in accordance with AS 4970: Protection of trees on development sites. Evidence of compliance with the above requirements must be provided to Council prior to the commencement of any works. Site works must not commence until the Director – City Development (or delegate) of Shoalhaven City Council has confirmed in writing that the above have been satisfied. Where a Council inspection is considered necessary by Shoalhaven City Council to verify the installation of tree/environmental protection measures, an inspection fee may apply.	To minimise biodiversity impacts.

BUILDING / SUBDIVISION WORK **Before building/subdivision work commences**		
CONDITIONS		REASON
10.	**Biodiversity – Project Arborist Engagement** Prior to the commencement of any works on site, a project arborist is to be engaged and must: a) Be provided all relevant documentation including approved arborist report (prepared by Allied Tree Consultancy, June 2024) and relevant conditions of consent. b) Hold a pre-works site meeting with principal contractor to discuss methods outlined in the approved arborist report and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection and construction methodology requirements that may arise. c) Oversee installation of the tree protection measures outlined in the approved arborist report.	To protect biodiversity values.
11.	**Shoalhaven Water – Application for Certificate of Compliance** Before commencement of works, an application for a Certificate of Compliance must be made with Shoalhaven Water and where required a Water Development Notice is to be obtained. Shoalhaven Water will determine if sewerage and/or water infrastructure and/or easements will be affected by any part of your development including what charges/fees apply. Please visit https://shoalwater.nsw.gov.au/planning-building/developers-consultants/water-development-notice to make application for a Certificate of Compliance or call (02) 4429 3214 to learn more about applying. Upon the receipt of the application, Shoalhaven Water will assess the development and if required will issue a "Water Development Notice" document detailing all requirements which must be met. *Note: As water and/or sewerage infrastructure may impact on part/s or all of the development such as building, provision of services, protection of water and/or sewer assets, etc., it is recommended that this application is made as early as possible during the development process.*	To ensure a Water Development Notice and Certificate of Compliance are obtained.
12.	**Erosion and sediment controls in place** Before any site work commences, erosion and sediment controls must be installed and remain in place until the completion of the works and until any bare earth has been restabilised in accordance with the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time).	To ensure ongoing compliance.

13.	**Works within the Road Reserve – Submissions to Council** 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.	To ensure relevant approvals are obtained.
14.	**Dilapidation Report – Minor** Before 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 0.9 metres 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.	To ensure ongoing compliance.

15.	**Temporary Fencing** Temporary fencing must be installed around the perimeter of the work area prior to the commencement of any work, to ensure there is no impact to any known items of aboriginal cultural heritage significance. *Note: Where there are any works that would impact or result in the destruction of an item of aboriginal cultural heritage significance, an Aboriginal Heritage Impact Permit (AHIP) is required to be obtained in accordance with Section 90 of the National Parks and Wildlife Act 1990.*	To ensure there are no impacts to any items of aboriginal cultural heritage significance
BUILDING / SUBDIVISION WORK **During building/subdivision work**		
CONDITIONS		REASON
16.	**Biodiversity – Arborist Hold Point** During building works, the Project Arborist is to: a) carry out regular site inspections to ensure works are carried out in accordance with approved plans. No less than monthly inspections are recommended. b) supervise all manual excavations and root pruning inside the TPZ of any trees to be retained. c) Ensure that conditions outlined in the approved arborist report and as below are adhered to: i) With regard to Tree Number 3, excavation required cannot occur within the SRZ. ii) With regard to Tree Number 3, the excavation for the short section of line servicing a water meter and electrical turret requires excavation by hand tools, and any root greater than 50mm in diameter is retained, and the pipes are installed around these roots. iii) With regard to Trees Number 1 and 2, excavation required for the exit/entry pit cannot be any closer than: A. Tree No. 1: 6.5m from this tree. B. Tree No. 2: 5.5m from this tree. d) Ensure that the retention and protection of the trees on site is maintained by strict adherence to the protection specifications (section 8.0) of the approved arborist report. e) Determine and supervise any further works required in the area of the TPZ or decline related to the three that not been covered by the approved arborist report. f) Determine and supervise and crown modification including pruning or root disturbance.	To protect biodiversity values.

17.	**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. During construction: a) all vehicles entering or leaving the site must have their loads covered, and b) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads. c) At the completion of the works, the work site must be left clear of waste and debris.	To ensure the site is maintained in a safe and secure manner.
18.	**Discovery of relics and Aboriginal objects** While site work is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered: a) the work in the area of the discovery must cease immediately. b) the following must be notified for a relic – the Heritage Council; or c) for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85. Site work may recommence at a time confirmed in writing by: a) for a relic – the Heritage Council; or for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85.	To ensure the protection of objects of potential significance during works.
19.	**Site Management - 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.	To ensure site work occurs within appropriate construction hours.

20.	**Potentially Contaminated Land - Unexpected Finds** If unexpected, contaminated soil and/or groundwater is encountered during any works: a) all work must cease, and the situation must be promptly evaluated by an appropriately qualified environmental consultant. b) 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. 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 before recommencement of works. The verification documentation must be provided to the satisfaction of the Certifier and Shoalhaven City Council before the recommencement of any works. 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).*	To ensure any detected contaminants are appropriately managed.
BUILDING / SUBDIVISION WORK **On Completion of building/subdivision work**		
21.	**Biodiversity – Arborist Hold Point** Upon completion of works, the project arborist must: a) assess that the subject trees have been retained in the same condition and vigour. If changes to retained tree condition are identified, the project arborist should provide recommendations for remediation and report to council once remediation is complete with evidence. b) certify that all tree protections are removed.	To protect biodiversity values.
22.	**Dilapidation Report (Minor) – Evidence of Completion** Upon completion of works, the developer must provide the Council with evidence that any damage to neighbouring premises or adjacent public infrastructure, not previously identified as existing damage in the Dilapidation Report, has been repaired by the developer to the satisfaction of Council.	To ensure any damage not previously identified in the Dilapidation

		Report is suitably repaired.
23.	**Works in the Road Reserve - Evidence of Completion** Upon completion of works, the developer must obtain from Council a completion of works in the road reserve letter, confirming compliance with the requirements of section 138 of the Roads Act 1993.	To ensure works in the road reserve are completed appropriately.
24.	**Completion of Public Utility Services** Upon completion of works, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to Council.	To ensure required changes to public utility services are completed in accordance with the relevant agency requirements
25.	**Shoalhaven Water – Certificate of Compliance** Upon completion of works, a Certificate of Compliance under section 307 of the *Water Management Act 2000* must be obtained from Shoalhaven Water to verify satisfactory compliance with all conditions for the supply of water and sewerage, as listed on the Water Development Notice. If the development is to be completed in approved stages, or application is subsequently made for staging of the development, separate Compliance Certificates must be obtained for each stage of the development.	To ensure compliance with Shoalhaven Water requirements.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation, and other legislation. Some of these additional obligations are set out in the Conditions of development consent: advisory notes. The consent should be read together with the Conditions of development consent: advisory notes to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a Construction Certificate or Subdivision Works Certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this consent (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the Building and Development Certifiers Act 2018.

Construction Certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Council means Shoalhaven City Council.

Court means the NSW Land and Environment Court.

EPA means the NSW Environment Protection Authority.

EP&A Act means the Environmental Planning and Assessment Act 1979.

EP&A Regulation means the Environmental Planning and Assessment Regulation 2021.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Occupation Certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

- the collection of stormwater
- the reuse of stormwater
- the detention of stormwater
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

Strata Certificate means a certificate in the approved form issued under Part 4 of the Strata Schemes Development Act 2015 that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.