

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

DETERMINATION OF DEVELOPMENT APPLICATION NO. 162-7-2004

(FILE NO. 9036372-1)

3 LOT SUBDIVISION

I, the Deputy-Director General, Office of Sustainable Development, Assessments and Approvals, as the delegate for the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005 and pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) To ensure that measures are implemented to manage environmental and social impacts which may arise from the development;
- (2) To ensure development proceeds in accordance with approved plans;
- (3) To ensure development satisfies the relevant statutory requirements;
- (4) To ensure lots are adequately serviced;
- (5) To ensure public utility services, access and restrictions are legalised over the land; and
- (6) To ensure that the development contributes towards the cost and provision of community facilities, public works, open space and recreation facilities in accordance with Section 94 of the Environmental Planning and Assessment Act 1979.

Sam Haddad
Deputy-Director General
Office of Sustainable Development, Assessments and Approvals

Sydney,

2005

SCHEDULE 1**PART A - TABLE**

Application made by:	Michael Collins, Caddey Searl & Jarman PO Box 259, Bega, NSW 2550.
Application made to:	Minister for Planning
Development Application:	No. 162-7-2004
On land comprising:	Lot 230 DP 869652 67 Nutley's Creek Road, Bermagui
For the carrying out of:	Development described in Condition A1, Part A, Schedule 2
Estimated Cost of Works	No significant cost
Type of development:	State Significant Development Integrated Development
S.119 Public inquiry held:	No
BCA building class:	N/A
Approval Body / Bodies:	NSW Rural Fire Service
Determination made on:	
Determination:	Development consent is granted subject to the conditions in the attached Schedule 2.
Date of commencement of consent:	This development consent commences on the date identified in the formal notification letter accompanying the Determination.
Date consent is liable to lapse	<p>This consent will lapse 5 years from the date of commencement of consent, unless:</p> <ul style="list-style-type: none"> ▪ a shorter period of time is specified by the Regulations or ▪ a condition in Schedule 2, or ▪ the development has physically commenced.

PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 162-7-2004

Responsibility for other approvals / agreements

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Appeals

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid:

- (1) for a development application, within 12 months after the date on which the applicant received this notice

Appeals—Third Party

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

Legal notices

Any advice or notice to the consent authority shall be served on the Director-General.

Section 94 Conditions

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies where imposed in accordance with the Bega Valley Council Section 94 Contribution Plan.

The specific public amenity or service or both are identified in the monetary contributions conditions in Part B of Schedule 2.

PART C—DEFINITIONS

In this consent,

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

Applicant means Caddey Searl & Jarman or any party acting upon this consent.

Approval Body has the same meaning as within Division 5 of Part 4 of the Act,

BCA means the Building Code of Australia.

Certifying Authority has the same meaning as Part 4A of the Act.

Council means Bega Valley Shire Council.

DA No. 162-7-2004 means the development application and supporting documentation submitted by the applicant on 1 July 2004.

Issuing Authority means the Minister for Planning or Council.

Department means the Department of Planning or its successors.

Director means the Director of the Urban Assessments (or its successors) within the Department.

Director-General means the Director-General of the Department.

Minister means the Minister for Planning.

PCA means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

Regulation means the *Environmental Planning and Assessment Regulation, 2000* (as amended).

Subject Site has the same meaning as the land identified in Part A of this schedule.

SCHEDULE 2**CONDITIONS OF CONSENT****DEVELOPMENT APPLICATION NO. 162-7-2004****PART A—ADMINISTRATIVE CONDITIONS****A1 Development Description**

Development consent is granted only to carrying out the development described in detail below:

Three lot residential subdivision of Lot 230 DP 869652. No 67 Nutley's Creek Road, Bermagui

NB: This consent does not allow for any construction or excavation works to commence on site other than that required by the conditions of this consent. Prior to any additional works being carried out, the appropriate consent must be obtained.

A2 Development in Accordance with Plans

The development shall be in accordance with development application number DA No. 162-7-2004 submitted by the applicant on 1 July 2004, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

1. Statement of Environmental Effects and associated addendum prepared by Caddey Searl & Jarman dated 28 June 2004.			
2. On-Site Sewerage Management Report prepared by Caddey Searl & Jarman and dated 5 January 2004.			
3. Bushfire Assessment prepared by Design Evolution, Environmental Consultants and dated June 2004.			
Survey Drawings prepared by Caddey Searl and Jarman, Consulting Surveyors and Valuers			
Drawing No.	Revision	Name of Plan	Date
46199	-	Plan of Proposed Subdivision of Lot 230, D.P. 869652 prepared by Caddey Searl and Jarman	2/5/05

[Reason: To ensure development proceeds in accordance with approved plans]

A3 Application for Subdivision Certificate

Prior to the lodgement of the plan of subdivision for registration under Division 3 of Part 23 of the Conveyancing Act 1919, a Subdivision Certificate is to be obtained in accordance with Section 109D (1)(d) of the Act.

[Reason: To enable separate land titles to be issued for the proposed lots]

PART B—PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

B1 Plan of Subdivision

Prior to the issue of a Subdivision Certificate, the applicant is to provide to the issuing authority, a survey plan of subdivision including a copy of the proposed instrument under Section 88B of the *Conveyancing Act 1919*.

Where any easement, right-of-carriageway or restrictive covenant is to be created pursuant to Section 88B of the *Conveyancing Act, 1919*, the subject Section 88B Instrument shall be submitted with the final plan of subdivision as a prerequisite to the endorsement of the Subdivision Certificate.

[Reason: To enable separate land titles to be issued for the proposed lots]

B2 Monetary Contributions

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

(1) Amount of Contribution

Contribution Category	Rate of Contribution	Amount
Recreational Facilities	\$529 per additional lot	\$1,058.00
Local roads	\$894 per additional lot	\$1,788.00
Water Headworks	\$4,500 per additional lot	\$9,000.00
TOTAL		\$11,846.00

(2) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Bega Valley Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Bega Valley Shire Council

Evidence of the payment to Bega Valley Shire Council shall be submitted to the issuing authority prior to the issue of the Subdivision Certificate.

(3) Indexing

The contribution for land will be adjusted in accordance with the latest annual valuations.

[Reason: To ensure the development contributes towards the cost and provision of community facilities, public works, open space and recreation facilities in accordance with Sections 94 and 94a of the Environmental Planning and Assessment Act 1979 (as amended)]

B3 Compliance Certificate for Water Supply

Pursuant to Sections 27 and 306 Division 2 of Part 5 of the Water Management Act, 2000 the applicant, prior to issue of the Subdivision Certificate, shall obtain a certificate of compliance. The certificate shall indicate that:

- Any required payment to the cost of works to augment that water supply and sewer mains, pumping stations and treatment works have been lodged with Council, and
- Arrangements have been made for town water supply mains and services to be extended at no cost to Council in accordance with the approved plans.

[Reason: To ensure all lots are provided with water supply]

B4 Connection to Reticulated Sewer

A caveat shall be created on the land title pursuant to Section 88B of the Conveyancing Act, 1919 that proposed Lots B, C and D shall be connected to reticulated sewer within one year of its availability in the area.

[Reason: To ensure effective environmental management and minimise impact to the water quality]

B5 Utilities – Telephone and Electricity Services

Prior to issue of a Subdivision Certificate, documentation shall be submitted to the issuing authority from Country Energy and Telstra stating that satisfactory arrangements have been made for the supply of electricity and telephone services to the allotments. Easements for electricity purposes, satisfactory to Country Energy, shall be created over existing and proposed electricity lines (pursuant to Section 88B of the *Conveyancing Act, 1919*).

[Reason: To ensure public utility services, access and restrictions are legalised over the land. To ensure lots are adequately serviced.]

B6 Cost in Installation of Utilities

Any necessary alterations to public utility installations will be at the applicant's expense and to the requirements of both Council and the appropriate authorities.

PART C—GENERAL**C1 *Effluent Disposal***

The effluent disposal systems shall be constructed in accordance with the recommendations contained in the On Site Sewage Management Report prepared by Caddey Searl & Jarman dated 8 January 2004 or any alternative system to the satisfaction of the Council. The treatment and disposal of effluent by means of primary effluent treatment system in Lots B, C and D are strictly prohibited.

[Reason: To ensure effective environmental management and minimise impact to the water quality]

C2 *Section 88B Instrument*

The plan of subdivision and Section 88B instrument shall establish restrictive covenants relating to the construction of effluent disposal systems in accordance with the recommendations contained in the On Site Sewage Management Report prepared by Caddey Searl & Jarman dated 8 January 2004. The Council shall have the benefit of these covenants and is the sole authority to release, vary or modify the covenants.

C3 *Water Supply*

Concurrently with the erection of a dwelling-house on the vacant lots, the owner shall provide a water storage tank of suitably sized storage capacity to cater for a 48 hour period of consumption, with an air gap and pressure pump, to allow storage of water from the reticulated water supply to service the dwelling-house with adequate water pressure.

C4 *Tree Preservation*

No trees will be lopped or removed from the site without the prior written consent of Council.

[Reason: To preserve vegetation and prevent soil erosion]

PART D—GENERAL TERMS OF APPROVAL

NSW Rural Fire Service

D1 Asset Protection Zones

The following asset protection zones shall be provided and maintained in accordance with Section 4.2.2 of Planning for Bushfire Protection 2001:

- a) minimum of 40 metres shall be provided from the southern boundary to any future dwelling on Lot D (30 IPA and 10 OPA);
- b) minimum of 40 metres shall be provided from the eastern boundary to any future dwelling on Lots C and D (30 IPA and 10 OPA);
- c) minimum of 50 metres shall be provided from the eastern boundary to any future dwelling on Lot B (40 IPA and 10 OPA);
- d) minimum of 20 metres shall be provided from the west to any future dwelling on Lots B, C and D which can include the road (IPA); and,
- e) minimum of 35 metres shall be provided from the north-west to any future dwelling on Lot B which can include the road (IPA).

D2 Asset Protection for Lot B

Lot B shall be entitled to only one dwelling. Should a new dwelling be erected on the lot to replace the existing dwelling, a minimum setback of 50m shall be maintained to the eastern boundary and a minimum setback of 35m shall be maintained to the north-west which can include the road.

D3 Thinning of Spotted Gums on Lot B

The spotted gums on Lot B shall be thinned as indicated on the Bushfire Assessment Plan (dated June 2004) so that they do not constitute a bushfire hazard.

Note: Thinning involves underscrubbing and the removal of branches. The Council's consent is required should trees be removed.

ADVISORY NOTES

AN1 Requirements of Public Authorities for Connection to Services

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Water Supply Authority, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

AN2 Application under Part 4A of the Act

An application under Part 4A of the Act shall be submitted to the issuing authority along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate.

AN3 Compliance with Conditions

The applicant will be required to submit, documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 162-7-2004 and of compliance (or a Compliance Certificate) with the conditions of that consent, prior to the issuing of the Subdivision Certificate.

AN4 Future Vehicular Access

Attention is drawn to the need to obtain Council approval for any proposed access prior to construction.

AN5 Roads Act, 1993

A separate application and consent under Sections 138 and 143 of the *Roads Act 1993* is required for any proposed construction work taking place within a Public Road Reserve. The relevant consents required under the *Roads Act 1993* are to be obtained prior to the release of the relevant Construction Certificate.

AN6 Street Numbering

In the event that street numbers or a change to street numbers are required, a separate application shall be made to Council.

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages in accordance with Council's Street Naming Policy, prior to the occupation of the building(s) or commencement of the use.

AN7 Bushfire Protection

The NSW Rural Fire Service has issued a Bush Fire Safety Authority pursuant to Section 100B of the Rural Fires Act 1997. The Bush Fire Safety Authority is dated 8 October 2004.

AN8 *Impact of Below Ground (Sub-surface) Works – Aboriginal Relics*

If any Aboriginal archaeological relics are exposed during construction works, the Applicant shall immediately notify the National Parks and Wildlife Service and obtain any necessary approvals to continue the work. The Applicant shall comply with any request made by the NPWS to cease work for the purposes of archaeological recording.

AN9 *Extension or Rebuilding of Existing Houses*

Should the existing dwelling on Proposed Lot B be enlarged, modified or rebuilt, the owner shall provide details, prepared by a suitably qualified person, that the lot is sufficiently large to accommodate an appropriate size effluent disposal system.

AN10 *Certification and Inspection of Subdivision Work*

Prior to the endorsement of the Subdivision Certificate for this development, a Compliance Certificate must be obtained either from Council or from an Accredited Certifier to demonstrate that all subdivision works have been completed. The subdivision works must be inspected and tested either by Council's inspector, or by an Accredited Certifier at each of the following stages of construction to confirm compliance with the standards set out in Council's Technical Specification for Civil Engineering Works. Any inspection and testing performed by Accredited Certifiers shall be documented by Compliance Certificate(s) for those parts of the subdivision work.

(a) After placement of all signs and control measures in accordance with the approved Traffic Control Plan.

(b) After stripping of topsoil from roads and fill areas, all Soil & Water Management Plan controls shall be in place at this stage.

(c) After completion of road subgrade.

(d) During application of bitumen seal or asphaltic concrete wearing surface.

(e) After laying and jointing of all water supply pipelines prior to backfilling.

(f) During pressure testing of all water supply pipelines.

(g) After completion of works.

(h) As otherwise required to confirm that the works are satisfactorily executed and in conformity with environmental controls.

It should be noted that Council charges fees for inspections and Compliance Certificates. These fees must be paid prior to the endorsement of a Subdivision Certificate.

AN11 *Works as Executed Plans*

Upon completion of all subdivision work, Council shall be provided with one complete copy of the plans to which the Construction Certificate relates, clearly marked up to show all variations of the completed works from the approved design in regard to alignment, levels and other details of the works. These plans must show the location and depth of any filling placed on any lot. Works-as-executed plans must be prepared and certified by a Registered Surveyor or Chartered Professional Engineer as a complete and accurate record of the subdivision work.

A complete record of all cadastral information, roads, stormwater drains, water supply and

sewerage infrastructure works for this subdivision shall also be provided to Council in an electronic format* suitable for inclusion in Council's Geographic Information System with a brief metadata description of the projection & datum used in the survey.

* Councils preferred format for the electronic data is AutoCAD DWG or DXF files in a locally used grid projection. i.e. MGA94 or AMG66. Data will need to be resupplied if coordinates are not valid for the surveyed area. Data will be also need to be resupplied if provided using "paper space" coordinates.

The works as executed plans must be examined and accepted by Council's engineering staff prior to release of the Subdivision Certificate..

AN12 *Dedication of Road Widening*

The final plan of subdivision shall include the dedication as Public Road of such land as is necessary to contain the constructed road in use (known as Nutley's Creek Road) over the frontages of all surveyed lots. The registered surveyor who prepares the plan of subdivision shall certify to the Principal Certifying Authority that the existing constructed road is wholly contained within the road reserve boundaries shown on the plan of subdivision.

NOTE:

1. A condition of this approval requires the developer to obtain a Compliance Certificate pursuant to the requirements of the *Water Management Act 2000*. The actual payment due will be calculated at the rate specified in Council's appropriate water and/or sewer development servicing plan, as at the date of application for the Compliance Certificate. Copies of the current plan(s) can be viewed at Council offices or on the Internet at www.begavalley.nsw.gov.au.

The payments listed below are as at the date of issue of this consent. Payment is due prior to release of the Compliance Certificate:

(a) Payment of a contribution of \$9,000 to Council's Water Headworks Fund Allocation No. 80161-003