



NSW GOVERNMENT
Department of Planning

***DEVELOPMENT APPLICATION ASSESSMENT:
State Environmental Planning Policy (State
Significant Development) 2005:
DA 172-7-2005 - Rural Residential Subdivision
Cnr Kings & Princes Highway Batemans Bay***

Planning Assessment Report
Under Part 4 of the *Environmental Planning and
Assessment Act 1979*
December 2006

1. EXECUTIVE SUMMARY

This report is an assessment of Development Application DA 172-7-2005 under *State Environmental Planning Policy (State Significant Development) 2005* ("SSD SEPP"), submitted by Canberra Investment Corporation Limited ("the proponent") for Lot 2 DP 865527 & Lot 10 DP 1015889, located on the corner of Kings Highway and Princes Highway Batemans Bay.

The application seeks consent for a rural residential subdivision into 150 lots with a capital investment value of approximately \$13 Million. Pursuant to the provisions of *Eurobodalla Rural Local Environmental Plan 1987* ("the LEP"), the site is located within the 1(c) Rural Small Holdings zone with a small area of 5(c) Proposed Arterial Road zone.

A master plan was adopted by the Minister in June 2004 for the proposed 150 lot rural residential development of the site. The current DA was lodged with the Department on 20 July 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* ("the Act"). At the time of lodgement of the DA, the Minister for Planning was the consent authority pursuant to Clause 6 of the SSD SEPP.

Following exhibition, a number of issues were identified by agencies and the community including flora and fauna impacts, infrastructure provision, pedestrian and cyclist facilities, road design and access points, traffic generation, public transport, and visual impact. All of these issues are discussed in Section 6.2 of this report.

The applicant was made aware of the Department's concerns in December 2005 and the opportunity for the submission of amended plans and information was offered. Amended plans were received and considered by the Department and associated stakeholders. This report is based on the amended plans and documentation received on 23 October 2006, which is referred to as the "amended proposal".

The proposal also requires separate development consent for native vegetation clearing under the *Native Vegetation Conservation Act 1997* from the Minister for Natural Resources since the site is zoned rural and clearing of native vegetation is proposed. A Native Vegetation clearing permit was subsequently issued by DNR on 31 October 2006.

The opinion of the Minister for Planning must be formed pursuant to Clause 6 of the SSD SEPP that the development is of a kind described in Schedule 2 of the SSD SEPP. The Minister for Planning is the consent authority for State Significant Development under Section 76A(9) of the Act. The Minister's opinion, that this proposal is development of a kind described in Schedule 2 of the SSD SEPP, forms part of the recommendation in Section 8 of this report.

The applicant has subsequently lodged a deemed refusal appeal with the Land and Environment Court of NSW since the Minister had not made a determination in the specified period.

It is recommended that the development application be **approved** subject to the recommended conditions of development consent being imposed as outlined at **Appendix A**.

2. BACKGROUND

2.1 Site Context and location

The subject site is identified as Lot 2 in DP 865527 and Lot 10 DP 1015889 and is bounded by the Kings Highway and Princes Highway in North Batemans Bay ("the site") in the Eurobodalla Council Local Government Area. Batemans Bay is a coastal town on the NSW south coast, located approximately 276 Km south of Sydney, and 147km east of Canberra, in an area known as the "Eurobodalla Nature Coast". The location of the site is illustrated in Figure 1.

Figure 1: Site Location



The southern end of the site is located approximately 1 kilometre north of Batemans Bay, while the northern end is approximately 4 kilometres from the town centre. The Batemans Bay town centre is located on the foreshore of the Clyde River and provides commercial, retail and recreational facilities. The Clyde River is located approximately 500 metres from the site to the south and southwest and the bridge crossing the Clyde River, which provides access to Batemans Bay, town centre is located to the south of the site.

The site is located within a low density residential and rural residential area consisting primarily of single detached residential dwellings comprising single and two storey development. The residential areas known as North Batemans Bay and Surfside are located to the south and east of the site, across the Princes Highway, and a motel development is also located opposite the site to the southeast across the Princes Highway.

Another motel development exists to the west of the site bounded by Old Punt Road and the Kings Highway, on the foreshore of the Clyde River. Rural residential development generally exists along Clyde Road to the northeast of the site, while forested lands are located to the north and west of the site, between the Clyde River and the Kings Highway. A wetland listed under State Environmental Planning Policy No 14 – Coastal Wetlands ("SEPP 14") adjoins the site to the northeast.

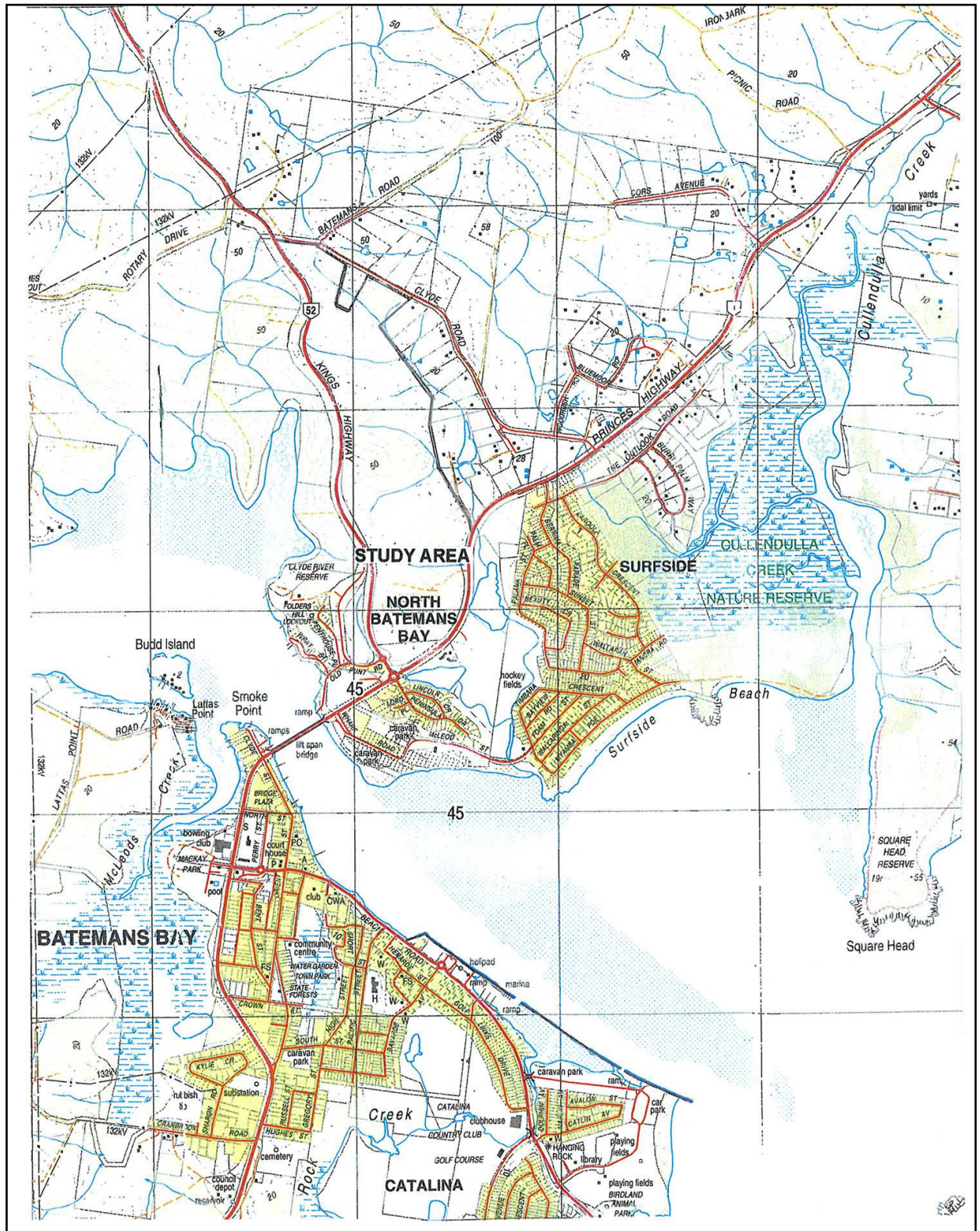
The Princes Highway and the Kings Highway form the boundaries of the subject site and are the main arterial roads into Batemans Bay. The Princes Highway, which forms the southern and eastern boundaries of the site, is a strategic route connecting Sydney with the south coast and in this location consists of a carriageway of 10 to 12 metres with two lanes, one in each direction. The posted speed limit of the Princes Highway is 60Km/Hr in the vicinity of the site.

The Kings Highway is another major arterial road, forming the western boundary of the site for a distance of approximately 3 kilometres and providing an east-west link with Canberra. In this location, the Kings Highway consists of a carriageway of 10 to 12 metres with two lanes, one in each direction and a posted speed limit of 60Km/Hr in the vicinity of the site.

The Kings Highway intersects with the Princes Highway at the southern end of the site in a two lane roundabout. Peninsula Road, a local road providing access to North Batemans Bay and Surfside, also connects at this roundabout. Old Punt Road, a local road providing access to residential development to the west of the site along the Clyde River intersects with the Kings Highway in another roundabout a short distance to the north of the major roundabout of the Highways and provides one of the two access points to the site.

Batemans Bay is generally characterised by a mix of uses within and adjoining the town centre including residential, commercial, recreational and retail and is recognized for its foreshore position on the Clyde River. The Coastal Design Guidelines describe Batemans Bay as a Coastal Town. The site context is illustrated in Figure 2.

Figure 2: Site Context



2.2 Site Features

The site consists of two allotments, being Lot 2 and Lot 10. Lot 2 is located at the southern end of the site adjoining the intersection of the Kings and Princes Highways and consists of an area of approximately 2.06 hectares. Lot 10 comprises the majority of the site, directly adjoining Lot 2 and consists of an area of approximately 85.93 hectares. The site, comprising Lot 2 and Lot 10, consists of a total area of 87.99 hectares.

The site currently consists predominantly of vegetation, with the construction of the spine/collector road nearing completion following earlier development consent (see Section 2.3 of this report). There appears to be numerous informal tracks also located on the site, which may have resulted from bushwalkers, trail bikes and four wheel drive vehicles. The site is however largely vacant with no improvements. There is an electricity easement located along the northern boundary of the site which has resulted in some clearing of vegetation for the installation of electricity infrastructure.

The site is comprised of a number of ridges and gullies, largely traversing the site in an east-west direction, with several of these gullies forming intermittent watercourses. These watercourses have been reviewed by the relevant Government Agencies and are not defined as rivers for the purposes of the *Rivers and Foreshores Improvement Act 1948*. Vegetation is proposed to be largely retained in these gully areas of the site. The northern end of the site is the higher portion, where some areas of the site exceed a 25% slope. The majority of the site, however, can be characterised as undulating, particularly towards the southern end of the site. There are no improvements on the site.

The site has been exposed to some clearing (for easements), bushfire and logging, while clearing for the construction of the spine road has been approved under the *Native Vegetation Conservation Act 1997*. Despite these past land uses, the site is extensively vegetated and consists largely of Spotted Gum, Stringy Bark, and Open Spotted Gum/Stringy Bark Open Forest. The Open Forest consists largely of trees between 25 and 45 metres in height, and a dense mid canopy of She-oak occurs over much of the forested area. The electricity easement consists of cleared grass land, including Kangaroo and Whisky grass. No threatened flora species were found on the site.

In relation to fauna, the site consists of native open forest and grassland communities which provide fauna habitat. However, creeks on the site are non-perennial, rock outcrops do not occur and there are relatively few large fallen logs observed on the site. An assessment of the trees on the site revealed the presence of numerous hollows that were considered to be sufficient to cater for the nesting requirements of the Glossy Black Cockatoo. Following fauna surveys approximately 70 vertebrae, 46 bird and 15 mammal species were detected as well as two threatened species including the Glossy Black Cockatoo and the Yellow-bellied Glider, amongst others. The Glossy Black Cockatoos observed were a family group consisting of an adult pair and one young. One Red Bloodwood tree was located that had two incisions made by the Yellow-bellied Glider. The site is also known to contain five identified Aboriginal sites and three European historical sites.

Previous land uses on the site included pastoral use and accordingly soil sampling has been undertaken to ensure the site is suitable for the proposed development. The site is 'bushfire prone' for the purposes of Section 146 of the Act and is classified as development for a 'Special Fire Protection Purpose' pursuant to Section 100B of the *Rural Fires Act 1997*. Noise from the two adjoining highways may adversely affect the proposal, while a small section of the site along the north-eastern portion, close to the adjoining wetland listed under SEPP 14, is subject to the 1 in 100 year flood event. These site constraints are discussed in Section 6.2 of this report and the site analysis and constraints are illustrated in Figures 3. Photographs of the site are illustrated in Figure 4 and 5. A site visit was undertaken prior to assessment

Figure 3: Site Analysis and Constraints



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Figure 4: The Site – existing internal road under construction



Figure 5: The Site looking north down the electricity easement



2.3 Previous Development Applications

2.3.1 3 Lot Subdivision & Access Road Construction (DA 487-11-2003)

Development Application, DA 487-11-2003, was lodged with the Department pursuant to Clause 10 of *State Environmental Planning Policy No. 71 – Coastal Protection* (“SEPP 71”) on 21 November 2003 to subdivide the existing two allotments into three large rural residential allotments and construction of an internal road. The application was Integrated Development as approvals under s100B of the *Rural Fire Act 1997*, s139 of the *Roads Act 1993*, Part 3A of the *Rivers and Foreshore Improvement Act 1948* and s90 of the *National Parks and Wildlife Act 1974* were required.

The three allotments consist of 16.2Ha, 32.2Ha and 35.9Ha. This application also required an approval to clear native vegetation under the *Native Vegetation Conservation Act 1997* (“NVC Act”) which was granted separate development consent by the then Department of Infrastructure Planning and Natural Resources under delegation from the Minister for Natural Resources on 18 March 2004 for the clearing of 10.6 hectares of native vegetation from the site.

This development application for the 3 lot subdivision and road construction was approved by the then Minister assisting the Minister for Infrastructure and Planning (Planning Administration) on 2 June 2004. It appears, however, that this subdivision was not registered with Land and Property Information of NSW.

A master plan waiver application under SEPP 71 was also submitted with this Development Application on the basis that the development was of a minor nature and that the proposal was the first stage of a larger proposal, which would subsequently be the subject of a detailed master plan application. This waiver application was granted by the Minister under delegation for this proposal.

2.3.2 Master Plan for 150 Lot Rural Residential Subdivision (MP 27-7-2004)

A Draft Master Plan under Part 5 of SEPP 71 was lodged with the Department by *Planning Initiatives* on 27 July 2004 for a 150 lot rural residential subdivision of the site. The Master Plan was required as subdivision of land within a rural residential zone into more than 5 lots was proposed pursuant to Clause 18(1)(c) of SEPP 71.

The main issues considered in the assessment of this Draft Master Plan included allotment sizes, Aboriginal Heritage, flora and fauna, visual impact and buffer areas and traffic and pedestrian movement. The Master Plan was adopted by the Deputy Director-General, as delegate for the Minister, on 5 May 2005. A variation was imposed on this master plan adoption which required that a grade-separated pedestrian crossing point be provided outside the Princes Highway road reserve with appropriate links to existing pedestrian facilities on the eastern side of the Highway and proposed pedestrian facilities on the western side of the Highway.

The adopted Master Plan is considered in Section 6.2 of this report.

3. THE PROPOSED DEVELOPMENT

3.1 The Proposed Development

The proposed development seeks development consent for the following components:

1. Subdivision of Lot 2 in DP 865527 and Lot 10 DP 1015889 into 142 rural residential lots under Torrens title:-
 - (a) Lot sizes – range from 2500m² to 31,811m², with an average lot size of approximately 5000m²;
 - (b) Building Envelopes – generally areas of 400m² for each designated lot having regard for bushfire, slope and ecological constraints;
 - (c) Visual Buffers – range from 25 metres wide along the Princes and Kings Highway boundaries of the site;
 - (d) Vegetation Reserves – generally comprising 80 metres of retained vegetation surrounding the drainage features/gullies on the site; and
 - (e) Phasing - the proposal is to be constructed over 7 stages.

The vegetation reserves are proposed to be retained in private ownership and will be managed and protected by individual landowners under Section 88B restrictions under the *Conveyancing Act 1919*. There will be no common areas to be managed by any associations and there will be no dedication to Council of any natural areas on the site.

2. Construction of an internal road and pedestrian/cycle network involving:-
 - (a) Existing collector “spine” road that runs along the upper north-south axis of the site and known as Road No 1 and Road No 6;
 - (b) Local access roads generally sited along the east-west ridges to the individual allotments and are known as Road No 2 (cul-de-sac), Road No 3 (cul-de-sac), Road No 4 (loop road), Road No 5 (cul-de-sac), Road No 7 (no-through road), and Road No 8 (cul-de-sac);
 - (c) Two access points from the Kings Highway into the site, including a southern access point at the existing roundabout at the intersection with Old Punt Road and a northern access point as a left in/left out intersection with the Kings Highway, approximately 1.5 Kilometres north of the Princes Highway intersection;
 - (d) Pedestrian and cyclists access including a number of measures external to the site and various paths within the site, including along the collector and local roads connecting to proposed fire trails and external linkages; and
 - (e) Fire trail along the eastern boundary of the site and at the termination of Road No 6 towards Clyde Road.
3. Services – construction and installation of the following services:-
 - (a) Water supply – proposed extension to existing reticulated system from Council water main located at the Kings and Princes Highway intersection for lots below RL 40m AHD and an auxiliary high zone system for lots above this level, involving a reservoir and booster pump station. Water supply will be augmented by rainwater tanks;
 - (b) Sewerage – proposed low pressure sewerage system for collection and transportation to the Council’s treatment plant involving construction of a rising main external to the site and construction of a detention storage tank, of

- approximately 98 kilolitres capacity, at the receiving pump station (BB12 to BB08);
- (c) Stormwater – a water sensitive urban design system involving detention basis and diversion and treatment of street and inter-allotment drainage systems discharging to the natural gully areas to allow for the removal of pollutants;
 - (d) Electricity – proposed to be serviced via underground reticulation of high and low voltage electrical supply, street lights and pad mount substations; and
 - (e) Telecommunications – telephone infrastructure to be provided from Old Punt Road intersection.

4. Provision of Asset Protection Zones for individual allotments and adjoining the buffer zones.

Separate development consent is required under the Native Vegetation Conservation Act 1997 from the Minister for Natural Resources (through the Department of Natural Resources) since the site is zoned rural and clearing of native vegetation is proposed. This development consent has been issued by the Department of Natural Resources under delegation on development consent BE0503 dated 31 October 2006. This issue is discussed further in Section 6.2.1 of this report.

A site layout plan of the proposed development is illustrated in Figure 6. The proposal is also illustrated in selected plans in **Appendix E**.

Figure 6: The Proposed Development



3.2 Application Chronology

The development application (DA 172-7-2005) was lodged with the Department of Planning by *Canberra Investment Corporation Limited* ("the applicant") on 20 July 2005 for a 150 Lot rural residential subdivision, construction of internal roads and provision of infrastructure. The proposed development was illustrated in plans dated June 2005 (Issue A and B) and is referred to in this report as the "original proposal". Upon receipt of the application, the Department referred the Development Application to the relevant State and Local Agencies on 3 August 2005 for comment and received responses outlining several issues. These agency comments are discussed in Section 5.2 of this Report.

Following an assessment of the proposal by the Department and agencies, and consideration of the issues raised by the Community following exhibition a summary of the concerns with the proposal was prepared in correspondence to the applicant dated 5 December 2005.

This comprehensive correspondence from the Department dated 5 December 2005 included the following issues:-

1. Native Vegetation Removal
2. Vegetation Corridors
3. Visual Buffer
4. Infrastructure Provision
5. Road Design and Traffic Issues

Following this correspondence, a site inspection was undertaken by the Department with the applicant on 19 December 2005, where the issues were further discussed.

On 8 March 2006, since the applicant had not formally responded to the Department's 5 December 2005 correspondence, a letter from the Director-General was sent to the applicant requesting the outstanding information to be submitted within 14 days or advice on the likely date of submission of this outstanding information.

The applicant responded to the Director-General's correspondence on 16 March 2006 requesting an extension to the deadline to provide the required information until 3 May 2006. Also in this correspondence, the applicant provided an amended plan reference no 2311392-SK0011 Rev A dated 13 March 2006 which reflected the following changes:-

- (a) Realignment of Road No 2 out of the gully with the provision of a 10 metre wide buffer on either side of the gully and the splitting of this road into Road No 2a and 2b;
- (b) Reduction of five lots primarily around Road No 2 and in the vicinity of Lot 604;
- (c) Extension of vegetation reserve to Kings Highway through electricity easement;
- (d) Extension to vegetation buffers along gully lines, with 40 metre buffers on either side of gully banks (i.e. greater than 80 metres overall).

A summary of the issues following consultation with the agencies was also provided outlining progress on the issues:-

- Issues 1 & 2 - Native Vegetation Removal and Vegetation Corridors

The applicant provided a summary of meetings which had taken place with DNR in relation to these issues as well as additional ecological information in reports titled "*Mapping of Black She-oak Stands and Consideration of Bushfire Issues*" prepared by BES Bushfire and Environmental Services, Reference No 5458 dated March 2006 and "*Analysis of Vegetation Retention Issues*" prepared by BES Bushfire and Environmental

Services, Reference No 6026 dated 13 March 2006. This information was referred to DNR by the applicant. These reports are considered by the Department in Section 6.2 of this report.

- Issue 3 – Visual Buffer

A response was provided by the applicant to this issue in the report "*Bayridge Batemans Bay: Response to Department of Planning Issue No 3 – Visual Buffer*" prepared by EDAW dated March 2006. This report is considered by the Department in Section 6.2 of this report.

- Issue 4 – Infrastructure Provision (water supply, sewer and stormwater infrastructure)

The applicant provided a summary of meetings which had taken place with the Council in relation to these issues as well as additional infrastructure information in the "*Bay Ridge External Sewerage Connection Study*" prepared by GHD dated February 2006. The aim of this study was to identify feasible routes for the external pressure sewer to access the Council's trunk sewerage system (BB12 to BB08). This report is considered by the Department in Section 6.2 of this report.

This information revealed that further studies were to be undertaken by the applicant including a 'Review of Environmental Factors' to be prepared in relation to the rising sewer main in consultation with Council.

- Issue 5 – Roads and Traffic issues

The applicant provided a summary of meetings which had taken place with the RTA in relation to these issues as well as additional information in updated plans including updated road sections, a Transport Plan illustrating proposed bus routes, proposed bus stops, proposed off-street shared pedestrian/cyclists paths and proposed fire trails. Also, traffic generation rates were provided dated February 2006. The "*North Batemans Bay Ridge Development Response to Department of Planning Comments on DA*" prepared by TTM Consulting dated 13 February 2006 was also submitted which provided a response in relation to the issues concerning the pedestrian and cyclist facilities and a pedestrian crossing over the Princes Highway. This information revealed that further studies were to be undertaken by the applicant to be prepared in consultation with the RTA.

Based on consideration of this update on the status of the issues, this request for an extension to lodge the requested additional and amended information was granted by the Director-General of the Department in correspondence dated 20 March 2006.

On 3 May 2006, the applicant provided a comprehensive response to the infrastructure (water, sewer, stormwater) and roads issues, being Issues 4 and 5 of the Department's correspondence dated 5 December 2005. Issues 1 and 2 were not addressed as DNR had not provided comments on the proposal. Issue 3 had been addressed previously in the correspondence provided from the applicant on 8 March 2006 (further discussed in Section 6.2 of this report).

This additional information provided the following:-

- Issue 4 – Infrastructure Provision (water and sewer infrastructure)

The applicant provided a summary of meetings which had taken place with the Council in relation to these issues as well as additional infrastructure information in the "*Bay*

Ridge Batemans Bay: Response to Department of Planning Visual Impacts of Proposed Reservoir prepared by EDAW dated May 2006. The aim of this report was to address potential visual impacts of the proposed reservoir required for the high water zone on the site. In relation to water supply, the *Bay Ridge Residential Development: Integrated Water Cycle Management Report for DA Response* prepared by GHD dated May 2006 was submitted to the Department. The aim of this report was to outline the integrated water cycle management approach for the site in relation to water supply, sewerage and stormwater and appears to replace the original report provided with the DA.

In relation to sewerage infrastructure, the *Bay Ridge Estate External Sewer Connection: Statement of Environmental Effects* prepared by GHD dated May 2006 was submitted which aims to assess the construction of the external sewer connection for Bay Ridge Estate. In relation to stormwater infrastructure, the *Report for Bay Ridge Estate Development: Response to Eurobodalla Shire Council Stormwater Comments* prepared by GHD dated May 2006 was submitted which provides a response to the stormwater issues. Amended plans reflecting the conclusions and recommendations of these reports were also submitted. All of these reports are considered by the Department in Section 6.2 of this report.

- Issue 5 – Roads and Traffic issues

The applicant provided a summary of meetings which had taken place with the RTA in relation to these issues as well as additional information including correspondence from GHD dated 27 April 2006 which discusses the internal road issues and an updated set of plans.

Also in this correspondence, the applicant provided an amended plan Reference No 23-11392-SK002 Rev B undated which reflected a reduction of lots adjoining Clyde Road from 5 lots to 2 lots, resulting in an overall lot yield of 142 lots.

The Department referred this additional information to the relevant agencies including DEC, RTA, DNR [Catchment Management Authority] and the South Coast Regional Office for further comment (outlined in Section 5 of this Report) on 8 May 2006. Responses were provided from the Council, DNR/CMA, DEC, RFS and the RTA.

The Department received further advice from DNR in correspondence dated 14 June 2006 in relation to Issues 1 and 2, which presented a level of vegetation clearing that would avoid a “likely significant effect” in relation to Section 5A of the Act. This advice was provided on the basis of the Vegetation Retention Plan Reference No 2311392-SK0011 Rev A, upon which the additional ecological information provided to the Department in correspondence from the applicant dated 16 March 2006. DNR requested that the applicant consider their response to allow determination of the NVC Act clearing application. This advice was generally related to vegetation retention along the drainage line east/west buffers (vegetation reserves) and the overall percentage of vegetation retained in the northern portion of the site.

A meeting was subsequently held with the applicant on 23 August 2006 to discuss the comments from DNR as there was the requirement for a substantial reduction in the number of allotments proposed in the subdivision as a result of this advice. The applicant stated that the DNR advice would result in a significant reduction in lot yield such that the proposal would only accommodate 128 lots, which is further reduced to 61 lots when the APZ requirements are considered.

The applicant lodged a response to the DNR advice to the Department in correspondence dated 22 August 2006, which was presented in the 23 August 2006 meeting. This correspondence rejected DNR’s advice with the following justification:-

- The assessment by the then DIPNR of the drainage lines determined that they served a limited catchment area with no defined channel formation and were therefore not classified as rivers under the *Rivers and Foreshores Improvement Act 1948* ("RFI Act");
- Since these drainage lines are not 'rivers', the 40 metre vegetation buffer zone as applied under the RFI Act does not apply to these drainage lines. The 80 metre vegetation buffer zones provided in the proposal are included for water quality and vegetation benefits and were adopted under the master plan. The measurement of these zones from the centre line is not applicable in this case;
- The eight part test confirmed that the impact of the clearing proposed in the master plan does not have a significant effect on threatened or endangered ecological communities;
- Additional vegetation retention studies confirmed that conservation values of habitats and vegetation at Bay Ridge are common and widespread in the locality and Bay Ridge does not generally provide high connectivity values for fauna species.

The applicant provided a further update on the progress of consultation with the relevant agencies in the correspondence dated 22 August 2006, which stated that the issue of the pedestrian crossing point was being progressed with the RTA and that the infrastructure issues were resolved with the Council.

A deemed refusal appeal was subsequently lodged with the Land and Environment Court of NSW ("the Court") on 13 September 2006 as the Minister had not made a determination. This appeal was lodged on the basis of the original plans submitted to the Department.

The applicant continued discussions with DNR in relation to the native vegetation clearing issues following the lodgement of the appeal with the court.

The applicant formally lodged amended plans with the Department on 23 October 2006 which reflected the final agreed plan with DNR in relation to the native vegetation issues and other issues following consultation with the agencies. The applicant states that this amended plan is substantially the same as the original DA plan as lodged and does not involve changes to roads or subdivision layout, with the only amendment being the amalgamation of 7 lots into other lots within the same subdivision pattern.

The following changes are outlined on the amended plans:-

- Additional vegetation retained in accordance with amended DA for Native vegetation clearance (APZ regimes and managed zones identified in accordance with DNR agreed plan);
- Staging amended to reflect preferred release to the market and the provision of infrastructure following discussions with Council. A temporary sales office has also been added to Stage 1;
- Reconfiguration of lots and reduction of 8 lots overall in the following manner:-
 - (i) Lots 101, 102, 103, 104 and 105 have been amalgamated to form Lots 101 and 102 to reflect agreement with RTA in relation to access to Clyde Road (loss of 3 lots);
 - (ii) Lots 301 to 312 have been rearranged and reduced by 1 lot to reflect agreement with DNR in relation to native vegetation retention (loss of 1 lot);
 - (iii) Lots 410 and 411 have been amalgamated to form Lot 610 (loss of 1 lot);
 - (iv) Lots 506, 507 and 508 have been amended to form Lots 406 and 407 (loss of 1 lot); and
 - (v) Lots 404, 405 and 406 have been amended to form Lots 603 and 604 (loss of 1 lot).

- Building envelopes have been amended to reflect the lot layout changes (reduction of 7 lots) and any associated changes from the vegetation retention and revised APZ requirements; and
- Roads and services plans have been amended to reflect discussions with authorities.

These amended plans represent the “amended proposal” and form the basis of this assessment.

This additional and amended information received in March, May and October 2006 has been assessed in conjunction with the originally submitted information and forms the basis of this report. This information does not significantly change the proposed development which was originally proposed in the development application submitted and does not give rise to any additional impacts.

Accordingly, these amendments were accepted as a replacement application in accordance with Clauses 55 and 90 of the *Environmental Planning and Assessment Regulation 2000* (“the Regulations”). In accordance with Clause 90 of the Regulations and Clause 3.4(b) of *Eurobodalla Shire Council's Development Control Plan - Advertising and Notification Guidelines*, no further notification of the application was undertaken given the amended proposal differs in only minor aspects to the original proposal (and results in less impact), and which was notified and advertised in accordance with the Regulations.

4. THE STATUTORY FRAMEWORK

4.1 Statement of Permissibility

The subject land is primarily zoned 1(c) Rural Small Holdings, with a small part zoned 5(c) Proposed Arterial Road along the Kings Highway boundaries towards the northern end of the site, under the *Eurobodalla Rural Local Environmental Plan 1987* (as amended) ("the LEP"). Clause 11 of the LEP contains the Zone objectives and development control table, which lists uses which are permissible with consent, without consent or which are prohibited. Since *subdivision* is not listed as either prohibited in the zone or permissible without consent, it is permissible with development consent. The proposed development is therefore permissible in the zone.

The DA was lodged on 20 July 2005 and is therefore subject to Clause 8J(7) of the Regulations. The Regulations state that if the development application was made before the commencement of Part 3A of the Act (1 August 2005) on the basis that the development was State significant development, and the Minister is required to form an opinion that the development is State significant development in order to determine the application on that basis (but the Minister had not, before that commencement, formed an opinion on the matter), the Minister may, after that commencement, form an opinion that the development was, at the time the application was made, State significant development.

In that case, which is evident in this instance, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

4.2 Instrument of consent and other relevant planning instruments

The proposed development is located within the coastal zone, as defined in Clause 1 of Schedule 2 of *State Environmental Planning Policy (State Significant Development) 2005* ("the SSD SEPP") and is also located within a 'sensitive coastal location', as a wetland under *State Environmental Planning Policy No 14 – Coastal Wetlands* is located within 100 metres to the east of the site across the Princes Highway.

The proposal involves development for the purposes of subdivision of land in a rural/residential zone into more than 5 lots within the coastal zone and therefore achieves the criteria in Schedule 2 Clause 1(1)(i) of the SSD SEPP. Accordingly, the application is 'State Significant Development' pursuant to Cl 6(a) of SSD SEPP and the Minister is the consent authority for this development application pursuant to Section 76A(9) of the Act.

The Minister, pursuant to Clause 6 of the SSD SEPP, must form the opinion that the proposal is Development that is development of a kind described in Schedule 1 or 2, or described in Schedule 3 as State significant development of the SSD SEPP, is State significant development. The opinion of the Minister will be provided upon determination of the application.

The following Environmental Planning Instruments and other Plans and Policies apply:

- *State Environmental Planning Policy – State Significant Development 2005*;
- *State Environmental Planning Policy No. 71 – Coastal Protection*;
- *State Environmental Planning Policy No. 55 – Remediation of Land*;
- *State Environmental Planning Policy No. 14 – Coastal Wetlands*;
- *State Environmental Planning Policy No. 11 – Traffic Generating Developments*;

- *Lower South Coast Regional Environmental Plan No 2;*
- *Eurobodalla Rural Local Environmental Plan 1987;*
- *Eurobodalla Shire Council Development Control Plan 165 – North Batemans Bay Rural Small Holdings;*
- *NSW Coastal Policy 1997;*
- *NSW Coast Design Guidelines.*

An assessment of the proposal against the provisions of these Environmental Planning Instruments is outlined in **Appendix C**.

4.3 Legislative context

The proposed development is 'Integrated Development' for the purposes of Section 91 of the Act and requires a Bushfire Safety Authority under s100B of the *Rural Fires Act 1997*. This issue is discussed in Section 6.2 of this report. Relevant conditions recommended to be imposed by the RFS have been outlined in **Appendix A**. the proposal also requires a Section 90 consent under the *National Parks and Wildlife Act 1974*, however, this approval has already been issued by the Department of Environment and Conservation. Relevant conditions regarding Aboriginal Heritage have been recommended to be imposed and are outlined in **Appendix A**.

The drainage features on the site have been considered by the then Department of Infrastructure Planning and Natural Resources and found not be classified as 'rivers' under the *Rivers and Foreshores Improvement Act 1948* ("RFI Act"). Therefore, Part 3A permits under the RFI Act are not required.

Conditions of development consent have been recommended to be imposed to ensure Section 138 consent under the *Road Act 1993* are satisfied in relation to works in the road reserve.

5. CONSULTATION

5.1 Public Consultation

The application was notified, in accordance with the Regulations and the *Eurobodalla Shire Council's Advertising and Notification Guidelines* for a period of 30 days. A summary of the notification procedure is outlined below.

Notifications – landowners/occupiers	Notification letters dated 3 August 2005 were sent to adjoining and nearby landowners.
Newspaper advertisements	Advertised in the <i>Batemans Bay Post</i> on 12 August 2005
Site notice	Requested to be erected in correspondence dated 9 August 2005
Exhibition dates	Start: 13 August 2005 End: 12 September 2005
Exhibition venues	▪ Department of Planning Information Centre (then DIPNR) - 23-33 Bridge Street Sydney; ▪ Department of Planning South Coast Regional Office (then DIPNR) – 84 Crown Street Wollongong; ▪ Department of Planning Queanbeyan Regional Office (then DIPNR) – 32 Lowe Street Queanbeyan; ▪ Eurobodalla Shire Council – Administration centre, Vulcan Street Moruya; and ▪ Batemans Bay Library – Hanging Rock Place. Hanging Rock.

A total of six (6) submissions were received raising objection to the proposal, during the period of public exhibition for the proposal. A summary of submissions is at **Appendix D** which raised concerns regarding traffic generation, visual amenity, infrastructure provision, flora and fauna and works already being carried out on the site. The concerns raised in these submissions are discussed in detail, where relevant, in Section 6.2 of this report.

5.2 External Referrals

5.2.1 Eurobodalla Shire Council

The application was referred to the Eurobodalla Shire Council (“the Council”) in correspondence dated 3 August 2005. The Council responded in correspondence dated 26 September 2005 stating there were several concerns with the proposal and that the comments provided in earlier correspondence in relation to the master plan remained relevant.

In addition to these earlier comments, the salient points of this advice included:-

- *Council would not support the provision of critical infrastructure being introduced in stages coinciding with staging of the allotments.*
- *Built form controls and building envelopes appear to not be sufficiently outlined in the supporting information.*
- *Insufficient detail has been provided at this stage to comment on adequacy of pedestrian access along fire trails and retention basin walls. The type and materials of construction, gradients, slope and finished surface construction are some issues requiring clarification.*
- *Council considers the issue of pedestrian access across the Princes Highway and to the CBD requires resolution prior to any consent, and should have regard to the shared pathway treatments proposed with the Bay Waters Inn and Lincoln Downs redevelopments.*

- *Road junctions and works within existing road reserves would require the consent of the RTA/Section 138 approval*
- *A number of issues have been previously raised in regard to stormwater and water sensitive urban design.*
- *Water supply –must allow for Council's Integrated Water Cycle Management Policies*
- *Roads – road widths (both reserve and construction) appear not in accordance with Council's adopted engineering standards.*
- *The RTA's views on the major access points are not reflected in the DA.*
- *No facility for bus shelters or adequate carriageway width to allow buses to access the subdivision appear to have been made.*
- *Sewer –must allow for Council's Low Pressure Sewer Policies (LPS).*

The issues raised in previous correspondence in relation to the master plan stated:

- Density of development;
- Visual impact and buffers
- Clearing on ridgelines
- Private ownership of proposed vegetation reserves
- Provision of reticulated services
- Stormwater issues including a stormwater management strategy
- Catchment geological study
- Traffic generation
- Pedestrian and cyclist linkages.

Following the submission of additional and amended information by the applicant in correspondence dated 3 May 2006, the proposal was referred to the Council for further comment in correspondence dated 8 May 2006. The Council responded in correspondence dated 8 June 2006 providing the following comments:-

- *Number of new lots gaining access to Clyde Road is restricted to two due to the deficient level of service of the Clyde Road/Princes Highway intersection.*
- *The revised Stormwater management report does not adopt an integrated approach to stormwater management and previous comments have not been satisfied. The Concept Stormwater Management Report does not propose mitigation measures to ensure that there is no increase in discharge of pollutants from the site following development. Council has raised concern of possible impacts on West Surfside wetland and Surfside Creek. The most significant impact expected is the increase in occurrence of small flooding events.*
- *It is proposed that no clearing will occur in the basins. The changed water regime and the introduction of additional nutrients and sediment loads is likely to significantly affect vegetation. The detention ponds are to be constructed in accordance with Council's Development Specification.*
- *The provision of water supply infrastructure requires an agreement to be reached between Council and the developer. The reservoir is to be 1ML sited at approximately RL90 on the Bay Ridge Estate reservoir site. A cost sharing agreement will be based on a 200KL concrete reservoir being required for the site. The reservoir is to be a bottom fill reservoir.*
- *The developer will be required to install a pump unit and rising main capable of servicing the dwellings. The switchboard is to be delivered into Council's store. Building envelopes have been proposed for each allotment and a condition requiring the developer to provide a pump unit and private rising main to the LPSS network. The LPSS reticulation is to be extended from the development site via rising main to SPS BB12. In train a new rising main is to transfer SPS BB12 to BB08. The route of the rising mains has conceptual layout that has been approved subject to the*

acceptance of options provided under the Bay Ridge External Sewer Connection Statement of Environmental Effects. Council requires separate longitudinal section of pressure sewer main indicating air valve and flushing point locations with respect to proposed allotment boundaries, after the final road layout has been determined. This has not been provided. The layout of the sewer rising main and air valves need to be sited sympathetically with building envelope locations.

- *The provision of pedestrian facilities is to take the form of a grade separated crossing and is to be operational prior to the release of stage one linen plan*
- *The intersection of proposed road and the Kings Highway is to be limited to left turn only.*

Council's view was that the issues highlighted required further investigation and provision of sufficient information to allow a more favourable response was required, although some suggested conditions of development consent were provided.

Following the submission of the amended plans, the proposal was referred to the Council for further comment in correspondence dated 23 October 2006. The Council responded in correspondence dated 7 November 2006 providing the following comments:-

- *There will be a requirement for a pathway to the developed school grounds.*
- *Eurobodalla Shire Council has had no confirmation from RTA that an underpass has been approved to this date.*
- *Whatever the form the grade separated structure will take, the design must accommodate an additional north bound passing lane in the Princes Highway. The grade separated pedestrian crossing is to have documentation and design for tendering prior to the release of Stage 3 and the tender indicating a completion date, let prior to the release of the linen plan for Stage 3. An estimate of the completion of the structure by the applicant was winter 2008.*
- *The Rural Fire Service is to be consulted on the access requirements at the Kings Highway and this access is to be built subsequent to the release of the Stage 3 precinct.*
- *The applicant is to install the pump station and rising main to the street infrastructure in such a position that the dedicated building platform is serviced.*
- *This will require the siting design to be submitted to Eurobodalla Shire Council for approval and issue of a construction certificate prior to construction.*
- *WAX plans for this component of the works are to be submitted and approved by Eurobodalla Shire Council prior to the issue of a subdivision certificate.*
- *It is noted that Council has forwarded general issues previously and feel that these will be dealt with via the Department's general conditions.*

The Council subsequently provided detailed conditions to be considered by the Department in correspondence dated 1 December 2006. Further consideration of the issues is provided in Section 6.2 of this report.

5.2.2 Department of Natural Resources (Formerly part of the Department of Infrastructure Planning and Natural Resources)

The proposal was referred to the NSW Department of Natural Resources on 3 August 2005 when it was part of the Department of Infrastructure, Planning and Natural Resources. Following the separation of DIPNR, a further request for comments from DNR and in particular the Catchment Management Committee regarding the required native vegetation removal consent under the *Native Vegetation Conservation Act 1997*, was requested.

A letter from DNR to the applicant regarding the *Native Vegetation Conservation Act 1997*

application (BE0503) to clear native vegetation from the site provided the following comments on the proposal:-

- *No consent to clear native vegetation for a subdivision can be given on this site until a firm commitment has been secured from Council to accept all effluent from the subdivision, and approval gained for the engineering works necessary to deliver the effluent to Councils sewage infrastructure. Any clearing of native vegetation associated with these works will need to be considered as part of the application.*
- *It is considered the two southern most stormwater basins can be constructed with minimal clearing of native vegetation, depending on the final designed size and given reasonable care during construction. However, construction of the remaining 4 basins would all require significant clearing of high quality riparian vegetation. Consent will not be given to clear native vegetation for these basins. Given the non-approval of clearing for four of the proposed six stormwater basins, there is a need to develop an alternate design to achieve the criteria of no increase in peak discharge of stormwater from the site. This design should include concept, structure types, sizing, locations, and supporting calculations. Any proposed clearing of native vegetation for these works must be identified. The department's preference is for the volume of stormwater and velocity of discharge to be managed at source.*
- *In addition to the five drainage features protected by vegetation corridors, two other substantial first order drainage features also occur on the site. One is located at the southern end of the site, where an access road is proposed to be located in the invert and the other is located in the north-east of the site. The proposal does not include vegetated buffers along these drainage features, which is considered unacceptable from a stormwater management perspective. An Undisturbed vegetation buffers of minimum 10 metres either side of the outer edges of the water flow area must be retained on both drainage features.*
- *Aboriginal archaeological sites occur on the property within areas proposed to be cleared. Before consent can be given to clear these areas approval must be gained from the DEC under section 90 of the National Parks and Wildlife Act 1974 to destroy these sites (this issue is discussed in Section 6.212 of this report);*
- *The currently proposed level of clearing does not adequately protect key habitat components for those threatened species known to occur on site, or likely to occur. The department's assessment indicates a likely significant effect on seven threatened species will occur without further protection of key habitat components. Specifically, the site is actively utilised by a local population of Glossy Black Cockatoo, for which Allocasuarina is the preferred food source. Significant stands of Allocasuarina need to be retained intact in the northern part of the site. In addition, an insufficient proportion (approx 36%) of hollow bearing trees on site are currently located in proposed clearing exclusion areas. These are essential habitat components for several threatened species likely to occur on site. Retention of several aggregations of hollow bearing trees and associated vegetation is required to protect a greater proportion of this critical habitat resource.*
- *Vegetation clearing also needs to be reduced, regardless of threatened species issues, in order to minimise impacts on other biodiversity values of the site (vegetation condition, vegetation of high conservation significance, biodiversity richness and connectivity). Generally, the southern part of the site is considered capable of a greater intensity of clearing than the northern section and this is compatible with clearing as applied for. Within the middle section of the site, a large clump of hollow bearing trees and associated vegetation must be retained, as well as any groves of Allocasuarina trees. In the northern section of the site it is considered that a maximum of 20 % only may be cleared.*
- *In addition to the above, a suite of consent conditions would be attached to any development consent. Among other matters, these would require maintenance of the drainage line vegetation corridors to the western boundary, to link with the visual*

buffers. In places this does not currently occur. The conditions would also prevent any clearing in areas of retained vegetation for any reason, including bushfire protection and installation of services (such as sewage, water and electricity).

Following the submission of additional and amended information by the applicant dated 16 March 2006 and 3 May 2006, the proposal was referred to DNR/CMA for further comment in correspondence dated 8 May 2006. The DNR/CMA responded in correspondence dated 14 June 2006 providing details on the level of broad-scale clearing considered acceptable on this site and intended to present a level of vegetation clearing that is considered to prevent a "likely significant effect" in terms of section 5A of the Act, and reduce other biodiversity impacts to acceptable levels as assessed under s79C of the Act. These comments were based on the amended design as depicted in Vegetation Retention Plan (Drawing Number 2311392-SK0011, Revision A) provided to DNR/CMA on 16 March 2006 by the applicant.

This response from DNR required an extensive reduction in the number of lots to ensure ecological impacts were minimised on the site. This letter and the applicant's response are discussed further in Section 3.2 of this report.

Following the submission of the amended plans, the proposal was referred back to DNR for further comment in correspondence dated 23 October 2006. DNR was continuing to assess the NVC Act application to clear native vegetation from the site.

DNR responded in correspondence dated 2 November 2006 providing the following comments:-

"We have enclosed for your information, a copy of the notice of determination for the development application, Registered Number BE 0503. This application to clear native vegetation has been approved under the Native Vegetation Conservation Act 1997. Please note all details are set out in the attached notice".

In DNR's Assessment Report, the following statement forms the basis of the decision summary:-

"Based on assessment of the relevant socio-economic benefits of the proposal and the environmental values of the area under application, consent can be granted for clearing part of the application area subject to detailed impact-mitigation conditions. Based on discussions with the proponent, Department of Planning and Eurobodalla Council, DNR considers that a modified subdivision development is an appropriate use of the site."

DNR's conditions relate to soil and water management plans, the areas where clearing is permitted and not permitted, site rehabilitation and revegetation, vegetation management and clearing operations, Aboriginal heritage issues and other specific conditions relating to clearing for APZs, access roads and other infrastructure, clearing for house sites and stormwater basins. This notice from DNR also included an Assessment Report which outlined a thorough assessment of the issues.

These issues are further discussed in Section 6.2 of this Report, with DNR's recommended conditions included in Appendix A.

5.2.3 Department of Environment and Conservation (DEC)

The application was referred to the Department of Environment and Conservation ("DEC") in correspondence dated 3 August 2005. DEC responded in correspondence dated 23 August 2005 referring to their earlier correspondence in relation to the master plan, reiterating comments from these previous correspondence stating:-

"In particular, there needs to be retention of:-

- *hollow bearing trees across the site;*
- *Allocasuarina littoralis stands that constitute Glossy Black Cockatoos feeding habitat;*
- *Clumps of trees and other vegetation around hollow-bearing and incised trees and buffers to the vegetation corridors and retained trees."*

The issues raised in previous correspondence in relation to the master plan included:

- *Flora and fauna*
- *Water supply*
- *Sewerage infrastructure*
- *Public transport*
- *Energy efficiency*
- *Cultural heritage*
- *Acid sulphate soils*

The DEC advised the Department in correspondence received on 19 November 2004, in response to the Master Plan application, that Section 90 consent under the *National Parks and Wildlife Act 1974* will be issued by DEC for consent to carry out the destruction of an Aboriginal Object Place. This approval was subsequently issued on 12 January 2004 (consent #2099).

Following the submission of the amended plans, the proposal was referred to the DEC for further comment in correspondence dated 23 October 2006. The DEC responded in correspondence dated 9 November 2006 providing the following comments:-

"The DEC is satisfied that the issues raised in its previous correspondence have been, or will be, adequately addressed by: the amended plans, the Department of Natural Resources consent and further and more detailed design of sewage infrastructure in accordance with the conditions of Environment Protection License #1397. In this regard, the DEC does not have any further comment or suggested consent conditions in respect to this development application."

The DEC were satisfied that ecological and threatened species issues had been thoroughly assessed by DNR. These issues are further discussed in Section 6.2 of this Report.

5.2.4 NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service (RFS) on 3 August 2005 as the proposal requires a Bushfire Safety Authority pursuant to s100B of the *Rural Fires Act 1997* and is therefore integrated development for the purposes of Section 91 of the Act. The RFS responded in correspondence dated 14 September 2005 which granted the Bushfire Safety Authority subject to conditions.

Following the submission of the amended plans, the proposal was referred to the RFS for further comment in correspondence dated 23 October 2006. The RFS responded in correspondence dated 13 November 2006 providing the following comments:-

"Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service is prepared to grant a Bushfire Safety Authority subject to the following conditions....."

These conditions relate to access roads, asset protection zones and other requirements and these issues are further discussed in Section 6.2 of this Report.

5.2.5 NSW Roads and Traffic Authority (RTA)

The application was referred to the New South Wales Roads and Traffic Authority ("RTA") on 3 August 2005 as the proposal is considered to be development under Schedule 2 of *State Environmental Planning Policy No 11 – Traffic Generating Developments* ("SEPP 11"), consisting of development on or of land that has direct vehicular access to an arterial road pursuant to Clause 7(4) of SEPP 11.

The RTA reviewed the information provided and stated it would not object to the development application subject to conditions of development consent in relation to access points, pedestrian facilities, access to Clyde Road, the internal road system, road noise, public transport and other general matters.

Following the submission of the amended plans, the proposal was referred to the RTA for further comment in correspondence dated 23 October 2006. The RTA responded in correspondence dated 9 November 2006 providing the following comments:-

"The RTA has reviewed the amended plans and will not object to the development application subject to the following comments being included in the Consent Authority's (Department of Planning) conditions of development consent....."

These conditions relate to access points, the grade-separated pedestrian crossing, pedestrian and cyclist refuge facilities off-site, road traffic noise and works within the classified road network. Consideration of traffic and access is discussed further in Section 6.2 of this Report.

5.3 Internal Referrals

5.3.1 Department of Planning – South Coast Regional Office

The proposal was referred to the South Coast Regional Office of the Department of Planning and a response was submitted via email on 18 November 2005. The following issues were raised:

- *Vegetation clearing is a major concern with this proposed development, specifically including riparian corridor widths, subdivision of riparian corridors is a problem (need to attach protection controls to title), need to retain some trees outside riparian zone (especially hollow trees), vegetation quality improves to the north of the site and the northern areas also provide habitat for Black Glossy Cockatoos.*
- *In relation to infrastructure, Council has advised that sewerage is not timed or staged for this development, the provision of water to higher areas is a problem and stormwater treatment as proposed is a concern and requires further justification or amendment.*

These issues are further discussed in Section 6.2 of this Report.

6. ASSESSMENT

6.1 *Section 79C of the Environmental Planning & Assessment Act*

Section 79C(1) of the Act requires a consent authority to consider prescribed matters as are of relevance to the development the subject of the development application. These matters are outlined below.

6.1.1 *Section 79C – Matters for consideration*

In determining a development application, a consent authority is to take into consideration the following matters as they are relevant to the development the subject of the development application.

(a) ***Section 79C (1) (a) – Environmental Planning Instruments, Development Control Plans etc***

The environmental planning instruments, draft environmental planning instruments, and development control plans applicable to the land to which the development application relates, as outlined in Section 4.2 of this report, are assessed in relation to this proposal in **Appendix C**. It is considered that the proposal is generally consistent with the provisions of these instruments.

(b) ***Section 79C (1) (b) – the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

The development application considers the potential impacts of the development proposed on the site including impacts on the natural and built environments. These impacts are considered in detail in Section 6.2 of this report. It is considered that the proposed development will not adversely affect the natural or built environments subject to the impact-mitigation conditions proposed by DNR and the other specific conditions recommended in this report, outlined in **Appendix A**. The proposed development is unlikely to have an adverse impact on the economic or social environments given the proposal provides additional housing in a choice of allotment sizes close to existing services while the economic impacts of the proposal are unlikely to be significant. There is no adverse social impacts on the Batemans Bay local Aboriginal community given the consideration in Section 6.2.12 of this report and the recommended conditions of development consent in **Appendix A**.

(c) ***Section 79C (1) (c) – Suitability of the Site***

The issues relating to the site's suitability for the development proposed in the development application are considered in Section 6.2 of this Report. In general, the site is considered to be suitable for the development proposed given its proximity to the city centre, the provision of pedestrian and cyclist linkages, the provision of adequate infrastructure and the retention of large areas of natural vegetation, subject to the recommended conditions outlined in **Appendix A**.

(d) ***Section 79C (1) (d) – Submissions***

The submissions received in response to the development application are outlined in **Appendix D** of this Report. The submissions are considered in detail in Section 6.2 of

the Report. The issues raised in these submissions have been considered in this assessment.

(e) Section 79C (1) (e) – Public Interest

The public interest has been considered in the assessment of this development application by considering the relevant environmental planning instruments and the submissions in Section 6.2 of this Report. The proposal is generally considered to be in the public interest given the compliance with planning instruments and the efficient and sustainable provision of additional housing.

6.2. Issues

The main issues with respect to the proposal are discussed below.

6.2.1 Native Vegetation Removal and Impacts on Flora and Fauna

Raised By Eurobodalla Shire Council, Community submissions, Department of Environment and Conservation, Department of Natural Resources, Department of Planning Regional Office, Statement of Issues.

Consideration

Flora and fauna on the site

The subject site consists of large areas of native vegetation comprising open forest which has high biodiversity, habitat and conservation values. The site provides high quality habitat for a number of threatened species, including the Yellow-Bellied Glider, Glossy Black Cockatoo, Brush-tailed Phascogale, Great Pipistrelle, Greater Broad Nosed Bat, Eastern Free-tail Bat and the Yellow-Bellied Sheath-Tail Bat.

The original proposal involved the removal of significant stands of *Allocasuarina littoralis* from the site, particularly from the northern portion, which is the preferred food source of the Glossy Black Cockatoo and which show evidence of a local population of Glossy Black Cockatoos feeding. In relation to the original proposal, it was considered that further stands should be retained intact in the northern portion to provide further habitat for the local population of the Glossy Black Cockatoo and other relevant species.

The site also contains a significant amount of hollow bearing trees which constitute habitat trees for several species including the Yellow Bellied Glider. The original proposal involved a level of clearing which did not adequately protect these key habitat components for the threatened species known to occur on site. This habitat removal was likely to have a significant effect on several threatened species without further protection of key habitat components. In particular, a large clump of hollow bearing trees and associated vegetation should be retained in the vicinity of the originally proposed Lots 409 to 412 inclusive, as well as any groves of *Allocasuarina* trees in this area.

The Proposal

The proposal involves the removal of approximately 49 hectares of native vegetation, which includes clearing for the proposed roads, stormwater detention basins, services, infrastructure, building envelopes and associated asset protection zones. The total area of the site is 88 hectares, of which 80 hectares is considered to consist of native forest vegetation, with the balance of the site area comprising a cleared electricity easement. The proposal is subject to

the provisions of the *Native Vegetation Conservation Act 1997* ("NVC Act")¹ as the site is zoned rural and clearing of native vegetation is proposed. Therefore separate development consent under the NVC Act is required for clearing of native vegetation from the site ("NVC Act consent").

Concerns with the Original Proposal and Master Plan

In relation to the original proposal, general vegetation clearing of the northern portion of the site needed to be limited for the purposes of building envelopes, infrastructure and Asset Protection Zones. This restricted vegetation clearing was required to maintain a functional habitat for biodiversity generally as well as for threatened species.

The DEC provided comments on the original proposal (and master plan), stating the following:-

- *The conclusions from a number of the part 5A assessments under the EP&A Act were predicated upon the retention (in perpetuity) of the linked vegetation corridors identified in the draft master plan, and the retention of hollow-bearing trees across the site.*
- *The part 5A assessment for Glossy Black Cockatoos assumes the retention of Allocasuarina littoralis stands, including those stands that showed evidence of Glossy Black Cockatoo feeding. Therefore it is necessary for these features to be protected..*
- *Among the threats to these corridors, A. littoralis stands, hollow bearing trees and other habitat features are the addition of nutrients from fertilisers, the presence of cats and dogs, weed propagules from gardens, increased noise from people, garden equipment, vehicles, pets etc, incremental loss of vegetation through edge effects, increased run-on, disposal of stormwater, construction of detention basins, impacts on root systems from trenching, compaction and other activities and use of habitat corridors for infrastructure.*
- *It is preferable to retain clumps of trees and other vegetation around hollow-bearing and incised trees as isolated forest trees will be more vulnerable to wind damage.*
- *Other recommendations that relate to flora and fauna are fencing should comprise of three or four strand plain wire (no barbed wire, ring-lock, netting or metal fencing should be used as they interfere with wildlife movements), planting enhancement should comprise species that occur naturally on the site, and include Allocasuarina littoralis and it is preferable for plants to be propagated from local stock. There should be buffers to the vegetation corridors and retained trees and vegetation corridors width should be maximised (i.e. more than 40m either side of the edge of gullies) where possible. If physical barriers are considered for use as noise buffers, these should be outside the vegetation corridors. Vegetation corridors identified in the draft master plan should not be reduced for the construction of stormwater detention areas or compromised through the construction of walking tracks, infrastructure and other services. These facilities should be beyond the vegetation corridors. All lots should be connected to sewer (refer to point 3 below regarding existing capacity), cats and dogs should be prohibited from the suburb, plant species known to be environmental weeds should be specifically prohibited and protection of hollow-bearing trees will require buffer areas at least to the diameter of the drip line of trees.*

These concerns were largely addressed in the amended proposal and in DNRs assessment and subsequent NVA Consent.

¹ The NVC Act 1997 has since been repealed and replaced by the Native Vegetation Act 2003.

Biodiversity and Threatened Species Assessment of Native Vegetation Clearing

The biodiversity and threatened species assessment of the proposal are outlined in the following reports and plans:-

- *Flora and Fauna Assessment (including Hollow Bearing Trees Addendum June 2004)* prepared by Gaia Research Pty Ltd dated December 2002 [Master plan studies];
- *Mapping of Black She-oak Stands and Consideration of Bushfire Issues*, prepared by BES (Bushfire and Environmental Services) dated March 2006, Ref 5458
- *Analysis of Vegetation Retention Issues*, BES (Bushfire and Environmental Services) dated 13 March 2006, Ref 6026;
- *Bayridge Estate Landscape Masterplan*, prepared by EDAW Gillespies dated July 2005;
- Site Plan – APZ, Contours, Trees with Hollows, Drawing no 23-11848-C001, Revision E dated 11 October 2006; and
- Landscape Masterplan, Drawing No 2036-LMP-002A dated 14 July 2005.

The Department of Natural Resources (“DNR”) have assessed the amended proposal under the NVC Act for this proposed clearing (based on the above reports and plans), with the following salient points of this assessment outlined below:-

Biodiversity Significance

- Vegetation within the application area is in good condition, contains a high diversity of flora and fauna species and habitats, and has connectivity value for medium to high-mobility species. The areas of Batemans Bay Cycad Forest are not considered to have high conservation status significance, while the areas of Murramarang Lowland Forest are considered to have high conservation status significance.
- The property is considered to contain habitat for migratory species, however substantial areas of similar suitable habitat occur elsewhere within the region and impacts on migratory species are expected to be those associated with the incremental loss of habitat for these species over time.
- The proposed rural residential development would significantly fragment vegetation on the property, resulting in the clearing of approximately 48 hectares of good quality vegetation with high habitat value. Further clearing/degradation of retained vegetation would be likely to occur over time if the subdivision was to proceed, as a result of subsequent uses.
- Given the density of lots proposed for the subdivision, and associated infrastructure and hazard reduction requirements, it is considered that the development as proposed would be likely to have significant, irreversible and permanent impacts on biodiversity values both on and adjacent to the property.
- Acceptable mitigation of impacts includes reduction of vegetation clearing intensity throughout parts of the site and retention of key habitat areas and elements including broad riparian reserves, boundary 'buffers', hollow bearing trees and extensive patches of *Allocasuarina*.
- It is considered that the southern half of the site is the least inappropriate area for clearing and subdivision development given environmental factors and proximity to Batemans Bay. Based on the high biodiversity values of vegetation within the northern half of the application area, proposed clearing would need to be reduced before development could proceed.

Threatened Species Assessment

- The proposed permanent clearing of approximately 48 hectares of known habitat is considered likely to place local populations of 5 threatened species at risk of extinction, through:

- (i) loss of essential roosting/breeding habitat (hollow-bearing trees providing breeding and maternity roost sites) for local populations of 4 threatened bat species (Great Pipistrelle, Greater Broad nosed Bat, Eastern Free-tail Bat, Yellow-bellied Sheath-tailed Bat); and
 - (ii) loss of confirmed high-quality feeding habitat and breeding habitat for a local population of Glossy Black-cockatoos.
- Given the significance of the site for these species, impacts on these species must be reduced if any development were to proceed. Mitigation required to reduce these impacts to non-significant levels includes reduction of vegetation clearing intensity through parts of the site, retention of *Allocasuarina* patches (particularly in areas showing high densities of Glossy Black Cockatoo feeding - chewed cones), and retention of hollow bearing trees, particularly where they occur in high density. It is considered that the northern half of the site is the most appropriate area for reductions in vegetation clearing and retention of *Allocasuarina* patches and clumps of hollow-bearing trees.
- The application area is considered to support parts of wider local populations of the remaining 8 species, with most of these species highly mobile and potentially able to utilise large areas of contiguous similar habitat in the surrounding area. The proposed clearing is considered unlikely to place populations of the following species at risk of extinction: Eastern Bent-wing Bat, Grey-headed Flying Fox, Square-tailed Kite, Swift Parrot, Spotted-tailed Quoll, Brush-tailed Phascogale, Yellow-bellied Glider, Powerful Owl and Masked Owl. However, it would contribute to the incremental loss of habitat (including hollow bearing trees, recruitment hollow bearing trees, foraging habitat, and other specific habitat features) for local and regional populations of these species.
- The conclusions of the “8-part test” to the proposed clearing are as follows:-
 - (a) The development **as proposed** is considered **likely** to place local populations of the following threatened species at risk of extinction: Great Pipistrelle, Greater Broad nosed Bat, Eastern Free-tail Bat, Yellow-bellied Sheath-tail Bat and Glossy Black Cockatoo.
 - (b) No endangered populations are known to exist within the area under application.
 - (c) In relation to the regional distribution of the habitat of a threatened species, population or ecological community, a significant area of known habitat is unlikely to be modified or removed for the proposed development.
 - (d) No habitat for threatened species will become isolated as a result of the proposed activity.
 - (e) No critical habitat inclusive of the area under application has been declared. Therefore critical habitat will not be affected.
 - (f) There is currently insufficient information to determine whether any of the relevant threatened species are adequately represented in conservation reserves in the South east corner Bioregion. It is likely that some of the potentially occurring threatened species are inadequately conserved as they have not been recorded in any conservation reserves within the region.
 - (g) The clearing of native vegetation and the removal of dead wood and dead trees are Key Threatening Processes relevant to the area under application;
 - (h) No threatened species were considered to be at the limit of their known distribution.

DNR considered that, following the assessment of the original proposal, a Species Impact Statement (SIS) would be required following the requirements of the TSC Act. However, DNR considers that significant impacts would be prevented, and a SIS would not be required, if certain areas are retained and other mitigation measures as specified in the NVC Act Consent were adopted.

DNR stated that acceptable mitigation measures required to prevent significant impacts on these species included reduction of vegetation clearing intensity through parts of the site, retention of certain habitat patches, particularly in areas where there has been evidence of Glossy Black Cockatoo feeding (chewed cones), and retention of hollow bearing trees, particularly where they occur in high density. It is considered that the northern half of the site is the most appropriate area for this to occur.

DNR stated that vegetation clearing needed to be reduced, regardless of threatened species issues, in order to minimise impacts on other biodiversity values of the site (vegetation condition, vegetation of high conservation significance, biodiversity richness and connectivity). DNR further stated that reduction in levels of clearing and implementation of mitigation measures prescribed in the NVC Act consent conditions will reduce impacts of the development to an acceptable level.

Following a thorough assessment, DNR considers that additional vegetation in the following areas should be retained to avoid a significant effect on the threatened species outlined above:-

- Areas of vegetation in the northern part of the application area which has high biodiversity value and are considered less appropriate for development than the southern part;
- Significant stands of *Allocasuarina* trees in the northern part of the application area. *Allocasuarina* seed is the preferred food of the Glossy Black-cockatoo, and a high level of feeding activity was observed in this area; and
- Clumps of hollow bearing trees and associated vegetation within and surrounding these clumps. The *Addendum to Fauna and Flora Assessment* (Gaia Research June 2004) indicates that only "36% of hollow bearing trees are located within the proposed 20 hectare conservation area". Gaia Research mapped the location of hollow bearing trees as part of this report. It is possible that many of the remaining hollow bearing trees would be cleared for roads, building envelopes and APZs. Consequently, DNR requires that a significantly greater proportion of these trees be retained to protect the seven threatened species listed above, as well as non-threatened species which rely on hollow bearing trees for breeding, shelter etc.

These additional areas of vegetation retention required by DNR have been illustrated to be retained on the amended plans.

NVC Act Consent

DNR subsequently issued a 'Deferred Commencement Development Consent' to clear approximately 49 hectares of native vegetation for the proposal on the site subject to the retention of further vegetation as outlined above and subject to strict NVC Act development consent conditions (Ref: BE0503) in consent dated 31 October 2006 by a delegate for the Minister for Natural Resources (DNR). This NVC Act consent does not operate until the current development application has been approved by the Minister and a Section 90 approval under the *National Parks and Wildlife Act 1974* has been issued (this latter consent has been issued).

The Department supports the biodiversity significance and threatened species assessment of DNR and the NVC Act consent as granted by DNR following a thorough review of DNR's assessment report and a review of DEC's submission supporting DNR's conclusions (as outlined in Section 5.2.3 of this report).

Landscape Masterplan

The proposal also includes a comprehensive landscape master plan which proposes planting principles which will result in a significant integration of the development into the surrounding

landscape. The other planting principles include minimising weed generation and nutrient loading potential, bushfire considerations and the planting of species which are indigenous to the site and which will extend fingers of vegetation into the streetscape. This will assist in providing habitat for indigenous species, minimise adverse visual impact and will retain the rural-residential nature of the surroundings.

Resolution

The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Compliance with all conditions of the NVC Act consent issued By DNR (BE0503) dated 31 October 2006;
- Restrictions on clearing in accordance with the NVC Act consent;
- Restrictions on fencing types;
- Section 88B instruments to protect the habitat corridors, hollow-bearing trees and other flora and fauna values on the site;
- Planting enhancement should comprise species that occur naturally on the site, and include *Allocasuarina littoralis* and it is preferable for plants to be propagated from local stock.
- Physical barriers and all infrastructure should be outside the vegetation corridors.
- All lots should be connected to sewer,
- Cats and dogs to be prohibited; and
- Protection of hollow-bearing trees will require buffer areas at least to the diameter of the drip line of trees.

6.2.2 Vegetation Reserves

Raised By

Department of Natural Resources, Statement of Issues.

Consideration

The amended proposal involves 80 metre wide vegetation reserves adjoining the five major drainage features on the site. The issues relating to the assessment of the vegetation reserves are outlined in the following reports and plans:-

- *Flora and Fauna Assessment (including Hollow Bearing Trees Addendum June 2004)* prepared by Gaia Research Pty Ltd dated December 2002 [Master plan studies];
- *Mapping of Black She-oak Stands and Consideration of Bushfire Issues*, prepared by BES (Bushfire and Environmental Services) dated March 2006, Ref 5458
- *Analysis of Vegetation Retention Issues*, BES (Bushfire and Environmental Services) dated 13 March 2006, Ref 6026;
- *Bayridge Estate Landscape Masterplan*, prepared by EDAW Gillespies dated July 2005;
- Site Plan – APZ, Contours, Trees with Hollows, Drawing no 23-11848-C001, Revision E dated 11 October 2006; and
- Landscape Masterplan, Drawing No 2036-LMP-002A dated 14 July 2005.

There were concerns with the original proposal in relation to the proposed width of the vegetation reserves adjoining the gullies which traverse the site in an east-west direction that such reserves must consist of a minimum of 40 metres each side of the drainage feature (80 metres overall). In addition, it was initially considered that the other minor drainage features which occur on the site at the southern end of the site (where Road No 2 is proposed to be located in the invert) and in the north-east section of the site (in the vicinity of the originally proposed Lots 510 and 511) should also contain associated vegetation reserves.

Another concern with the original vegetation reserves related to the watercourse crossings within proposed Road No's 1 and 6 on the site, which should be designed and constructed to the following specifications:-

- Clearing of vegetation to be limited to the area occupied by fill embankments and drainage structures;
- Use of multiple box culverts is strongly preferred to single structures (either pipe or box culverts) as this will spread discharge and also provide for fauna movement. These culverts should extend for the width of, and be aligned with, the drainage feature;
- Drainage and fauna underpass structures must be located at invert level of the watercourse;
- Any scour apron should be rip rap and a cut-off provided;
- Rip-rap (rip rap walls are sloping rock walls which have the capacity to dissipate wave energy rather than reflect and magnify it like the vertical concrete walls) must consist of angular run-of-quarry durable rock placed over a 200mm layer of 140mm median sized angular cobbles over geo-textile. All rocks and cobbles must be packed with topsoil. Gaps in rip rap must be planted with local native species; and
- Any bare areas remaining after construction are to have previously stored topsoil re-spread and the litter layer restored.

Following consideration of the amended proposal, DNR were satisfied that the five proposed main vegetation reserves were sufficient to mitigate adverse impacts on the environment. Furthermore, conditions of development consent have been included in the NVC Act consent relating to the clearing for access roads and other infrastructure (conditions 38 to 42 inclusive of the NVC Act consent), which addresses the issue of watercourse crossing points within the proposed vegetation reserves.

The Department supports DNRs assessment of this issue given the drainage features were not defined as 'rivers' under the *Rivers and Foreshores Improvement Act 1948* and 80 metre wide vegetation reserves are considered sufficient to preserve the ecological values of these natural areas on the site. The Department is satisfied that the proposed watercourse crossing points will minimise adverse impact on the natural areas of the site.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Compliance with all conditions of the NVC Act consent issued by DNR (BE0503) dated 31 October 2006;
- Restrictions on clearing in accordance with the NVC Act consent;
- Restrictions on construction of watercourse crossing points within the vegetation reserves; and
- Restrictions on clearing for access roads and other infrastructure.

6.2.3 Water Supply Infrastructure

Raised By Eurobodalla Shire Council, Community submissions, Department of Planning Regional Office, Statement of Issues.

Consideration

The provision of infrastructure and services to the subject site under the current proposal are outlined in the following studies and plans:-

- *'North Batemans Bay Residential Subdivision: Integrated Water Cycle Management Plan - Final Report'*, prepared by GHD dated July 2004;
- *'Bay Ridge Estate – North Batemans Bay: Concept Stormwater Plan'*, prepared by GHD dated November 2004;
- *Bay Ridge Residential Development: Integrated Water Cycle Management Plan - Report for DA submission*, prepared by GHD dated July 2005;
- *'Bay Ridge External Sewerage Connection Study'*, prepared by GHD dated February 2006;
- *'Bay Ridge Residential Development – Integrated Water Cycle Management Report for DA Response'*, prepared by GHD dated May 2006 ("the Revised IWCM Report");
- *'Bay Ridge Estate External Sewer Connection – Statement of Environmental Effects'*, prepared by GHD dated May 2006;
- *'Report for Bay Ridge Estate Development – Response to Eurobodalla Shire Council Stormwater Comments'*, prepared by GHD dated May 2006;
- Services Plans (Drawing Nos 23-11848-C200 to C229) prepared by GHD.

The proposal involves the extension of the reticulated water supply to the site. The proposed water supply system, however, requires the construction of a 'High Level Zone Water Reservoir' and a 'Water Pump Station' to supply water to allotments proposed above RL 40 due to pressure restrictions of the existing reticulated system. The regional water supply infrastructure that is required to be implemented in conjunction with this development includes the regional upgrading of the high level supply system. The future requirements of the whole area need to be taken into consideration to ensure that this development does not impede future water supply requirements.

The concept details of these facilities, including potential clearing of native vegetation required, the restrictions/easements on title, the potential visual impact and any associated mitigation measures, their size and location and their proximity to building envelopes, were not provided for the original proposal. The connection point for the water supply was also not illustrated and the acceptability of the proposed water supply system in relation to hydraulic detail were not adequately demonstrated.

The applicant provided additional information and amended plans which outlined the proposed arrangements for a reticulated water supply to the site. Reticulated water supply will be provided to all dwellings in the Bay Ridge subdivision and connection will be made to the existing 200mm water main at the intersection of the Princes Highway and Peninsula Drive. A booster pump station is proposed to be located at the connection point and a rising main will travel in the road reserve to an easement within the electricity easement to a new 1ML reservoir. The booster pumping arrangement will be constructed in accordance with Council requirements.

The development will be fed from a gravity distribution main from the 1ML reservoir, which will link into the existing water supply, and will enable water to be supplied to Surfside, when required, in addition to servicing the Bay Ridge Estate. The scheme also provides a basis from which to supply water to Nelligen in the future.

The proposed reservoir is to be 7.5 high and 14.7m in diameter and is to be located in the northern corner of the site adjoining Clyde Road. An access track and the rising main infrastructure would also be required to be constructed which will result in the removal of some of the existing vegetation around this site, however, the majority of existing vegetation in this vicinity will be retained to reduce potential visual impact of the proposed reservoir. Further mitigation measures include using a dark colour for the reservoir and black coated chain mesh on the fence and gates, strictly limiting vegetation clearance and ensuring that screening

vegetation is retained and immediately rehabilitated upon completion of construction. It is considered that the potential visual impact of the reservoir will be mitigated by these measures, which are recommended to be imposed as development consent conditions. The portion of this allotment where the proposed reservoir will be located is required to be dedicated to the Council in the recommended conditions of development consent.

The Council are satisfied that the proposed water supply system for the site is satisfactory subject to recommended conditions of development consent.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Imposition of all infrastructure conditions as recommended by the Council; and
- Mitigation measures for visual impact of reservoir.

6.2.4 Sewerage Infrastructure

Raised By Eurobodalla Shire Council, Community submissions, Department of Planning Regional Office, Department of Environment and Conservation, Department of Natural Resources, Statement of Issues.

Consideration

The provision of adequate reticulated sewerage infrastructure is essential for the development given the scale of development proposed and its proximity to adjacent sensitive receiving waters including the adjoining SEPP 14 wetland and the Clyde River estuary. The Master Plan identified several options for sewerage disposal off-site, which relied upon the effluent being delivered to, and treated in, Council's sewage treatment infrastructure. While this is technically feasible, any proposal requires the approval of Council to both accept the effluent, and for the engineering works to deliver this to the Council system.

A Low Pressure Sewerage System (LPSS) connected to the Council reticulation system is the preferred method for sewerage disposal for the site. Whilst the Council supports the concept and will accept servicing of the proposal, detailed designs of the proposed system were not provided in the original proposal. Following the submission of amended plans and additional information from the applicant on 16 March 2006, 3 May 2006 and 23 October 2006, such details have now been provided which allow a thorough assessment and consideration of the proposed sewerage system for the site.

The proposal involves the provision of an LPSS system which consists of small diameter pressure pipes connecting all properties to a central collection point. Each property has a grinder pump installed in a small well. Each household is connected to the main LPSS system which is constructed along the proposed internal roads within the subject site, aligning with other services, thereby minimising clearing of vegetation and other site disturbances.

The LPSS is to be connected to the existing sewage pump station BB12 located on Lincoln crescent near Batemans Bay Public School, via a rising main from the site which crosses the Princes Highway (by underboring) and then follows the verge at the front of properties along Lincoln Crescent. At the pump station, detention storage is required to be installed as the trunk sewerage system is at capacity during peak periods. Accordingly, the detention storage will balance sewage flows to match the system capacity.

A rising main will be constructed to discharge from pump station BB12 to pump station BB08 at McLeod Crescent. The Council engaged the Department of Commerce to undertake modelling of this main and have identified that the new rising main needs to be 150mm in diameter. The alignment of the rising main from pump station BB12 to BB08 is through open terrain, with the exception of crossing an ephemeral creek, the access road to the Batemans Bay Public School and McLeod Creek. These crossings will be under bored to minimise environmental impact and avoid trenching through road pavement.

The Council is satisfied with the proposed LPSS subject to detailed conditions of development consent being imposed, following extensive discussions with the applicant and their consultants. The current application seeks approval for all external sewer works in addition to the works to be carried out on the subject site.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Imposition of all infrastructure conditions as recommended by the Council.

6.2.5 Stormwater Infrastructure

Raised By Eurobodalla Shire Council, Department of Planning Regional Office, Department of Environment and Conservation, Department of Natural Resources, Statement of Issues.

Consideration

The provision of an adequate system for the treatment and disposal of stormwater is essential for the development given the scale of development proposed and its proximity to adjacent sensitive receiving waters including the adjoining SEPP 14 wetland and the Clyde River estuary. The Master Plan identified stormwater detention basins would be required for each catchment in order to ensure that all surface runoff discharged from the site did not exceed the predevelopment levels. An average basin size of 50m by 75m was considered to be required for all six catchments.

The original proposal did not provide sufficient detail to adequately demonstrate two key areas in relation to stormwater management, including the design of detention basins and the method of treatment of stormwater. The design of the detention basins were required to demonstrate that the peak discharge from the developed site did not exceed that prior to development, while the treatment of stormwater to ensure post development nutrient loads and suspended sediments were consistent with the predevelopment scenario were also not demonstrated. Details regarding the method of construction and any associated sizing and nomination of storage areas, potential impacts on the SEPP 14 wetland and possible downstream impact, were not addressed in the original proposal and the construction of proposed Basins C & D required significant clearing of high quality riparian vegetation which was considered to be unacceptable. An alternative design to achieve the criteria of no increase in peak discharge of stormwater from the site needed to be considered.

The applicant subsequently provided additional information and amended plans which outlined the proposed arrangements for stormwater on the site, which is outlined below:-

Pre and post development flows

To ensure the post development discharge will be limited to pre development discharge rates,

the existing conditions of the site were examined. The existing drainage catchments on the site were determined by contour information, resulting in catchments A to F being identified, and the data entered into a RAFTS-XP computer modelling system, which determined the existing peak flow from each of the nominated catchments. This modelling found that there was an increase in the peak discharge from each of the catchments by varying amounts and accordingly, to offset the effects of this increase, detention basins were required to be incorporated into the development. The catchments are illustrated in Figure 7.

Stormwater Detention and Treatment

Positioning of the detention basins was determined by the existing terrain as well as the proposed lot and road layout. The size of the detention basins may be reduced by using on-site detention on lots and the use of rainwater tanks.

The storage depth of the existing detention structure in catchment A was increased by 40mm and forms Basin A. Basin B is located in the same position of the existing detention structure at the downstream end of catchment B, being located in a natural valley. The configuration of this existing system showed there was minimal increase for the 10 and 100 year events, however, there was a significant increase in flows for the 1 year event and therefore a secondary embankment was found to be required to ensure flood storage levels were not increased given the proximity to the Highway.

The natural valleys running through catchments C and D converge at the boundary of these catchment and accordingly, a single basin has been provided for the detention of flows from these two catchments. A fire trail is also proposed to be incorporated along the eastern boundary of the site which will run across the top of the proposed embankment of this basin. The natural valley will be used to achieve the required storage and the embankment will be placed across the downstream end of the valley to create the required basin.

Basin D was originally proposed to detain flows from catchment D, however, such a basin would have required the removal of extensive areas of natural vegetation which formed habitat for the Glossy Black Cockatoo, which was not supported. A series of pervious mini-detention basins along the gully constructed from rocks are now proposed, which will receive flows only from catchments E, F & G which have minimal flow given the reduced amount of development proposed in this area of the site. Basin D is therefore not required to be artificially constructed.

The water sensitive urban design of the development involves the street and inter-allotment drainage systems discharging into the vegetation reserves to allow removal of nutrients. This system is supported by DEC and DNR since extensive vegetation removal would have been required to construct wetlands to treat the stormwater prior to discharge which was considered unacceptable on this site.

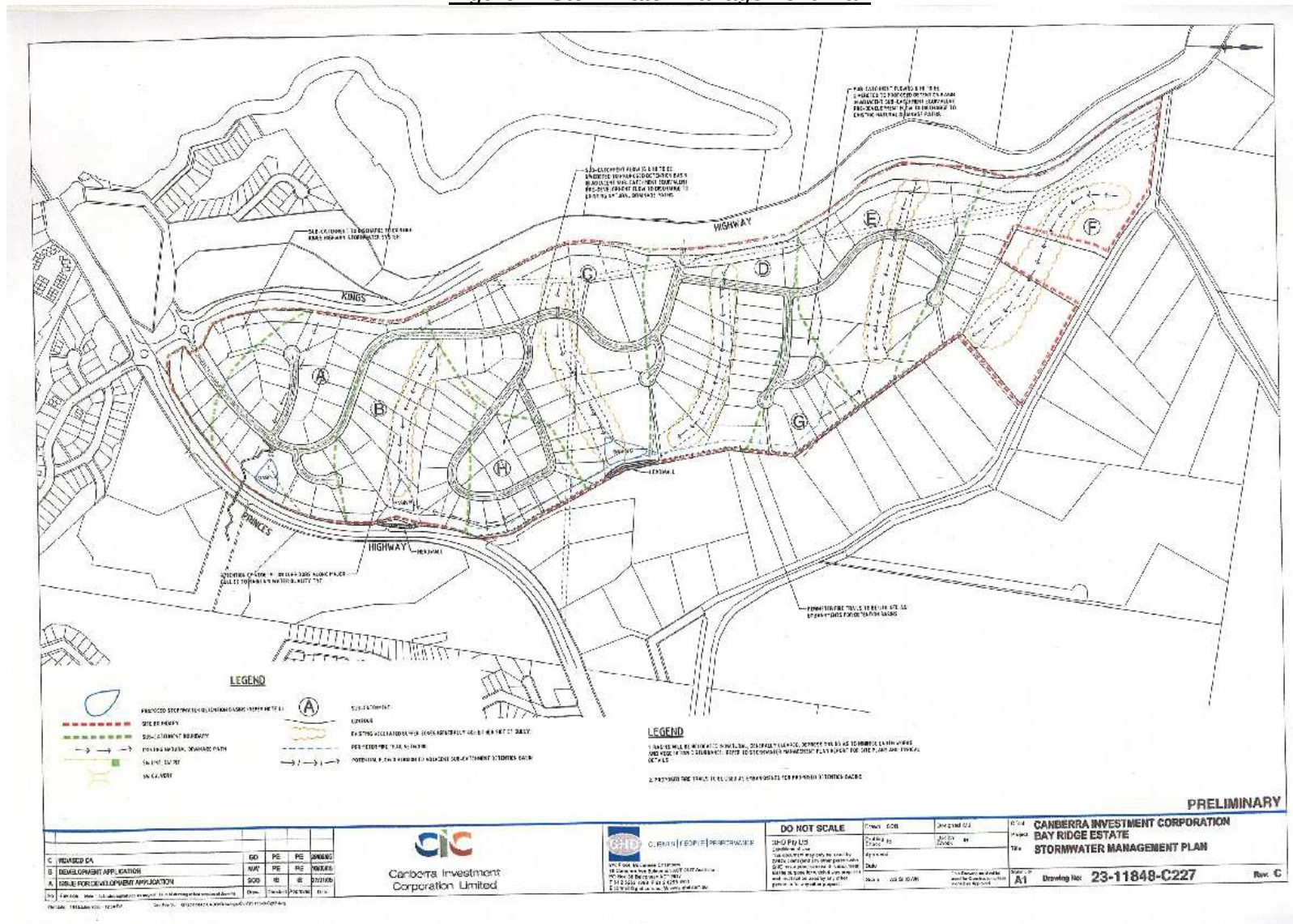
The Council has reviewed the amended proposal and found the proposed stormwater detention and treatment to be satisfactory for the proposal, which involves treatment of stormwater in the vegetation reserves and the detention of stormwater in the detention basins to ensure pre-development flows match the post-development flows.

Resolution

The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Imposition of all infrastructure conditions as recommended by the Council.

Figure 7: Stormwater Management Plan



6.2.6 Highway Crossing Point

Raised By Eurobodalla Shire Council, RTA, Statement of Issues.

Consideration

A grade separated pedestrian bridge over the Princes Highway to link the proposed subdivision with the existing community facilities (including the school) on the eastern side of the Princes Highway must be provided for the proposed development (a variation imposed on the adopted master plan). The assessment of the proposed highway crossing point is outlined in the following reports and plans:-

- *North Batemans Bay - Bay Ridge Development - Response to Department of Planning Comments on DA*, prepared by TTM Consulting Pty Ltd dated 13 February 2006;
- Site Plan – APZ, Contours, Trees with Hollows, Drawing no 23-11848-C001, Revision E dated 11 October 2006;
- Staging Plan, Drawing No 23-11848-C002, Revision E dated 11 October 2006;
- Transport Plan, Drawing No 23-11848-C005, Revision F dated 29 September 2006.

The applicant provided advice in the TTM Consulting report which recommended a signal-controlled at-grade crossing to be provided in the later stages of the proposal. The RTA and the Council were both opposed to the at-grade crossing point and accordingly, a grade-separated crossing point (i.e. either an underpass or overpass was required) spanning the entire 40 metres of the Princes Highway road reserve to allow for future road works and pedestrian linkages was to be provided.

The Council and the RTA have advised that this crossing is required to form part of the current proposal. Suitable treatments should also be provided to corral pedestrians to the controlled facilities and prevent pedestrians crossing the Princes Highway at uncontrolled locations.

The RTA and the Council have both provided conditions in relation to this grade-separated pedestrian crossing point which are recommended to be imposed on the development consent. The Department supports this assessment and considers a grade-separated crossing point is required by the development to be provided in Stage 3. The RTA support the provision of either a pedestrian overpass (bridge) or underpass, which the Department also considers to be satisfactory.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Grade-separated pedestrian crossing must be constructed in Stage 3 of the subdivision;
- Facilities required to corral pedestrians to crossing;
- RTA and Council recommended conditions.

6.2.7 Road Design and Access Points

Raised By Eurobodalla Shire Council, RTA, Statement of Issues.

Consideration

The consideration of access points, the internal road system and traffic generation were also assessed by the applicant in the following reports and plans:-

- *North Batemans Bay Traffic Study: Traffic Impact Statement Final Report (Rev 3)*, prepared by GHD dated September 2003 [Master plan studies];
- *North Batemans Bay Residential Subdivision: Addendum to Traffic Impact Statement – Prepared for DA Submission* dated July 2005;
- *Bay Ridge Estate North Batemans Bay - Pedestrian and Cycleway Masterplan Report* prepared by GHD dated July 2005;
- Site Plan – APZ, Contours, Trees with Hollows, Drawing no 23-11848-C001, Revision E dated 11 October 2006;
- Staging Plan, Drawing No 23-11848-C002, Revision E dated 11 October 2006;
- Typical Sections, Drawing No 23-11848-C003, Revision C dated 29 September 2006;
- Kings Highway Intersection Layout, Drawing No 23-11848-C004, Revision C dated 29 September 2006;
- Transport Plan, Drawing No 23-11848-C005, Revision F dated 29 September 2006; and
- Road plans Drawing No 23-11848-C100 to C109, Revision C dated 29 September 2006.

Access Points

The proposed development has two access points to the subject site, including the northern (Kings Highway) and southern (existing Old Punt Road intersection) intersections with the Kings Highway. The Kings Highway (National Route 52) is an arterial road and provides an east-west connection between the Princes Highway at Batemans Bay in the southeast to Queanbeyan, the ACT and the Barton and Monaro Highways in the west. The Kings Highway forms the western boundary of the site and ascends northward of the intersection with Old Punt Road and has some curves in alignment, which are likely to impact on sight distances and other traffic safety matters.

The Kings Highway has a posted speed limit of 100Km/hr, although the speed limit is reduced to 60Km/hr approximately 150 metres north of the intersection with Old Punt Road, with raised thermoplastic pavement markers installed on the decline to the Old Punt Road intersection to reduce traffic speed. The carriageway is approximately 10 to 12 metres wide, consisting of two lanes, one in each direction. Two access points are proposed to the development along the Kings highway as outlined below:-

(a) Northern access point

The proposal involves constructing a new northern access point to the proposal along the Kings Highway approximately 1.5Km north of the Kings Highway and Old Punt Road intersection. The RTA stated that the junction treatment for the proposed northern access point to the Kings Highway shall be a left in/left out intersection only, incorporating a left turn deceleration lane to accommodate eastbound vehicles and a triangular concrete island must be provided at the throat of the main spine/access road to ensure the left in/left out arrangement is maintained. The Traffic Impact Statement states that this proposed access point satisfies the minimum sight distance requirement measured in accordance with the definition set out in Ausroads and it satisfies the desirable sight distance requirement (SISD) for vehicles approaching the proposed access road from both the north and south, also in accordance with Ausroads.

The applicant states that peak daily traffic generated by the development is about 1200 vehicles per day (two way) in 2009. This represents 8 trips per dwelling per day. The Traffic Study indicates that approximately 95% of traffic leaving the development will travel towards Batemans Bay, which would result in approximately 30 vehicles per day travelling from the development to the north of the site (towards Nelligen). It is considered that given the limited amount of traffic which would need to turn right out of the proposed northern access point and the inherent safety concerns and obstruction to the traffic flow on the Kings Highway, a left in/left out turn is the most appropriate intersection treatment at this location.

The RTA do not object to this proposed access point subject to the imposition of recommended conditions of development consent including junction treatment requirements (left in/left out only) and the provision of adequate sight distance. This proposed access point is satisfactory subject to conditions including the requirement for this access point to be constructed in Stage 2 and not Stage 3 as currently proposed to ensure there is adequate access/egress from the site in the event of a bushfire (refer Figure 8).

Figure 8: Kings Highway – approximate location of northern access point



(b) Southern access point

The southern access point proposes to use the existing roundabout which currently forms the intersection of Old Punt Road and proposed Road No 1 in the subdivision. Proposed Road No 1 will connect to this existing roundabout, which will provide good visibility of the intersection and adequate sight lines to oncoming traffic for a roundabout intersection treatment with a 50Km/hr speed limit. This access point is satisfactory (refer Figure 9).

Figure 9: Kings Highway – approximate location of northern access point



(c) Clyde Road access

There are currently 50 existing lots on Clyde Road which access the Princes Highway via Clyde Road, with a peak hour flow (non-holiday periods) of approximately 800 vehicles per hour (two way). Peak hour holiday flow on the Princes Highway is approximately 2000 vehicles per hour (250% of normal flows). Current traffic on Clyde Road from the existing 50 blocks is estimated to be approximately 45 vehicles per hour in peak hours with an AADT (two way) of around 400 vehicles per day. The additional traffic generated by 5 rural residential lots originally proposed is 4 vehicle trips per hour in the peak and 40 vehicles per day overall. An aaSIDRA analysis (a computer modeling system) of the Clyde Road/Princes Highway intersection, revealed this intersection is operating at a B level of service and it is considered that the additional trips created by the now 2 proposed lots with direct access to Clyde Road would be negligible and is therefore acceptable.

The potential impact on road safety of incremental development along Clyde Road, particularly at the junction of the Princes Highway and Clyde Road, resulted in the RTA requiring that only emergency access to Clyde Road from the proposed subdivision was acceptable. Following the reduction in the number of allotments requiring direct vehicular access to Clyde Road from 5 lots (proposed lots 101 to 105) to 2 lots (proposed lots 101 and 102), the Council and the RTA were satisfied that such access could be permitted subject to these proposed lots not being further subdivided (subject to restrictions on title). The RTA has accepted that existing sight distance at the intersection satisfies safe intersection sight distance requirements (refer Figure 10).

Figure 10: Clyde Road



Internal Road System

The internal road widths in the original proposal were considered to be inconsistent with Council's adopted engineering standards. Given the type of subdivision proposed, the Council stated that the roads should be designed and constructed in accordance with the urban standards adopted by Council, which would include kerb and guttering. Safe Intersection Sight Distance should also be achieved and demonstrated for the 85th percentile travel speed at all internal road junctions.

There were no details provided regarding the proposed junction treatments for the internal roads in the original proposal and the RTA considered that roundabouts should be considered as they are a suitable street calming device and require less sight distance due to lower approach speeds. Street lighting on the internal road system is required.

The proposed internal road system comprises the following roads:-

- Road No 1 – main spine road, with a 20 metre road reserve (7.5m carriageway);
- Road No 2, 3, 5 and 8 – cul-de-sacs with a 17 metre road reserve (6.5m shoulder and carriageway)
- Road No 4, 6 and 7 – minor loop roads with a 18m road reserve (7.5m carriageway).

The Council and the RTA are now generally satisfied with respect to the proposed access points and the internal road layout subject to conditions given the changes to the northern access point to incorporate a left in/left out only intersection and the widening of Road No 1.

The Department is satisfied that the internal road layout and the proposed access points are satisfactory.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- RTA and Council recommended conditions.

6.2.8 Pedestrian and Cyclist Facilities

Raised By Eurobodalla Shire Council, RTA, Statement of Issues.

Consideration

The studies and plans provided which consider of the issue of pedestrian and cyclist facilities are outlined in Section 6.2.7.

The existing pedestrian and cyclist network in the vicinity of the site is inadequate to allow safe and efficient movement of people and cyclists to nearby facilities including recreational and tourist activities (coastal foreshore, walking tracks etc), work related trips (to and from bus stops and to the city centre) and schools, churches and commercial premises. The proposal must be provided with adequate pedestrian and cyclist facilities both on and off the site.

The following key elements are proposed within and external to the site under the current proposal, following potential redevelopment of other sites in the immediate vicinity:-

- (i) Utilisation of the proposed fire trail along the eastern boundary of the development site as an informal off-street shared pedestrian/cycle path, with linkages to the site via public reserves located at various points along the route;
- (ii) New off-street pedestrian/cycle path incorporated within the proposed redevelopment of the existing "Country Comfort" site;
- (iii) New shared link into the proposed future service station outlet adjacent to the proposed Country Comfort development site;
- (iv) New pedestrian/cyclist crossing of the Princes Highway (see section 6.2.6 of this report);
- (v) A new off-street shared pedestrian/cycle path on the eastern side of the Princes Highway between the proposed pedestrian/cyclist crossing point and the existing footpath at Peninsula Drive (to be widened);
- (vi) Widened and upgraded footpaths located along the eastern side of Princes Highway, including relocation of guide signs, to produce shared pedestrian/cycle facilities;
- (vii) New pedestrian/cyclist crossing refuges at Kings Highway/Old Punt Road roundabout, Peninsula Drive/Princes Highway roundabout and Wharf Road/Princes Highway intersection;
- (viii) Improved pedestrian/cyclist underpass at the northern end of the Clyde River Bridge; and
- (ix) New pedestrian/cyclist ramps linking existing and new road-level footpaths to the proposed improved pedestrian underpass located under the northern end of the Clyde River Bridge.

The path alignments in the proposed concept design generally satisfy pedestrian and cyclist desire lines and are in accordance with AUSROADS and RTA standards providing safe access to key destinations.

Following consultation with the Council and applicants of other large developments in the North Batemans Bay area, a cost-sharing arrangement was agreed to whereby each developer was assigned an area of responsibility. This is outlined in Section 6 of the "*Bay Ridge Estate North Batemans Bay – Pedestrian and Cycleway Master plan Report*" prepared by GHD dated July 2005.

Accordingly, the applicant for the current proposal will be responsible for the implementation of all works within the subject site, including (i), (iv), and (vii) for the Kings Highway/Old Punt Road intersection only) as outlined above. These requirements are recommended to be imposed as conditions of development consent, as outlined by the Department, RTA and the Council.

On-site Facilities

The on-site pedestrian and cyclist facilities are outlined on the Transport Plan (Drawing No 23-11848-C005 Rev F dated 29 September 2006) and on the Typical Sections Plan (Drawing No 23-11848-C003 Rev C dated 29 September 2006). These on-site facilities consist of a 2.5m shared path on the eastern side of Road Nos 1 and 6, while the remaining roads are lower volume roads where pedestrian and cyclists are capable of safely sharing the verge within the road reserve.

Off-site Facilities

Pedestrian refuge facilities must be provided at the Old Punt Road roundabout to include splitter islands and kerb blisters as outlined above in (vii). Suitable treatments should be provided to corral pedestrians to the controlled facilities and prevent pedestrians crossing the Kings Highway at uncontrolled locations.

Resolution

The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Pedestrian/cyclist refuge facilities at Old Punt Road and Kings Highway intersection;
- Facilities required to corral pedestrians to crossing;
- RTA and Council recommended conditions; and
- Conditions outlined in Section 6.2.6 regarding the Princes Highway crossing point.

6.2.9 Public Transport

Raised By

Eurobodalla Shire Council, RTA, Department of Environment and Conservation, Statement of Issues.

Consideration

The proposed development should be designed to ensure public transport services can be provided to ensure people have alternative options to private vehicle transport. Proposed bus routes, nomination of bus stops and a carriageway width assessment to ensure bus access can be accommodated was not provided in the original proposal.

The Transport Plan (Drawing No 23-1848-C005, Revision F dated 29 September 2006) illustrates proposed Road No 1 will be a proposed Bus Route with 3 bus stops proposed along this road which will ensure the majority of the proposed lots will be within 400 metres of a bus stop. This proposed bus route will enter the site at the existing Old Punt Road/Kings Highway roundabout (southern access point) and will exit the site at the northern access point at the left

turn only intersection with the Kings Highway where the bus service will return the Batemans Bay.

Normal services to the development will be added to the local services between Surfside and Batemans Bay and consist of a loop through the development as detailed above. Afternoon school services will similarly consist of a loop through the development as part of the Batemans Bay-Surfside run. The morning school services will be included in the Nelligen-Batemans Bay run and will run through the development on Road No 1 from the north to the south (on its return trip using the left in intersection at the northern access point to the site). The bus service has confirmed their willingness to provide this service to the proposed development.

In relation to bus stops, there are a number of lots at the northern end of the site which will be greater than 400 metres from a bus stop, however, the extension of the proposed bus routes into proposed Road No 6 is undesirable given the topography of the site in this area is too steep for a bus route. Furthermore, only approximately 15 lots are affected and are still within 550 metres of the proposed bus stops, which represents 10% of lots, only slightly higher than the 5% allowed by Council guidelines. This is considered to be acceptable.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Provision of bus stops; and
- RTA and Council recommended conditions.

6.2.10 Traffic Generation

Raised By Eurobodalla Shire Council, Community submissions.

Consideration

The Traffic Impact Statement stated the main traffic movements for the intersection of Kings and Princes Highway were straight through traffic along the Princes Highway (60-80% of total) both in the morning and evening and that a high percentage of the traffic approaching from either the Kings Highway or Peninsula Drive (approx 80%) turn southbound towards Batemans Bay town centre.

The traffic movements at the intersection of Old Punt Road and the Kings highway revealed that 90-100% of traffic from Old Punt Road turns right towards the Princes Highway and 90-100% of the south/eastbound traffic travelling (towards the Princes Highway) along the Kings highway continues straight ahead.

An aaSIDRA analysis on intersection levels of service for the Kings and Princes Highway intersection and the Kings Highway and Old Punt Road intersection revealed that under existing normal peak traffic conditions, the level of service was A (less than 14 seconds average delay per vehicle). Similar testing was undertaken during the holiday period, where levels of service were good, although the right turn from the Kings Highway to the Princes Highway resulted in an average delay of 21.4 seconds, which classed this as a B level of service. An investigation of the vehicle crashes which had occurred in the vicinity of the site revealed 16 accidents had occurred, 13 of which resulted in no injury, while 3 resulted in injury. There were no fatal accidents recorded in the vicinity of the site.

In relation to traffic generation rates for the proposal and the potential impact on the surrounding road network, the following relevant conclusions in relation to traffic generation were made in the Traffic Statement:-

- *The existing roundabout intersections of Princes Highway/Kings Highway and Kings Highway/Old Punt Road operate at a satisfactory level of service under existing traffic, both in the normal and holiday peak periods;*
- *The existing roundabout intersections of Princes Highway/Kings Highway and Kings Highway/Old Punt Road would operate at a satisfactory level of service under the impact of traffic generated from ultimate development (2009) of the proposed site area.*
- *The proposed development would not have a significant impact on the overall capacity of the Princes Highway over the lift span bridge. The Princes Highway is currently already at capacity during holiday peak periods and it is not clear if this is due to the holiday traffic volumes or as a result of the frequency of bridge opening to enable water based traffic to pass; and*
- *The location of the proposed Kings Highway/northern access road intersection provides a satisfactory level of traffic safety under the current speed environment by satisfying sight distance criteria.*

It is therefore considered that the potential traffic generation of the proposal is acceptable given the levels of service which will be maintained at the various intersections in the vicinity of the subject site.

Resolution The proposal is considered to be acceptable subject to the imposition of recommended conditions of development consent as outlined above (see **Appendix A**).

6.2.11 Visual impact

Raised By Eurobodalla Shire Council.

Consideration

The proposal involves a variable visual buffer of between 25 to 40 metres, consisting of retained vegetation. The application states the following in relation to the surrounding visual environment:-

“The land is not visually prominent from a distance as it cannot be seen from the waters of the Clyde River or the Batemans Bay town centre due to topography and vegetation cover. The land is visible from the Kings and Princes Highways and from a limited number of locations in the adjoining suburb of Surfside. The northern end of the site can also be viewed from Clyde Road.”

A site inspection has revealed that this is an accurate description of the site's visual position in the locality. A detailed Visual Assessment was undertaken for the master plan, titled “*North Batemans Bay Visual Assessment Report*” prepared by EDAW Gillespies dated November 2004, and a supplementary report was also provided for the proposal, titled “*Bayridge Batemans Bay: Response to Department of Planning Issue No 3 – Visual Buffer*” prepared by EDAW dated March 2006. These assessments revealed the following locations were most affected:-

a) Views from Clyde Road

The views from Clyde Road are primarily from the road and surrounding rural-residential development (illustrated in Figure 11). The proposed development will be largely obscured by topography and lot layout, since there are only two lots proposed in the northern section of the site which will be located in the vicinity of Clyde Road.

Figure 11: View from Clyde Road



b) Views from the Princes Highway

The view from the Princes Highway elevation provides a gateway to Batemans Bay from the north (refer Figure 12). A 25 metre internal buffer zone is proposed on the site in this location, which will be further supplemented by a 14 metre wide verge of vegetation adjoining the Princes Highway (overall buffer of approximately 39m). There is no APZ required in this vicinity and a vegetation reserve is proposed which will ensure extensive areas of vegetation are retained. The existing thick vegetation is capable of minimising visual impacts in this location.

Figure 12: View from Princes Highway



c) Views from the Kings Highway

The views from the Kings highway elevation provides a gateway to Batemans Bay from Canberra and this elevation is important given the length of boundary which is shared with the Kings Highway (refer Figure 13). Given the location of the electricity easement and alignment of the spine road along this elevation, the visual buffer varies along this elevation. In the northern section, a 25 metre internal buffer zone is proposed on the site in this location, which will be further supplemented by a 15 metre wide vegetated verge and a 12m low vegetation on the verge of the Kings Highway, which results in an overall buffer zone of more than 40 metres (and the highway is in cut in this location).

In the middle section of the site, the electricity easement coincides with the internal buffer zone, resulting in less dense vegetation than in other locations. There is, however, a 15 metre wide regenerating vegetation verge adjoining the road reserve, a 12 metre electricity easement and a 13 metre internal buffer between the easement and the internal road system, resulting in an overall buffer of 40 metres. In the southern section of this elevation, the internal spine road becomes part of the internal buffer; however, the road reserve of the highway extends for approximately 21m, where there is a 14 metre wide band of vegetation. Overall, there is a buffer zone of approximately 46 metres, which includes the internal road reserve within the site.

Figure 13: View towards Kings Highway



d) Views from Surfside

Surfside is located to the south of the site across the Princes Highway, the suburb of Surfside is likely to be the only residential area which may be capable of viewing the proposal. Given the topography of the subject site, the minimal development proposed on ridgelines and the retention of large areas of vegetation (particularly on the perimeter of the site), is likely to result in the proposal being screened from this residential area.

The Council were concerned that the site is considered to be visually prominent being located at the junction of the Kings and Princes Highways at the Northern/ Western gateway to Batemans Bay and that the level of assessment carried out to determine the extent of clearing for the provision of infrastructure and the creation of asset protection zones for bushfire mitigation is not definitive.

The Council also considered that having regard to the type of development present in the area and level of development proposed, this is considered to be inadequate as Council's Draft Residential Design Code requires a minimum buffer of 60 metres (as retained canopy and understorey). The proposed buffer zone is primarily 40 metres in the majority of locations around the site and will be protected by covenants (see Section 6.2.16 of this report). Furthermore, the Department adopted a master plan for the site which required visual buffer zones consistent with those proposed in the current application.

The Council were also concerned that the proposal will require the clearing of, and development on, a number of prominent ridgelines and that views exist from these ridgelines to the east over the suburb of Surfside to the waterways beyond. Any clearing will be highly prominent from the Princes Highway and public places in the area nominated and such clearing of ridgelines are not supported. The Department considers that in general, the proposal has sited building envelopes below ridge lines.

In general, it is considered that the proposal has been designed to minimise any potential visual impacts. These measures include siting buildings below ridge lines and out of gullies, retaining extensive areas of vegetation, incorporating building controls to minimise visual impact (discussed further in Section 6.2.14 of this report) and encouraging appropriate planting outside the designated vegetation retention areas including on proposed allotments and within the road reserve.

<u>Resolution</u>	The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see Appendix A), in particular the following conditions: • Vegetation retention conditions as outlined in Section 6.2.1 of this report; and • Easements and restriction conditions as outlined in Section 6.2.16 of this report.
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6.2.12 Cultural and European Heritage

<u>Raised By</u>	Department of Environment and Conservation, Department of Natural Resources.
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Consideration

The matters for consideration under SEPP 71 in relation to Cultural heritage include measures to protect and preserve cultural places, Aboriginal cultural heritage, values, customs, beliefs and traditional knowledge of Aboriginals and the conservation and preservation of items of heritage, archaeological or historical significance (cll 2(d), 8(l) and 8(n) of SEPP 71).

The relevant matters for consideration on this site were identified in the "Archaeological Survey" prepared by Patricia Saunders of Archaeology Heritage Surveys dated October 2002 and June 2004 which identified sites and potential Archaeological Deposits (PADS) on the site. These surveys were carried out in consultation with the Batemans Bay local Aboriginal Land Council ("BBLALC") and were commissioned following consultation with DEC in relation to a Section 90

application to destroy Aboriginal objects, which related to the whole of the site (being Lot 2 and Lot 10).

A number of Aboriginal objects (sites) were recorded on the subject site including 5 Aboriginal artefacts sites and 7 PAD areas. The proposed development is likely to impact on some of these sites as a result of road construction, drainage, building envelopes, fire abatement zones, underground utilities etc and therefore a program of subsurface investigation was carried out under the approval of DEC.

The results of the subsurface investigation in these surveys included (illustrated in Figure 14):-

- PAD areas 2, 4 and 7 did not have any evidence of Aboriginal objects and therefore would not require any Section 90 approvals to impact these areas; and
- PAD areas 1, 3, 5 and 6 did contain evidence of Aboriginal objects and would require a Section 90 approval by DEC in order to impact those areas. While remnants of a highly disturbed Aboriginal shell midden was discovered within PAD 5, additional advice was provided after consultation with the Batemans Bay Local Aboriginal Land Council (BBLALC) which did not warrant any further investigation.

These surveys revealed an overall significance rating for the site as being low. Consideration of archaeological, educational and cultural factors were considered in reaching the conclusion of low significance. In particular, archaeological significance was considered to be low since the site contents and context were similar to previously recorded sites in the area and therefore the sites were not considered to be rare site types. In relation to educational significance, only minor educational value for the local Aboriginal community and the wider local community was identified for artefacts to be salvaged from the site. In relation to cultural/anthropological significance, no significance above and beyond the fact that all surviving Aboriginal sites has significance to the Batemans Bay Aboriginal community for their association with traditional Yiun culture and lifestyle and as evidence of their ancestor's occupation of the land was identified. Furthermore, all cultural heritage significance is particularised to the items discovered in the archaeological surveys. No specific Aboriginal places, values, customs, beliefs and traditional knowledge of Aboriginals were identified on the site.

DEC received an application on 13 September 2004 for a Section 90 'Consent to Destroy with Salvage' for all identified Aboriginal objects (sites) across the subject area. The consultant archaeologist and the BBLALC both agreed that the sites exist within a highly disturbed environment, are low density in the number of Aboriginal objects present and are low significance, all of which supports the Section 90 application. The DEC subsequently issued Section 90 consent for all of the identified sites and PAD areas with the exception of PAD 5, in Consent #2099 dated 12 January 2004 (this should read 2005). The Archaeological surveys and consultation with DEC in relation to this issue is further discussed in **Appendix F**.

The Minister has obtained and reviewed all known reports relating to Aboriginal heritage on this site and considers that certain items are to be protected (i.e. KPH 5) while others may be salvaged in accordance with the consent issued by DEC. It is therefore considered, having regard to the matters for consideration pursuant to SEPP 71 (cll 2(d), 8(l) and 8(n) of SEPP 71), that subject to conditions of development consent recommended by the Archaeological Survey, the BBLALC and DEC, the proposal will not adversely impact on the cultural heritage values of the site.

European Heritage

The *Archaeological Survey*" prepared by Patricia Saunders of Archaeology Heritage Surveys dated October 2002 and June 2004 also identified a section of the original Princes Highway, approximately 180m long and 2.5m wide located along the south-eastern boundary of the site and the remains of an old timber bridge within this old highway formation. While both of these

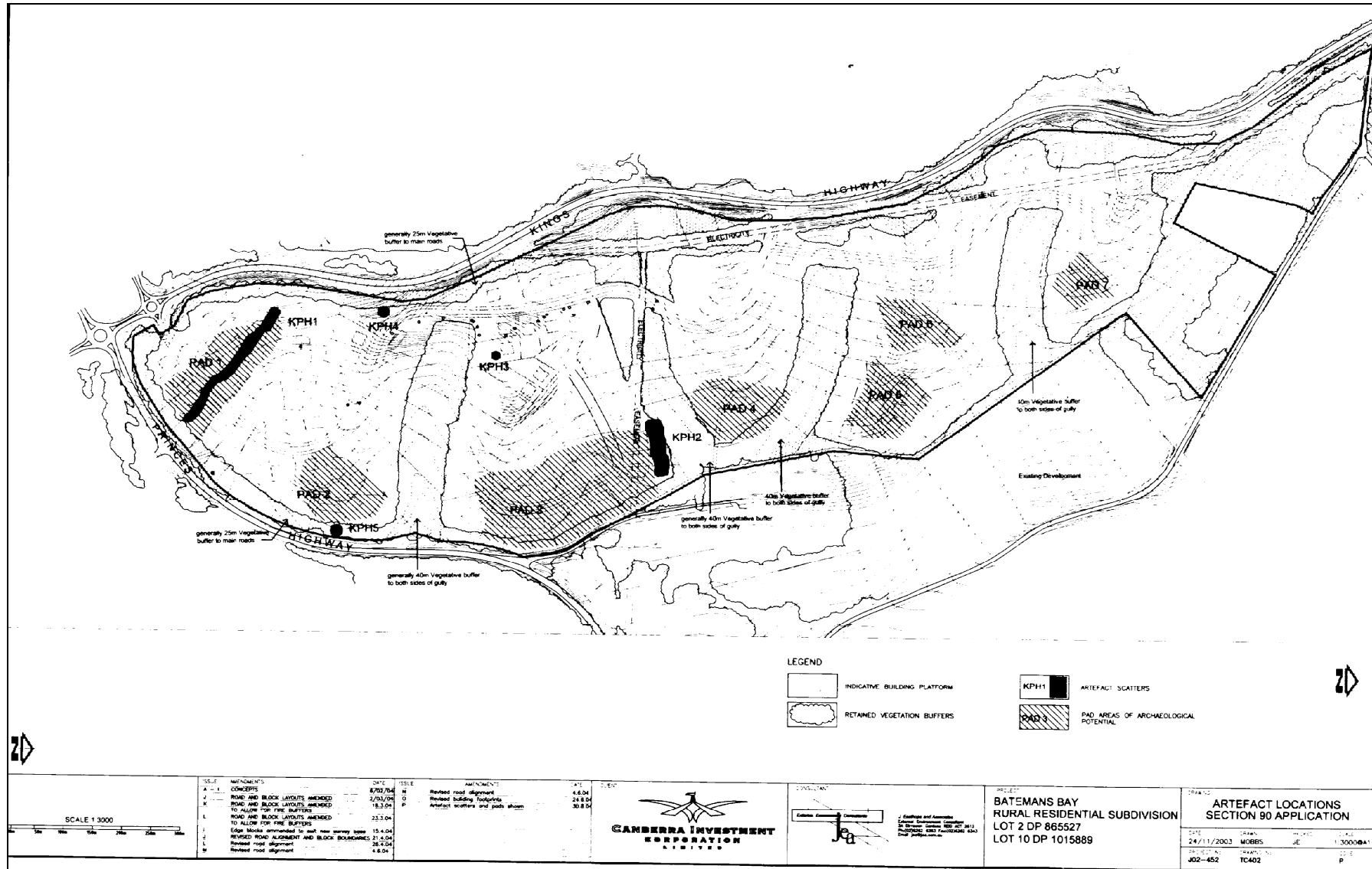
items may be of historical interest, it was considered that these sites would not be classified as significant under the relevant assessment criteria. It is also noted that neither of these items are listed as heritage items in Schedule 2 of the LEP. Furthermore, both of these features are located within a proposed vegetation reserve along the Princes Highway and therefore will not be adversely impacted by the proposed development.

Resolution

The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Excavation in accordance with Batemans Bay Local Aboriginal Land Council requirements;
- Section 90 consent issued by DEC dated 12 January 2004;
- Recommendations of the Archaeological Survey; and
- Discovery of Aboriginal relics during construction to be reported to DEC.

Figure 14: Location of Aboriginal Sites and Potential Archaeological Deposits (source: Archaeological Survey)



6.2.13 Bushfire

Raised By Rural Fire Service, Eurobodalla Shire Council.

Consideration This issue is considered in the assessment below.

The bushfire assessment of the proposal is contained in the "*Bushfire Protection Assessment*" prepared by Bushfire Protection Planning and Assessment Services, the "*Revised APZ Impact Assessment Report*" prepared by Bushfire Protection Planning and Assessment Services dated 23 October 2006 and the Site Plan (Drawing No 23-11848-C001, Rev E dated 11 October 2006).

The original bushfire report provided the following recommendations in relation to a general assessment of Compliance with '*Planning for Bushfire Protection, 2001*' ("PfBP"):-

- *The proposed development and potential siting for future residential dwellings will generally facilitate the minimum required APZ on the hazard side of the development;*
- *Access to the proposed development site will be easily achievable for all types of vehicles (including category 1 tankers) via the existing and proposed road network. Proposed new property access road/dives can easily meet PfBP guidelines.*
- *Design and siting of the development is relatively simple and generally addresses the suggested issues described in the PfBP guidelines section 4.4.*
- *Assuming the availability of a reticulated water supply and the available area on each affected lot to store additional water (water supply tank), this should ensure provision of an appropriate water supply and availability during times of bushfire emergency.*

The original proposal was referred to the RFS for a Bushfire Safety Authority pursuant to Section 100B of the Rural Fire Act 1997, which was subsequently granted by the RFS subject to the conditions relating to access points, planting, and the recommendations of the Bushfire Planning Report to the complied with.

Following amendments made to the proposal after discussions with DNR (discussed earlier in this report), a report titled "*Mapping of Black She-oaks Stands and Consideration of Bushfire Issues*" prepared by BES dated March 2006 explored the potential for the provision of asset protection zones whilst also preserving habitat for threatened species. A revised Bushfire report was also prepared (dated 23 October 2006) on the basis of the amended proposal and it was considered by the Bushfire consultant that the amended plan facilitated compliance with PfBP to the extent the original proposal complied for the following reasons:-

- The extent and arrangement of bushfire vegetation to be retained within this revised plan is mostly the same as the previous plan. Where the extent of vegetation has been revised such that previous APZ/building setback distances become technically non-compliant, the affected allotments have been merged or redesigned to facilitate minimum APZ compliance. The revised plan reduces building entitlements from 150 to 142;
- Public roadway design (including permitter fire trails and access to power line easements) and precinct clustering within the revised plan is basically the same as the previous plan. In this respect, the revised allotments (or clustering) are still afforded compliant APZ setback distances at least the extent as the previous plan;
- Similarly, gully line buffer vegetation (at least 40m either side of the gully centre line = 80m wide) within the revised plan is mostly the same as within the previous plan; albeit an increased vegetation extent between the northern most building clusters (as a result of retained *Allocasuarina* spp). Where the gully line vegetation has been increased in width, the revised plan has redesigned (reduced) adjacent allotments to facilitate minimum APS/setback distances;

- Compliance for revised plan allotments facilitating potentially <20m separation from Group 3 remnant vegetation is predicted upon the installation of acceptable radiant heat protection (barrier) or other alternative building solutions over and above BCA Deemed to satisfy (AS 3959) provisions. In this respect, the RFS would most likely consider each of the marginal lots (or lots requiring radiant heat barrier protection) on their merits.
- All previous bushfire compliance recommendations (notwithstanding revised fire fighting water supply requirements) are still applicable and can be easily incorporated into the subject development.

The RFS were requested by the Department to comment on the amended plans and have subsequently issued a revised Bushfire Safety Authority (BFSA) dated 13 November 2006 subject to conditions similar to those outlined in the earlier advice. The RFS have required several additional conditions relating to turning heads and the provision of all infrastructure and services prior to the release of any of the proposed lots in the revised BFSA.

It is considered that the bushfire protection measures outlined for the site are satisfactory given the APZs are primarily located outside of the vegetation reserves, there will be an adequate reticulated water supply to the site and the RFS have issued a Bushfire Safety Authority for the proposal.

It is noted, however, that the RFS requires all services and infrastructure to be provided prior to final release of any lots. The Department considers that all services and infrastructure as set out in the Staging Plan (Drawing No 23-11848-C002, Rev E dated 11 October 2006) is satisfactory in relation to bushfire safety, with the exception of the construction of the northern access point. The applicant proposes to construct this access point in Stage 3, however, this is considered to be required in Stage 1 to ensure adequate access and egress from the site in the event of a bushfire (through access is required). Accordingly, the requirement for the northern access point to be constructed in Stage 1 is recommended to be imposed as a condition of development consent.

<u>Resolution</u>	The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see Appendix A), in particular the following conditions: • Condition requiring compliance with recommendations of the Bushfire Protection Assessment Reports; • Conditions required by the RFS under the Bushfire Safety Authority; and • Condition requiring the construction of the northern access point in Stage 1.
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6.2.14 Compatibility and Context (Density and Building Form)

Raised By Eurobodalla Shire Council.

Consideration This issue is considered in the assessment below.

Desired Future Character

The proposal states that the desired future character of the site or the overriding philosophy for the development is that the landscape should dominate the built environment. This desired future character is achieved through the subdivision density and the building form proposed in this application, discussed below.

The Subdivision Design and Density

The subdivision pattern and density proposed in the current application has been designed

having regard to the site constraints of:

- Topography
- Vegetation retention
- Archaeology
- Integrated water cycle management
- Sewerage servicing capacity
- Aesthetics
- Proximity to town centre
- Pedestrian/cyclist linkages
- Bushfire.

The subdivision layout as proposed in the application incorporates the following aspects:-

- The majority of buildings are sited below ridgelines and above the gullies
- The majority of lots facilitate the achievement of a north-easterly, northerly or south-easterly aspect;
- Building envelopes generally have a minimum area of 400m² having regard to Asset protection zones, slopes of less than 25% and retention of vegetation in proposed vegetation reserves.
- A two storey height limit would be imposed in accordance with Council's height policies;
- Limiting visual impact on locality through a combination of topography of the site, use of vegetation buffers, subdivision design and proposed building envelopes;
- The road layout is based on the topography as an interconnected (grid) road network was not considered to be practical, nor appropriate, given the topographical and vegetation restraints on the site; and
- Building controls are separately discussed below.

The proposal involves lot sizes ranging from 2500m² to 31,811m² with the average lot size being 5000m², while the DCP states that a minimum recommended lot area is 2Ha. The applicant provides the following reasons as justification for this non-compliance:-

- *The southern end of the land is within walking distance of the Batemans Bay town centre (approx 1-1.5Km away);*
- *The southern end of the site is bounded by urban development to the east and south;*
- *The land is capable of being subdivided into lots less than 5000m² in that there are no physical constraints that preclude this option;*
- *Roads servicing the subdivision would be sealed and be of an adequate standard to service the development;*
- *It is proposed to service the site utilising reticulated water supply and sewer, with the exception of Lots facing Clyde Road at Councils request;*
- *Reticulated electricity would be provided;*
- *Proposed lot sizes are still substantially larger than the minimum specified in urban areas under the 2ec Residential Environmental Constraints Zone and in unsewered residential areas. Council's minimum allotment size in these areas is 1500m²;*
- *The lot sizes contained in the proposed subdivision are consistent with those approved in the adopted master plan.*

Having regard to this justification, it is considered that given the proximity to the town centre and the servicing of the lots with reticulated services, these lot sizes are acceptable. Furthermore,

the majority of small lots are located in the southern portion of the site, which is less constrained than the northern portion. The Council are also generally supportive of these proposed lot sizes given the reasons outlined above as outlined below from Council's correspondence:-

"It is recognised that this parcel of land is unique in terms of its close proximity to Batemans Bay CBD, its capacity to be serviced with water and sewerage and may be suitable for a higher density of development than that permitted within the zone."

It is considered that the subdivision design and density is satisfactory given the incorporation of the aspect outlined above and subject to the recommended conditions of development consent as outlined in **Appendix A**.

Building Form

The building envelopes and built form controls were set out in the approved master plan and are also contained in the current application. The building form controls were based on enhancing the desired future character (see above) which seeks to ensure that the landscape should dominate the built environment. The building form and materials controls proposed in the application include:-

- Choice of built form that complements the natural landscape;
- Integration of the dwelling into the site topography i.e. stepping of dwellings rather than large bench works would be encouraged;
- Articulation of building facades with a variety of building elements including balconies, balustrades, verandahs, timber awnings, screens, decks and eaves, colours and materials;
- Setting ground floor levels as close to natural ground surface as is practicable;
- Careful selection of roof forms to be consistent with the building design and sensitive to the natural landscape. Roof shapes should be integrated with the building form and mass;
- Siting of all buildings from the front boundary a desirable distance of 10 metres with an allowable minimum of 7.5 metres where required due to APZ requirements;
- Siting of buildings generally a minimum distance of 4.5 metres from side and rear boundaries;
- Limiting building height to two storeys in accordance with Council's height policies;
- Choice of materials and colours that maintain a harmonious setting with the landscape and reflect the bushland character. House colours should be selected from the subtle, natural colour palette of the landscape;
- Whilst most buildings will have brick or rendered finish, other lightweight material such as plywood, weatherboard, timber, corrugated iron, zinc, copper, metal sheeting, fibre cement products and glass be considered on individual merit;
- Outbuildings including garages will be of design, construction, materials and colours consistent with the main building;
- Roofs will generally be of clay or concrete tiles, pre-coloured metal sheeting or shingles complementing the style of the home whilst reflective materials would be avoided;
- Balustrades, sunshades and other trim elements would be light and delicate utilising fine steel and/or timber detailing;
- Highly reflective finishes would not be permitted;
- Meter boxes, hot water services, air conditioning units, gas metres, TV aerials and other building service are to be visually obscured from the public view;

- External lighting should be directed away from adjoining properties and public areas and should be directed groundwards to avoid disturbance to nocturnal fauna;
- Allotment boundary fencing will be of low scale, rural type of a permeable, transparent nature which is fauna friendly. This could be a combination of post, wire and rial fencing;
- Beyond the building footprint, native vegetation within the asset protection zone will be managed and or enhanced consistent with bushfire management requirements. In these areas, significant trees will be retained wherever possible to enhance the natural amenity of the estate. Predominant use of native plant species will encourage native fauna and reduce garden maintenance and water usage.

The Council were concerned that the built form controls and building envelopes were not sufficiently outlined and that a method would need to be adopted whereby each property owner is made aware of controls and a statutory position exists in regard to their implementation. It is considered that the building form controls have been adequately outlined and that such controls will be enforced through s88B restrictions and covenants under the *Conveyancing Act 1919*, which have been recommended to be imposed as conditions of development consent in **Appendix A**.

The subdivision design, density and built form controls are considered satisfactory for this proposal.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Requirements for minimum lot sizes; and
- Restrictions on building form controls under s88B instruments.

6.2.15 Noise

Raised By Department of Environment and Conservation, RTA, Community Submissions.

Consideration This issue is considered in the assessment below.

The proposal adjoins two major arterial roads and accordingly, the impact of road noise on the development and the impact of additional traffic generated by the development on the surrounding area must be considered. While the buffer zones and topography of the site will assist in minimising road noise for future dwellings on the site, the proposed development should be designed such that road traffic noise from the Kings Highway and the Princes Highway is mitigated by durable materials, in accordance with EPA criteria for new land use developments outlined in "*The Environmental Criteria for Road Traffic Noise*" prepared by DEC dated May 1999.

The development will also be traffic generating and therefore issues such as road traffic noise need to be assessed. It is considered that the roads are sited having regard to the topography of the site and that noise for the internal road system will not adversely affect development within or external to the site.

General environmental noise from the site is unlikely to adversely affect the general amenity of nearby residential development as the subject site is separated from this nearby development by the two major arterial roads and the proposed lot sizes are sufficiently large to ensure noise will be maintained within the individual allotments. This issue will be further assessed when individual applications are lodged with the Council for dwelling construction on the site.

Resolution The proposal is considered to be acceptable and conditions of development consent are not required in this instance.

6.2.16 Easements and Restrictions

Raised By Eurobodalla Shire Council.

Consideration This issue is considered in the assessment below.

The proposal involves the creation of various s88B instruments under the *Conveyancing Act 1919*, which seek to impose restrictions relating to the following (as outlined in SEE on pages 36-39):-

- (i) The conservation of existing vegetation in the retained corridors along gullies and buffers and retained hollow-bearing trees outside these areas by:-
 - Designating east/west and north/south corridors where the existing natural environment and vegetation will be conserved and retained;
 - Encouraging retention of a significant tree canopy in addition to the vegetated corridors;
 - Providing lists of appropriate native plant species for landscaping;
 - Listing weeds that should not be planted and be removed from the site;
 - Invoking restrictions on keeping pets such as cats, dogs and hoofed animals;
 - Management of vegetation clearing especially hollow bearing trees.
- (ii) A restriction on fencing types and extents in vegetation reserves;
- (iii) Building controls including design guidelines, building envelopes, cut and fill extents, building materials and colours, driveways and entries, retaining walls, design and siting of ancillary structures, landscaping, bushfire protection requirements, swimming pools and tennis courts and restrictions on parking commercial vehicles;

The areas to be retained within the vegetation reserves along the gullies are to be incorporated into private lots (and therefore not in common or community ownership) and therefore management will be the responsibility of each individual landowner.

It is considered that subject to such covenants being imposed, such easements and restrictions will satisfactorily achieve the required outcomes in relation to vegetation retention and building controls. The Council is also satisfied with this approach, subject to the provision of legally binding instruments placed on individual titles to ensure ongoing retention and viability of existing vegetation.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Easements requiring conservation of existing vegetation ("vegetation reserves"), restrictions on fencing types and building controls.

6.2.17 Energy Efficiency and Ecological Sustainable Development

Raised By Department of Environment and Conservation.

Consideration This issue is considered in the assessment below.

DEC considers that the draft master planning exercise provides an excellent opportunity for the proponent to promote more efficient use of resources. This may involve changes to subdivision layout or the identification of building envelopes that would provide easier solar access design for buildings. In addition opportunities may exist in the subdivision design to promote energy efficient housing design, the use of appliances such as solar hot water, conservation measures such as rainwater tanks and native gardens, and street design creating attractive pedestrian environments. All these features could all contribute to housing options, which are not only visually attractive but also financially attractive due to the long-term cost savings in energy, water and transport. All future development should be linked into Council's waste strategy.

The proposed development incorporates pedestrian and cyclist facilities (discussed in section 6.2.8 of this report) and public transport is also able to be provided (discussed in section 6.2.9 of this report). As a result of the topography and orientation of the site, the proposed allotments are generally aligned north-south, allowing for greater northern solar access with the majority of lots have a north-easterly to south-easterly orientation. Building envelopes of 400m² on relatively large lots have been provided, allowing greater side setbacks between allotments which will permit solar access to the majority of windows and openings in future dwellings.

The proposal involves an Integrated Water Cycle Management Strategy which aims to conserve water, protect the environment, ensure sustainability, equitability and cost effectiveness. Rainwater tanks will be installed which will assist in minimising water consumption, while water sensitive urban design techniques are proposed for the treatment of stormwater on the site by diverting flows to the vegetation reserves where nutrient removal can occur. Reticulated services are proposed for sewer, stormwater and water supply, minimising potential impacts on nearby watercourses and other sensitive areas.

Resolution The proposal is considered to be acceptable subject to the imposition of recommended conditions of development consent (see **Appendix A**) which have already been recommended in other issues.

6.2.18 Consistency with Master Plan

Raised By Department of Planning.

Consideration This issue is considered in the assessment below.

A Master Plan was adopted by the then Deputy Director-General, as delegate for the Minister, on 5 May 2005 under SEPP 71 for a 150 lot rural residential subdivision of the site. The Master Plan was required as subdivision of land within a rural residential zone that is not identified as a sensitive coastal location into more than 5 lots was proposed pursuant to Clause 18(1)(c) of SEPP 71. The main issues considered in that assessment included allotment sizes, Aboriginal Heritage, flora and fauna, visual impact and buffer areas and traffic and pedestrian movement. A variation was imposed requiring a grade separated pedestrian bridge be provided outside the Princes Highway road reserve with appropriate links to existing pedestrian facilities on the eastern side of the Highway and proposed pedestrian facilities on the western side of the Highway (discussed in Section 6.2.6 of this report).

Clause 19 of SEPP 71 required a consent authority to consider the provisions of an adopted master plan prior to determination of a development application. It is considered that the proposal is generally consistent with this adopted master plan.

Resolution The proposal is considered to be acceptable and there are no conditions of development consent other than the built form controls discussed in Section 6.2.16 of this report.

6.2.19 Acid Sulphate Soils and Land Contamination

Raised By Department of Environment and Conservation.

Consideration This issue is considered in the assessment below.

Land Contamination

The subject site was used previously for pastoral uses and therefore a preliminary Contamination Study was undertaken in the "*North Batemans Bay Estate Contamination Study Preliminary Investigation*" prepared by Geotechnical Consultants Pty Ltd dated May 2005.

This study tested soil samples for heavy metals, pesticides, herbicides and hydrocarbons. This investigation into previous land use indicated a generally low potential for contamination of the site. A comparison of the sample test results with the relevant criteria shows that the samples have levels of contamination lower than the criteria for further investigation. The study concluded that based on an investigation into previous land use and testing for possible contaminants, it is concluded no further testing or action is required.

Acid Sulphate Soils

Given the topographical nature of the site and the prevailing soil conditions, it is considered that acid sulphate soils will not affect the subject site.

Resolution The proposal is considered to be acceptable and conditions of development consent are not required in this instance.

6.2.20 Cumulative Impact

Raised By Eurobodalla Shire Council.

Consideration This issue is considered in the assessment below.

It is considered that while the proposal involves smaller allotment sizes than is permitted under the relevant DCP controls, the site is located close to the Town Centre, is capable of being serviced with reticulated services and will provide adequate pedestrian, cyclist and public transport services, thereby minimising any adverse cumulative impact of the proposal in the area.

It is further considered that there are minimal other sites in the vicinity which display these characteristics and therefore such development is unlikely to set an undesirable precedent for future development in the locality.

Resolution The proposal is considered to be acceptable and there are no conditions of development consent which are recommended to be imposed in this instance.

6.2.21 Construction Management and Phasing

Raised By Eurobodalla Shire Council, Department of Planning.

Consideration This issue is considered in the assessment below.

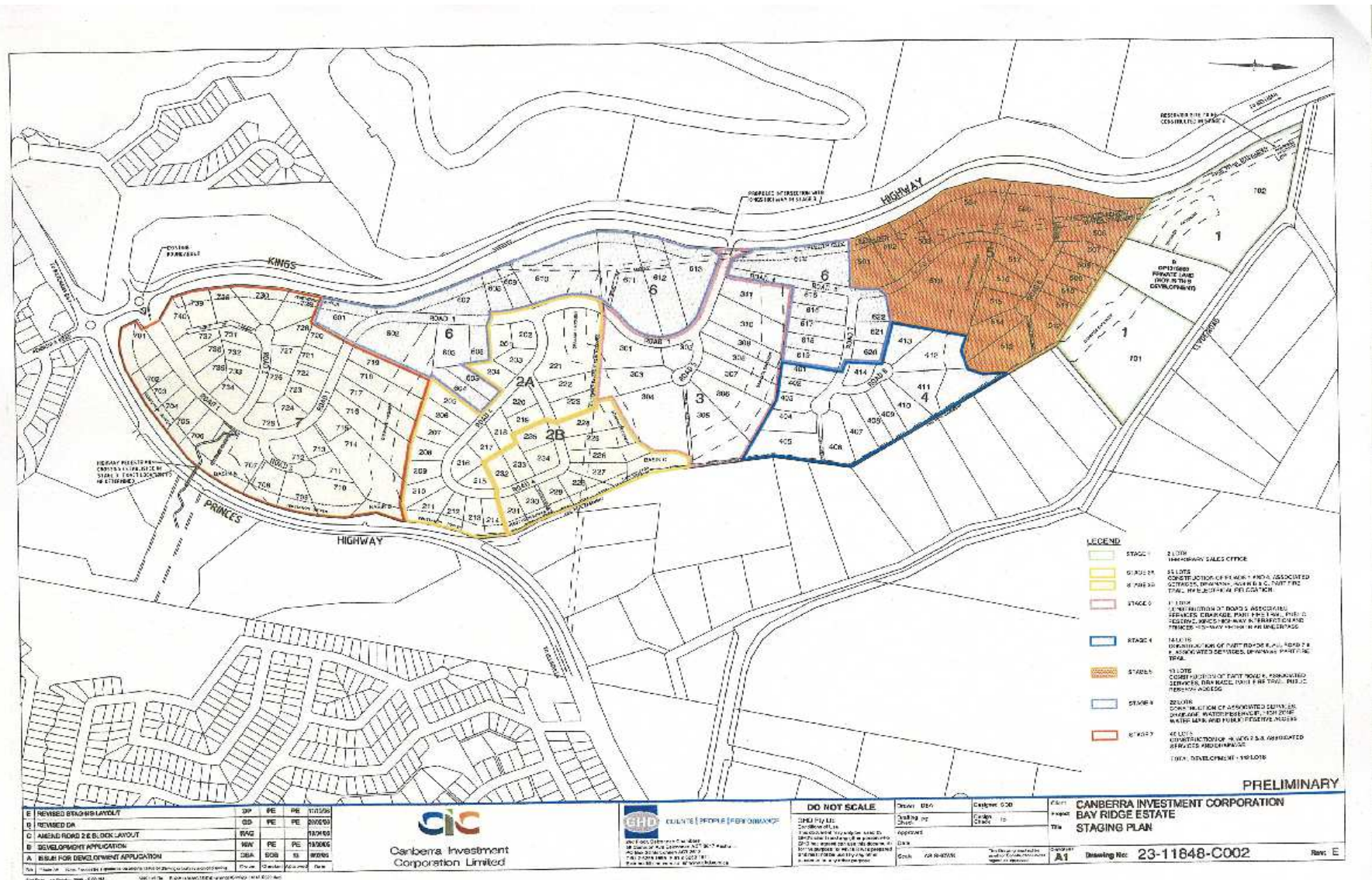
The Staging Plan is illustrated in Figure 15.

It is considered that there will be a need to impose conditions of development consent regarding the construction of the proposal to ensure there is minimal impact on the natural areas on the site and the surrounding natural environment. In addition, it is important that certain aspects of the proposal are constructed in order such as the Highway crossing point and the northern access point to the Kings Highway. Accordingly, it is necessary to impose staging conditions on the development consent.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Construction management; and
- Phasing requirements.

Figure 15: Staging Plan



6.2.22 Social Infrastructure

Raised By Department of Planning.

Consideration This issue is considered in the assessment below.

Given the size of the proposed development, the provision of social infrastructure such as schools, hospitals and other community services, needs to be considered.

Educational Facilities

The site is located within close proximity to Batemans Bay Primary School and will be linked to this facility via the proposed grade-separated pedestrian crossing point to be provided in Stage 3 of the proposed subdivision. A high school is located on beach Road in an area to the south of the main town centre of Batemans Bay and there are two catholic schools in Batemans Bay. The Batemans Bay Education Centre is a joint facility between the University of Wollongong, Illawarra Institute of TAFE and the Eurobodalla Shire Council. Courses are provided by the University and TAFE and the Centre also houses the Batemans Bay Community Library. TAFE campuses are located at Nowra, Ulladulla and Moruya.

Community and recreational Facilities

Community facilities located in the town centre include a Community centre, library and churches, while recreational facilities provided in Batemans Bay include sports fields, beach reserves, parks and play grounds, a golf course and tennis courts. A court house is also located in the town centre.

Commercial and Industrial Facilities

A large shopping centre, Stocklands Batemans Bay, is located at the entrance to the town centre and includes more than 55 retail outlets. The industrial area to the west of the town centre, the sawmill on the Princes Highway to the south, the Forestry Commission offices, the shopping centre and the Hospital all provide employment opportunities within Batemans Bay.

Emergency Services

Police, fire and Ambulance stations are all located in the Batemans Bay town centre.

Medical Services

Batemans Bay has a district hospital located in Pacific Street which is operated by the Greater Southern Area Health Service Health. In addition, there are several General Practitioners in the Batemans Bay area. The centres of Ulladulla-Milton and Nowra are located within 100Km of Batemans Bay which also offer Hospital and educational facilities including Milton-Ulladulla Hospital at Milton and the Shoalhaven Hospital at Nowra, both operated by the South Eastern Sydney Illawarra Area Health Service and provide surgical, intensive care, emergency and out-patient services.

It is considered that there are sufficient services in the area to provide adequate services to future residents of the proposed subdivision.

Resolution The proposal is considered to be acceptable and conditions of development consent are not required in this instance.

6.2.23 Strategic Planning Context

Raised By Department of Planning.

Consideration This issue is considered in the assessment below.

There are several strategic planning documents which have recently been prepared and are discussed below:-

Draft South Coast Regional Strategy & Expert Panel Review

The South Coast Regional Strategy applies to the local government areas of Shoalhaven, Eurobodalla and Bega Valley. The primary purpose of the Regional Strategy is to ensure that the significant natural and scenic assets that define the region's character and underpin its economy are not compromised by growth. It will do this by ensuring that land is available in appropriate locations to sustainably accommodate the projected population growth and associated housing, employment and environmental needs over the next 25 years.

The major aims of this Strategy include:

- Protect high value environments including pristine coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that new urban development avoids these important areas and their catchments.
- Cater for a housing demand of up to 45 600 new dwellings by 2031 to accommodate the additional 60 300 people expected in the Region over the next 25 years.
- Ensure that new housing meets the needs of future households, in particular the needs of smaller households and an aging population.
- Ensure that future urban development is prioritised to support new housing in and around existing well serviced centres and towns.
- Independently review existing zoned land in isolated and sensitive locations to determine the suitability and scale of any release (Appendix 2 – Sensitive urban lands).
- Only consider additional development sites if demand for additional housing supply can be demonstrated, they adjoin a major regional centre or major town and are consistent with the Sustainability Criteria (Appendix 1).
- No new towns or villages will be supported.
- No new rural residential zones will be supported unless as part of an agreed structure plan or settlement strategy.
- Ensure an adequate supply of land to support economic growth and an additional 19 000 new jobs particularly in the areas of finance, administration, business services, health, aged care and tourism.
- Prevent development in places constrained by coastal processes, flooding, wetlands, important primary industry resources and significant scenic and cultural landscapes.
- Protect the cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes.

Specifically, an additional 10 700 dwellings will be required to cater for growth in Eurobodalla over the next 25 years. Existing vacant urban land, more than half of which is located around the major regional centre of Batemans Bay (includes the Batemans Bay Group of settlements from North Batemans Bay to Malua Bay) and major towns of Moruya and Narooma, will accommodate 7600 of these dwellings. The 2100 dwelling supply gap will be accommodated within and adjoining these centres through medium-density development and investigation areas to be identified in the endorsed Eurobodalla Settlement Strategy.

The current proposal provides for housing in an area zoned for rural residential development close to services in the North Batemans Bay area, ensuring that future urban development in

and around existing well serviced centres and towns. The proposal will not adversely affect any high value environments including pristine coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors as the proposal retains large tracts of native vegetation. The proposal will provide for additional housing which will assist in the satisfying the additional housing demand in the region. The smaller lot sizes on the lesser constrained southern portion of the site will ensure that new housing meets the needs of future households, in particular the needs of smaller households and an aging population. Cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes is protected by the proposal as outlined in Section 6.2.11 and 6.2.12 of this report. The proposal is therefore considered to be consistent with the Draft Regional Strategy.

The subject site was not identified as being located in isolated and sensitive locations as described in Appendix 2 to the Strategy and therefore was not subject to a priority review by an expert panel to determine suitability and scale of any release.

Draft Eurobodalla Settlement Strategy

Eurobodalla Shire Council has prepared the *Draft Eurobodalla Settlement Strategy* which aims to conserve biodiversity, respect cultural heritage, stimulate economic and community development and provide efficient public services. High population growth, the need for housing choice, protection of coastal ecosystems and provision of employment opportunities and infrastructure has influenced the content of the strategy. The Strategy is to be presented to Council in the next few weeks for endorsement.

In relation to residential and rural residential land, the Strategy recognised that there was a strong market choice for smaller 5000m² to 1 hectare lots with a high level of service infrastructure in the northern district (including Batemans Bay) and land adjoining an existing urban area can be subdivided to a minimum of 5000m². Following a review of residential and rural residential lands in the Eurobodalla Shire (section 5.2 and 5.3), the Strategy recommends rezoning suitable rural residential land located at north Batemans Bay to Urban Residential through the new LEP to extend land supply in the northern district and to make best use of vacant rural residential land that is in close proximity to commercial and civic services. This recommendation to rezone the subject site supports the density of the subdivision proposed in the current application and therefore the proposal is considered to be consistent with the Draft Eurobodalla Settlement Strategy.

Resolution The proposal is considered to be acceptable and conditions of development consent are not required in this instance.

6.2.24 Contributions

Raised By Eurobodalla Shire Council.

Consideration

The proposed development will generate the need for additional services in the area which are provided by the Council and accordingly it is necessary to levy contributions under Section 94 of the Act. In addition, other infrastructure contributions are required to be levied to ensure the cost of servicing the site is provided by the applicant.

Resolution The proposal is considered to be acceptable subject to the imposition of the recommended conditions of development consent (see **Appendix A**), in particular the following conditions:

- Section 94 and other developer contributions.

7. CONCLUSION

7.1 Conclusion

The Minister for Planning is the consent authority, pursuant to the provisions of Clause 6 of the SSD SEPP 2005. The application has been notified in accordance with the Regulations and all submissions received in the period prescribed by the Regulations have been considered.

The application has been considered with regard to the matters raised in section 79C of the Act. Furthermore the application was referred to a number of agencies, including the Eurobodalla Shire Council, Department of Environment and Conservation, Department of Natural Resources, NSW Rural Fire Service, NSW Roads and Traffic Authority, and the Department's South Coast Regional Office and their comments were considered in this assessment.

In relation to the original proposal, there were concerns in relation to the potential impacts on flora and fauna on the site as a result of vegetation clearing, the proposed effectiveness of the vegetation reserves, the provision of infrastructure, the adequacy of the road layout (including access points) and pedestrian and cyclist linkages, the potential visual impact, potential bushfire and cultural heritage impacts, the compatibility and contextual appropriateness of the proposal and the consistency of the proposal with the adopted master plan.

Following amended and additional information, it is considered that the issues relating to infrastructure, road design and linkages, visual amenity, impacts on flora and fauna, vegetation reserves, bushfire and cultural heritage and compatibility have been addressed by the proposal. The proposed subdivision will be provided with adequate reticulated services, there will not be a significant impact on any threatened species on the site, large areas of natural vegetation will be retained in the proposed vegetation reserves which will be protected by easements and title restrictions and visual buffer zones will be provided along the side boundaries of the site. Adequate bushfire protection measures are included in the proposal and cultural heritage has been assessed and addressed to ensure adequate protection of relics. The proposal will provide additional housing in the vicinity of the site, close to services as well as preserving large tracts of land for habitat and biodiversity protection.

On balance, it is considered that the proposed development is acceptable and therefore should be approved for the reasons and conditions outlined in **Appendix A**.

7.2 Consultation with Applicant – Draft Conditions

It is the Department's policy to advise the applicant of the draft conditions and to seek feedback on such conditions. Accordingly, the applicant was provided with a copy of the draft conditions on 4 December 2006 and several comments were received in correspondence dated 5 December 2006. These comments were considered by the Department and further consultation with the Council and the RTA was undertaken. This consideration is outlined in Table 1.

Table 1: Consideration of Applicant's Comments on Draft Conditions

Comment No	Condition No	Changes requested by applicant	Consult Council	Changes made
1	1.1	Construction of temporary sales office not provided for in the conditions.	N	Sub-condition added to ensure design and siting of temporary sales office to be in accordance with Council requirements.
2	1.1	Requests clarification on the unspecified pedestrian/cyclist facilities to be provided off-site as these were not discussed with Council in recent discussions.	N	Condition reworded to specify the pedestrian/cyclist refuges required to be within the roundabout of Proposed Road No1 and Old Punt Road including splitter islands, kerb blisters and suitable treatments to corral pedestrians to controlled facilities. The pedestrian underpass was a condition of the master plan adoption and the above-mentioned facilities were also discussed in the master plan.
3	1.1	Street lights – as this is a rural residential development, streetlights are only required to be provided at the intersections of the Kings Highway.	Y	Wording changed to state that both access points on the Kings Highway ONLY are to have streetlights in accordance with the requirements of AS/NZ 1158.3 and AS 4282.
4	1.7	Staging of Pedestrian crossing point over the Princes Highway – tendering only at Stage 3.	Y	The council stated that the tendering documentation must be completed by the start of Stage 3 works and that construction is to be completed prior to the release of the Subdivision Certificate for Stage 3. A requirement for a Compliance Certificate in condition #5.1 has been added to ensure the construction of this facility prior to the issue of the Subdivision Certificate for Stage 3.
5	1.9	Clarification of clearing, suggest “within the APZ” to be added to point (ii)	N	“.....within the APZ” added to condition as per applicant's request.
6	2.2	Nominating material for reservoir	Y	Wording changed to require the water supply service reservoir to be constructed in accordance with the requirements of the Council

				(deletion of specific material).
7	2.4	Requirement for Water Cycle Management Strategy reports, the referencing of the CSIRO guidelines for WSUD to be deleted and the reference to "inter-allotment drainage" to be deleted.	Y	Wording changed to delete "inter-allotment drainage" reference and deletion of reference to the CSIRO document. The Council wanted to retain CSIRO reference however the Dept decided that it is sufficient to state "in accordance with other requirements of the Council". The Dept was also satisfied that this condition states that stormwater drainage be constructed in accordance with the approved plans and documents which reference the previously submitted reports. The Council did not comment on this aspect of their proposed condition.
8	2.5 & 5.25	Sewerage infrastructure – conflict between costs of installing infrastructure and being levied for it? Inconsistent with Condition No .25	Y	Condition No 2.5 reworded to state that sewerage infrastructure will be provided via a contribution as required by this consent following consultation with the Council and Condition No 5.25 reworded in accordance with Council requirements.
9	2.6	Is SEE for external sewerage works required given one has already been submitted?	Y	Wording changed to not require an SEE for external sewer works since an SEE has already been provided. The external sewerage works are to be provided in accordance with the approved plans and documents.
10	2.9	A number of road design elements included in the plans have not been included in this condition.	N	Wording changed to reference approved plans only and no specific references to facilities.
11	2.10 & 5.20	Road dedication for highway duplication – not raised previously with the applicant.	Y	Wording changed to state that dedication is not required at this point, however, all infrastructure is to be provided no closer than 5 metres to the Princes Highway so that dedication can be provided in the future. Condition No 5.20 has also been amended to remove the requirement for dedication of land in this respect.

12	2.11	Pedestrian path to school – is it to be provided to within school grounds or to the school buildings? We suggest to the school grounds.	Y	Wording changed to state that position of pathway to be in consultation with the Council and the Department of Education and Training following discussions with the Council.
13	2.14	Footpaths – only required on one side of Roads No 1 and 6	Y	Wording changed to require footpaths on one side of roads 1 and 6 only.
14	5.20	Road design – requirements inconsistent with Council development standards.	Y	Wording changed to refer to different Council standard/policy following consultation with the Council.
15	1.7(v)	All lots must be serviced, however, stage 1 (2 lots) only requires electricity and telecommunications.	N	Wording changed to state that stage 1 only needs electricity and telecommunications
16	1.7(iii)	This condition refers to construction of bus bays to be constructed ion stage 2 while it is considered that some of these will be constructed in stage 3.	N	Wording changed to require all public transport facilities (i.e. bus stops) to be constructed in Stage 3 of the subdivision.

8. RECOMMENDATION

It is recommended that the Minister for Planning:

- (A) Form the opinion, under Clause 6 of *State Environmental Planning Policy (State Significant Development) 2005* and Clause 8J(7) of the *Environmental Planning and Assessment Regulation 2000*, that the application is for development of a kind described in Schedule 2 Clause 1(1)(i) of that SEPP (being development for the purpose of subdivision in a rural/residential zone into more than 5 lots in the coastal zone);
- (B) Under section 80(1)(a) of the *Environmental Planning and Assessment Act 1979*, approve the development application for the reasons and subject to the conditions listed in **Appendix A**; and
- (C) Authorise the Department to carry out post-determination notification.

Prepared by:

Endorsed by

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Coastal Assessments – South Coast

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Director
Coastal & Urban Assessments

APPENDIX A. CONDITIONS OF APPROVAL

APPENDIX B. SITE PHOTOGRAPHS

APPENDIX C. ENVIRONMENTAL PLANNING INSTRUMENTS CONSIDERATION

The aims and objectives of the relevant environmental planning instruments and development control plans are assessed below in relation to this development application. It is generally considered that the application proposes development which is capable of satisfying the objectives of the environmental planning instruments and development control plans applicable to the site as outlined below.

1. State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71)

MATTERS	COMPLY	COMMENT
CLAUSE 2: AIMS OF POLICY		
(a) To protect and manage the natural, cultural, recreational and economic attributes of New South Wales coast and	YES	The proposal will not adversely affect the natural attributes of the NSW coast given the retention of large areas of vegetation.
(b) To protect and improve existing public access to and along coastal foreshores to the extent that it is compatible with the natural attributes of the coastal foreshore, and	YES	The proposed development does not affect pedestrian access along the foreshore and such access is improved in the general area as discussed in section 6.2.6 and 6.2.8 of the report.
(c) To ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and	YES	As above.
(d) To protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and	YES	An assessment of Aboriginal Heritage significance of the site was undertaken and is discussed in Section 6.2.12 of the report. The matters for consideration which have arisen from consultation with the BBLALC, consideration of the relevant archaeological reports and DEC's consideration of the Section 90 consent indicates the site has archaeological significance, rather than anthropological.
(e) To ensure that the visual amenity of the coast is protected, and	YES	It is acknowledged that the proposed development will not be visually prominent when viewed from foreshore and surrounding residential area, largely due to the topography of the site. The proposal involves retaining large areas of vegetation within an along the perimeter of the site and proposes single detached dwellings houses in the future on large blocks, set within landscaped areas of open space and roads planted with native species. The visual amenity of the area is unlikely to be adversely affected by the proposal. This is further discussed in Section 6.2.11 of the report.
(f) To protect and preserve beach environments and beach amenity, and	N/A	The proposed development is not located within the vicinity of the beach environment.

(g) To protect and preserve native coastal vegetation, and	YES	The proposed development involves the removal of coastal vegetation, however, large areas of vegetation are to be retained and is therefore satisfactory.
(h) To protect and preserve the marine environment of New South Wales, and	YES	There is no development proposed within the wetland portion of the site and the sewer and stormwater will be directed to the reticulated systems.
(i) To protect and preserve rock platforms, and	N/A	There are no rock platforms on or in the vicinity of the site which would be affected by the proposed development.
(j) To manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6(2) of the <i>Protection of the Environment Administration Act 1991</i>), and	YES	The proposal will be consistent with the relevant principles of ESD and is further discussed in Section 6.2.17 of the report.
(k) To ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and	YES	The scale and size of the proposed development is appropriate for the location as the development will not adversely affect the visual amenity of the locality particularly when viewed from the foreshore, is compatible with existing development in the locality and the proposed building envelopes are sited on the less constrained portions of the site.
(l) To encourage a strategic approach to coastal management.	YES	The proposal is consistent with some of the aims of SEPP 71 (see above) and therefore it is considered that the development represents a strategic approach to coastal management.
CLAUSE 8: MATTERS FOR CONSIDERATION		
(a) The aims of this Policy set out in clause 2	YES	See above
(b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved	YES	The proposed development does not change public access along the foreshore.
(c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability	YES	See above.
(d) The suitability of development given its type, location and design and its relationship with the surrounding area	YES	The proposed development is considered suitable for its location given the scale of the proposal is similar to the character of surrounding development and the proposal is located outside the highly constrained parts of the site.
(e) Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore	YES	The proposed development will not adversely affect the coastal foreshore due to the location of the site away from the foreshore.
(f) The scenic qualities of the New South Wales coast, and means to protect and improve these qualities	YES	In general, the proposed development will not adversely affect the visual amenity of the locality as discussed in Section 6.2.11 of the report.

(g) Measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act) and their habitats	YES	The proposed development will result in the retention of significant amounts of vegetation and accordingly will not have a significant impact on ecological values and corridors (further discussed in section 6.2.1 and 6.2.2 of the report).
(h) Measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act</i> 1994) and plants (within the meaning of that Act), and their habitats	N/A	The proposed development Will not adversely affect fish in the vicinity of the site.
(i) Existing wildlife corridors and the impact of development on these corridors	YES	The proposed development is unlikely to adversely affect existing wildlife corridors as the site is surrounded by existing development and major arterial roads (see Section 6.2.1 of the report).
(j) The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.	YES	The site is not affected by coastal processes.
(k) Measures to reduce the potential for conflict between land based and water based coastal activities.	N/A	There is unlikely to be any conflict between land based and water based coastal activities.
(l) Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals	YES	Refer to 2 (d) above. The matters for consideration which have arisen from consultation with the BBLALC, consideration of the relevant archaeological reports and DEC's consideration of the Section 90 consent indicates the site has archaeological significance, rather than anthropological.
(m) Likely impacts of development on the water quality of coastal water bodies	YES	There is unlikely to be any unacceptable impacts on the water quality of coastal water bodies given the proposed infrastructure to service the site will ensure minimal runoff from the site to nearby watercourses.
(n) The conservation and preservation of items of heritage, archaeological or historic significance	YES	Refer to 2 (d) above. The matters for consideration which have arisen from consultation with the BBLALC, consideration of the relevant archaeological reports and DEC's consideration of the Section 90 consent indicates the site has archaeological significance, rather than anthropological.
(o) Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities	N/A	The proposed development does not involve the preparation of an LEP.

(p) Only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	YES	These issues are further discussed in Section 6.2.17 and 6.2.20 of the report.
CLAUSE 14: PUBLIC ACCESS		
A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impending or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.	YES	The proposed development does not change existing public access to the foreshore.
CLAUSE 15: EFFLUENT DISPOSAL		
The consent authority must not consent to a DA to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, coastal creek or other similar body of water, rock platform.	YES	The proposed development will be connected to the existing reticulated system (further discussed in section 6.2.4 of the report).
CLAUSE 16: STORMWATER		
The consent authority must not consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	YES	The proposed development will drain to the gullies on the site where pollutants will be removed (further discussed in section 6.2.4 of the report).
CLAUSE 19: Consent Authority to consider Master Plan		
A consent authority must not determine a development application for development on land to which this Policy applies unless the consent authority has taken into consideration the provisions of a master plan adopted under this Part.	YES	The proposed development is generally consistent with the adopted master plan.

2. State Environmental Planning Policy No 14 – Coastal Wetlands

MATTERS	COMPLY	COMMENT
CLAUSE 2: AIMS, OBJECTIVES ETC		
The aim of this policy is to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State.	YES	There is a wetland protected under SEPP 14 – Coastal Wetlands, located adjoining the site to the east. The proposal will not adversely affect this wetland given there are vegetation reserves and buffer areas proposed along this elevation and there will be no adverse impacts from runoff from the site into this adjoining wetland. The proposal will also detain the majority of stormwater from the site and will treat this runoff in the proposed vegetation reserves, which is considered satisfactory by DEC.
CLAUSE 6: CONSENT AUTHORITY		
(1) The council of the local government area in which development described in clause 7 (1) (a), (b), (c) or (d) or 7A is proposed to be carried out shall be the consent authority having the function to determine a development application relating to that development.	N/A	The Council is not the consent authority.
(2) If development that requires consent under this Policy is State significant development, the consent authority is the Minister (as provided by the Act), and the concurrence of the Director is not required, despite anything to the contrary in this Policy.	YES	The Minister is the consent authority pursuant to SEPP 71.
CLAUSE 7: RESTRICTIONS ON DEVELOPMENT OF CERTAIN LAND		
(1) In respect of land to which this policy applies, a person shall not: a) clear that land; b) construct a levee on that land; c) drain that land; or d) fill that land. except with the consent of the council and the concurrence of the Director.	N/A	The development application does not seek consent from the Minister for any of these works.

3. State Environmental Planning Policy No 55 – Remediation of Land

The proposal was assessed under SEPP 55 in the consultants report on contamination, as discussed in Section 6.2.19 of the report.

4. State Environmental Planning Policy No 44 – Koala Habitat Protection

It is considered that the subject site does not contain koala habitat as outlined the Flora and Fauna Assessment and discussed in Section 6.2.1 of

this report.

5. State Environmental Planning Policy No 11 – Traffic Generating Developments

The proposal was referred to the Roads and Traffic Authority as the proposal involved development listed under Schedule 2 of this Policy. The RTA's comments are outlined in Section 5.2.3 of this report.

6. Lower South Coast Regional Environmental Plan No 2

MATTERS	COMPLY	COMMENTS
PART 1 PRELIMINARY		
2 AIMS, OBJECTIVES etc		
(1) The aims of this plan are:		
(a) to develop regional policies that protect the natural environment and promote the orderly and economic development and use of land and other resources in the region, consistent with conservation of natural and man-made features;	N/A	The proposed development does not involve the development of regional policies.
(b) to consolidate and amend various existing policies applying to the region, to make them more appropriate to regional needs, and to place them in the context of regional policy,	N/A	The proposed development does not involve the development of regional policies.
(c) to provide a basis for the coordination of activities related to growth in the region and to encourage optimum economic and social benefit to the local community and visitors to the region, and	N/A	The proposed development does not involve the development of regional policies.
(d) to establish a regional planning framework for identifying priorities for further investigation to be carried out by the Department of Planning and other agencies.	N/A	The proposed development does not involve the development of regional policies.
(2) The aims will be implemented in this plan by specifying:		
(a) objectives for the future planning, development and use of land within the region, and	N/A	Not relevant to the proposed development.
(b) regional policies to guide the preparation of local environmental plans and for development control.	N/A	Not relevant to the proposed development.
PART 2: THE ENVIRONMENT		
Division 2: Coastal and waterway environments		
11 Objectives		

The objectives of this plan in relation to coastal areas and waterways are:		
(a) to minimise changes to natural coastal processes resulting from development;	YES	The proposed development will not result in any changes to coastal processes as the site is not located adjoining the coastal foreshore and stormwater and sewerage will be adequately contained.
(b) to protect water quality,	YES	The proposed development will not result in any adverse impacts on water quality, including the waters of the Clyde River and the adjoining SEPP 14 wetland, as stormwater and sewerage will be adequately contained and relevant conditions of development consent have been recommended to ensure there will be minimal environmental impact during construction through stringent environmental site management controls.
(c) to minimise risks to people and property resulting from coastal processes,	YES	The proposed development will not result in any risks to people and property resulting from coastal processes as the site is not located adjoining the coastal foreshore.
(d) to maintain the visual quality of the coastal and waterway environments,	YES	The proposed development will result in minimal adverse impacts on the visual quality of the coastal and waterway environments as the site is not visible from the coastal foreshore and is largely located obscured from view of the existing residential development in the area.
(e) to provide for the appropriate recreational use of beaches, other coastal lands and waterways, and	N/A	The proposed development will not result in any changes to the existing recreational use of the beaches and waterways.
(f) to maintain or enhance public access to and use of beaches, other coastal attractions and waterways in appropriate locations.	N/A	The proposed development will not result in any changes to the existing public access arrangements to the beach due to it distance from the coast and the proposal being wholly contained in private property.
13 Policies for development control		
(1) In considering any application for development in coastal areas, the council shall take into account:		
(a) the "Coastline Management Manual" published by the New South Wales Government,	YES	The proposed development is not likely to be contrary to any of these provisions.
(b) the "South Coast Design Guidelines" issued by the Department of Planning,	YES	The proposed development is not likely to be contrary to any of these provisions.
(c) any other guidelines issued by the Department of Planning in relation to development in coastal areas,	YES	The proposed development has been assessed under the requirements of SEPP 71 (1.1), the NSW Coastal Policy 1997 (1.9) and the Coastal Design Guidelines (1.10).

(d) the "Estuarine Habitat Management Guidelines" or "Freshwater Habitat Management Guidelines" issued by NSW Fisheries, or both, and	N/A	The proposed development does not involve works in an Estuarine Habitat.
(e) the "Crown Lands Coastal Policy" issued by the Department of Conservation and Land Management, where relevant.	N/A	The proposed development does not involve Crown land.
(2) In considering any application for development, including land/water based development, on land in the vicinity of waterways, the council shall take into account:		
(a) whether the development will cause pollution or siltation of the waterway and measures to minimise any adverse impacts,	YES	The proposed development will not result in any adverse impacts on water quality, including the waters of the Clyde River, as stormwater and sewerage will be adequately contained and relevant conditions of development consent have been recommended to ensure there will be minimal environmental impact during construction through environmental site management controls.
(b) whether the development will have adverse effects on terrestrial or aquatic fauna, flora or their habitats,	YES	The proposed development will not adversely affect the habitat of any flora and fauna as the impact on the Glossy Black Cockatoo and the Yellow-bellied Glider is not considered to be significant (further discussed in section 6.2.1 and 6.23.2 of the report).
(c) the need to maintain or improve the water quality of the waterway,	YES	The water quality of the nearby waterway (Clyde River and adjoining SEPP 14 wetland) will not be adversely affected as set out in this assessment (stormwater, sewer and construction effects have been addressed).
(d) whether the development will have an adverse effect on drainage patterns or cause shoreline erosion,	YES	Due to the location of the site away from the coastal foreshore, the proposed development is unlikely to adversely affect drainage patterns or cause shoreline erosion.
(e) the appearance of the development from the waterway and its foreshores,	YES	The proposed development is not visible from the waterway or the foreshores and therefore will have minimal impact on the visual amenity of these areas.
(f) the desirability of requiring the dedication of appropriate land for open space or waterway access purposes for the purpose of ensuring public access to the waterway and its foreshores,	N/A	The site is not located adjoining the coastal foreshore and therefore dedication of land for public access to the foreshore is not required.
(g) whether the development will cause excessive congestion of, or generate conflicts between, people using the waterway or nearby land, and	YES	The proposed development will not result in any congestion with respect to people using the waterway and adjoining foreshores.

(h) The noise likely to be generated by the development and the effect that any such noise would have on existing beneficial uses of the waterway or nearby land.	YES	The proposed development will involve noise during construction of the subdivision. Whilst there is likely to be heavy earthmoving machinery on the site, this will be short term and given the distance to the waterway and coastal foreshore, such noise is unlikely to adversely affect the recreational use of these areas. Noise control measures have been recommended to be imposed on the development consent.
(3) An application for consent to carry out development for the purpose of heavy mineral sand mining on land comprising a beach or incipient dune shall be referred by the council to the Director of Planning for concurrence prior to the determination of the application.	N/A	The proposed development does not involve heavy mineral sand mining.
(4) In deciding whether to grant concurrence under this clause, the Director shall take into account the extent of previous and existing disturbances and modifications to the land and whether the development is likely to adversely affect any significant scientific, cultural or environmental aspects of the land and its environs.	YES	The site has been disturbed in the past through various processes including clearing, under scrubbing, bushfires, rubbish dumping and road construction. The proposed development is therefore unlikely to adversely affect any significant scientific, cultural or environmental aspects of the site.
PART 2: THE ENVIRONMENT		
Division 3: Environmental Hazards		
14 Objectives		
The objective of this plan in relation to environmental hazards is to encourage development on land that is free from flooding, coastal hazards, high bushfire risks, airborne pollution or other hazards.	YES	The proposed development is located on a site affected by bushfire hazard, however, the New South Wales Rural Fire Service, under the provisions of integrated development, has assessed the proposal and have issued a Bushfire Safety Authority for the proposed development (see Section 6.2.13 of the report).
PART 2: THE ENVIRONMENT		
Division 4: Heritage		
16 Objectives		
The objective of the plan in relation to heritage items is to protect, preserve and enhance heritage items and precincts of cultural or environmental significance to the community.	YES	The Archaeological assessment found that cultural significance on the site will be adequately protected (see section 6.2.12 of the report).
PART 3: RURAL LAND		
19 Objectives		

The objectives of this plan in relation to rural land are: a) to conserve better quality agricultural lands for the purposes of agriculture; b) to facilitate farm adjustments, c) to enable other forms of development associated with, or compatible with, rural activity in appropriate locations, and d) to minimise the cost to the community of fragmented and isolated development.	YES	The subject site is not considered to be quality agricultural land.
21 Policies for Development Control		
Councils, before granting consent to the development of rural land for purposes other than agriculture must, where the land is classified as Class 1, 2 or 3 on the maps marked "Agricultural Land Classification Map—Lower South Coast Region" copies of which are deposited in the office of the councils, be satisfied that the development will not significantly reduce the agricultural potential of the land or adjoining lands.	YES	The subject site is not considered to be quality agricultural land.
PART 4: NATURAL RESOURCES		
Division 4: Water Resources		
22 Objectives		
The objective of this plan in relation to water quality and water resources is to encourage the effective use and the protection of the quality of the region's water resources.	YES	The proposed development will not adversely affect the quality of water in the area or its availability (see discussions on stormwater and sewer disposal methods earlier in this report).
24 Policies for development control		
In considering a development application relating to land in the vicinity of surface or ground water supplies, the Council shall:		
(a) consider the impact the proposed development is likely to have on water quality and availability; and	YES	The proposed development will not adversely affect water quality in the vicinity as stormwater and sewer will be adequately addressed and the availability of water will not be affected.
(b) only consent to the application if satisfied adequate water quality and availability will be maintained if the proposed development is carried out.	YES	There will be no detrimental impact on the quality or availability of water (see above).
PART 7: REGIONAL SERVICES		
Division 2: Utility Services		
43 Objective		
The objective of this plan in relation to utility services is to facilitate the economic and orderly provision of utility services to new urban and residential areas.	YES	The proposed development provides for utility services such as drainage, sewer, electricity, telecommunications, roads and footpaths to ensure the economic and orderly provision of new residential land through this proposed subdivision.

7. Eurobodalla Rural Local Environmental Plan 1987

MATTERS	COMPLY	COMMENTS
PART 1 PRELIMINARY		
Clause 2 – Aims		
1) The overall aim of this plan is to further the objects of the <i>Environmental Planning and Assessment Act 1979</i>, that is: (a) to encourage: (i) the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns, and villages, for the purpose of promoting the social and economic welfare of the community and a better environment, (ii) the promotion and co-ordination of the orderly and economic use and development of land, (iii) the protection, provision and co-ordination of communication and utility services, (iv) the provision of land for public purposes, (v) the provision and co-ordination of community services and facilities, and (vi) the protection of the environment, (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.	YES	The current proposal allows the proper management, development and conservation of land through the design of the subdivision taking into consideration the site constraints, while the proposal represents an orderly and economic use of the land. Infrastructure and utility services have been provided for the proposal on the site and the environment is protected with the provision of the vegetation reserves and buffer zones. Opportunity has been provided for public involvement and participation throughout the assessment of this proposal (refer to Section 5.1 of this report).
Clause 3 – Objectives		
(1) The general objectives of this plan are: (a) to encourage orderly and proper development within the Shire of Eurobodalla; (b) to identify zones where particular classes of development are most likely to be appropriate, having regard to the environmental characteristics of the area, servicing and access requirements and constraints, and the characteristics of the development, (c) to optimise the use of existing services and infrastructure and promote the efficient provision of any services and infrastructure in future in accordance with the intensity and type of development proposed for the area,	YES	The proposal results in the orderly and economic use of the land and optimises the use of existing services and infrastructure by providing extensions to existing services, and being located close to the existing centre with pedestrian and cyclist linkages allowing access to nearby services.

(d) to ensure that provision is made for public amenities, public services and community facilities early in the process of development, (e) to ensure that no development on any land is likely to jeopardise the future orderly and economical development of the land or land in its vicinity, (f) to provide a broad, long-term framework of planning controls based on a strong emphasis on general, particular and zone specific statements of objectives and strategies in concert with development control plans giving expression to detailed planning provisions.		
(2) The particular objectives of this plan are: (a) in relation to <u>environmental protection</u>: (i) to protect coastal areas, estuaries, wetlands, rainforests and other environmentally sensitive areas from the effects of inappropriate use or development, (ii) to promote the retention of trees and tree cover and to conserve as far as practicable the existing pattern of vegetation to maintain landscape quality and remaining natural ecosystems, (iii) to conserve soil flora and fauna and significant natural features, (iv) to provide for the existing and potential functions of water courses and flood ways for domestic water supply, drainage, aquaculture, recreation and ecological purposes, (v) to control development to the catchment areas of the Buckenbowra, Deua and Tuross Rivers and Deep and Dromedary Creeks to protect water quality for domestic purposes, (vi) to maintain the overall scenic beauty of the rural areas of the Shire of Eurobodalla and protect significant views from public roads, reserves and waterways, (vii) to maintain air quality and avoid noise pollution, having regard to the nature and extent of the effects and the sensitivity of affected people or things, (viii) to ensure that development or activity in one zone does of adversely affect environmentally sensitive land in adjacent zones, (b) in relation to <u>rural land management</u>: (i) to minimise risks to life and property from flooding, bushfires or geological hazard, (ii) to protect and conserve agricultural land and to encourage continuing agricultural land use, (iii) to provide for use and management of the Shire of Eurobodalla's extractive and forestry resources to meet community needs while	YES	<u>Environmental Protection</u> The proposal promotes the retention of trees and tree cover and other significant natural features on the site by providing the vegetation reserves, visual buffer zones and retaining hollow-bearing trees on the site. While the gullies on the site do not possess "water courses" under the RFI Act, the gullies allow for the treatment of stormwater prior to discharge into these natural drainage lines. The overall scenic beauty of the rural areas is not adversely affected by the proposal, particularly from the foreshore since the site is obscured by topography. <u>Rural Land Management</u> The site is affected by bushfire hazard and a small area is also affected by flooding, however, these site constraints have been adequately mitigated by the proposal (further discussed in section 6.2 of the report). The site is not considered to be agricultural land and is not used for extractive or forestry related industries. The proposal includes the construction of local access roads and services and provides proximity to the town centre for other services. <u>Heritage Conservation</u> Items of heritage have been adequately conserved on the site under the proposal (see Section 6.2.12 of the report). <u>Transport</u>

minimising adverse environmental and social impacts, (iv) to minimise the need for urban services and works in the non-urban area, including road works, (v) to encourage community services and facilities for residents of non-urban areas to be located in existing villages and towns, (c) in relation to <u>heritage conservation</u>—to conserve and enhance items, structures, and places of natural, historic, scientific or cultural significance, including Aboriginal relics and places, (d) in relation to <u>transport</u>: (i) to encourage the provision of a balanced transport system including safe and convenient facilities for pedestrians, cyclists, public transport users and road users generally, (ii) to encourage the development of transportation networks and systems in a manner integrated with land use, including a hierarchy of roads to service varying transport functions, (iii) to promote provision of roads in non-urban areas that are compatible with the nature and intensity of development and the character of the area, (iv) to ensure that provision of roads supports and facilitates the desired pattern of development as indicated on the map, (v) to ensure adequate reservation of land for roads and access in new developments, (vi) to minimise conflicts between the transport function of roads and the access needs of adjoining land, (vii) to protect visual amenity for road users, and (viii) to require adequate off-street parking to meet demand generated by redevelopment or new development, (e) in relation to <u>recreation and tourism</u>: (i) to promote the development of a range of recreational opportunities and facilities to meet the needs of various ages and interests at the neighbourhood, local and regional levels, (ii) to provide for multiple use of public buildings and facilities, (iii) to promote the provision of land for neighbourhood recreational use in or adjacent to residential areas and for local recreational use in reasonable proximity to residential areas, (iv) to encourage tourist accommodation primarily in urban areas, (v) to provide for tourist-related facilities and associated accommodation in non-urban areas where such facilities are related to and in harmony with the character of the area,		The proposal provides an internal road system, access points to the Kings Highway, pedestrian and cyclist facilities and public transport for the site, which are further discussed in Section 6.2.6, 6.2.7, 6.2.8 and 6.2.9 of the report. <u>Recreation and Tourism</u> The proposal provides easy access to nearby recreational facilities through the provision of pedestrian and cyclist linkages and proximity to the town centre and foreshore of the Clyde River (as discussed above on “Transport”). <u>Housing</u> The proposal provides a variety of lot sizes which will encourage a range of housing opportunities to meet the needs of the community for a choice of dwelling size, type, tenure, cost and location, all serviced. <u>Industry and Commerce</u> The proposal does not involve commercial or industrial development.
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(vi) to protect the quality, accessibility and attractiveness of the Shire's natural recreational resources consistent with their environmental characteristics and sensitivity, (f) in relation to housing—to encourage a range of housing opportunities to meet the needs of the community for a choice of dwelling size, type, tenure, cost and location, where essential public services are available or can be provided efficiently and economically to the standard required by the nature of the development, (g) in relation to industry and commerce:		
PART 2 GENERAL RESTRICTIONS ON DEVELOPMENT OF LAND		
Clause 10 – Zones indicated on the Map		
Zones on the map	YES	Zone No 1 (c) (Rural Small Holdings Zone) and Zone No 5 (c) (Proposed Arterial Road Zone).
Clause 11 – Zone Objectives and Development Control Table		
The objectives of this zone are: (a) to provide opportunities for small scale agricultural activity, (b) to provide residential opportunities while retaining the scenic quality and overall character of the land and the environmental quality of any adjoining waterways, wetlands, rainforest or other environmentally sensitive areas, (c) to ensure that environmental impacts of development and the impact of development on land or activity in surrounding zones are fully considered in advance of any significant development, (d) to ensure that development is compatible in scale and density with the level of essential public services and facilities to be provided, (e) to permit a variety of uses where these are compatible with small scale rural activity or require a location outside urban areas or villages, and (f) to permit the provision, expansion or maintenance of utility services within this zone.	YES	The proposal provides residential opportunities while retaining the scenic quality and overall character of the land and the environmental quality of adjoining waterways. The proposal also ensures that environmental impacts of development have been mitigated through designing the lot layout having regard to the site constraints. It is also considered that the proposal is compatible in scale and density with the level of essential public services and facilities to be provided, and provides adequate utility services for the site.
PART 3 SPECIAL PROVISIONS		
Clause 12 – Subdivision Generally		
The land to which this plan applies shall not be subdivided, except with the consent of the Council.	YES	This proposal seeks consent for subdivision.
Clause 17 – Subdivision of land within Zone No 1 (c)		
(1) This clause applies to land within Zone No 1 (c). (2) Before determining a development application for the subdivision of land to which this clause applies, the Council shall examine:	YES	The proposal has been designed having regard to the risk of bushfires and flooding as well as topography which has resulted in the proposed siting of the building envelopes for

a) the consequences of carrying out that development on the pattern of land use within the zone, b) the topography of the land with regard to: (i) the siting of dwelling-houses, and (II) the relationship of those dwelling-houses to one another and the topography of the land, c) the risk of bushfires, d) the risk of flooding, and e) the likely impact of the proposed development on any wetland, waterway, forest or significant natural or cultural environmental feature or values. (3) The Council shall not consent to the subdivision of land to which this clause applies unless it is satisfied that each lot to be created by the subdivision will have an adequate area, having regard to: a) the means available to provide water reticulation, and if unavailable, the capacity of the land to provide an adequate domestic water supply, including a fire fighting capacity, b) the ability of the land to accommodate septic disposal of household waste, c) the standard and capacity of public roads serving the land relative to the likely volume of traffic to be generated as a consequence of development within the subdivision, and the means available to improve roads to a standard appropriate to the level of traffic likely to be generated, d) the availability of other utility services and social services relative to the likely demand for those services and the cost of their provision, e) the nature and topography of the land as related to the density of subdivision, f) the desirability of maintaining a low density of development in the primary catchments of wetlands or other areas where intensive subdivision may create a significant risk of soil erosion or pollution of the environment, g) the desirability of providing a range and mix of allotment sizes, h) the need to maintain a semi-rural character in the area, i) the purpose for which the land is proposed to be used after subdivision, and j) any other matter identified by the Council consistent with the objectives of this plan.		the site. The proposal also fits with the scale and pattern of existing development on the area. The proposal involves adequate services, the internal road layout is satisfactory and the density of the development is acceptable for the site. The proposal provides a range and mix of allotment sizes and maintains a semi-rural character in the area.
Clause 24 – Development on Major Roads		

(1) In this clause, major road means any main road or arterial road or any other road which in the opinion of the Council carries or is likely to carry a significant volume of vehicular traffic. (2) This clause applies to land: a) having a frontage to a major road, b) which relies on a major road for sole direct means of access, or c) which has direct access to another road at a point less than 90 metres from the road's junction with a major road. (3) The Council shall not consent to development on land to which this clause applies unless it is satisfied that: a) the development, by its nature, intensity or the volume and type of traffic likely to be generated, is unlikely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the major road, b) the development is of a type, whether or not related to the characteristics of the land on which it is proposed to be carried out, that justifies a location in proximity to a major road, c) the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the major road are not impeded, d) the development will not prejudice future improvements or realignment to a major road as may be indicated to the Council from time to time by the Commissioner for Main Roads, or any associated intention to declare part of a road as a State highway or freeway, within the meaning of the State Roads Act 1986, e) the development will not prejudice future improvements or realignment to a major road, particularly with regard to the number of access points to main roads, and f) the views of the local traffic committee or Regional Advisory Committee (as appropriate) have been obtained and considered by the Council.	YES	The Princes and Kings Highway are defined as arterial roads and therefore this clause applies to the current proposal. The proposed development is unlikely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the major road, given there are two access points only to this main road which are acceptable to the RTA. The proposal is considered to be of a sufficient size to justify the location in proximity to this major road. The location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the major road are not impeded. The proposed development will not prejudice future improvements or realignment to a major road following advice from the RTA that the section of the site designated for widening is no longer required. The Council and RTA do not object to the proposed development.
Clause 25 – Heritage Objectives		
The objectives of this plan in relation to heritage are: a) to conserve the environmental heritage of Eurobodalla Shire, b) to conserve the heritage significance of existing significant fabric, relics, settings and views associated with the heritage significance of heritage items and heritage conservation areas, c) to ensure that archaeological sites and places of Aboriginal heritage significance are conserved, and	YES	Discussed in Section 6.2.12 of the report.

d) to ensure that the heritage conservation areas throughout Eurobodalla Shire retain their heritage significance.		
Clause 26 – Protection of Heritage Items and Heritage Conservation Areas		
(1) When is consent required? The following development may be carried out only with development consent: a) demolishing or moving a heritage item or a building, work, relic, tree or place within a heritage conservation area; b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area by making structural or non-structural changes to its exterior, such as to its detail, fabric, finish or appearance, c) altering a heritage item by making structural changes to its interior, d) disturbing or excavating a place of Aboriginal heritage significance or an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed, e) moving the whole or a part of a heritage item, f) erecting a building on, or subdividing, land on which a heritage item is located or which is within a heritage conservation area. (2) What exceptions are there? Development consent is not required by this clause if: a) in the opinion of the consent authority: (i) the proposed development is of a minor nature or consists of maintenance of the heritage item or of a building, work, archaeological site, tree or place within a heritage conservation area, and (ii) the proposed development would not adversely affect the significance of the heritage item or heritage conservation area, and b) the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development will comply with this subclause and that development consent is not otherwise required by this plan. (3) (4) What must be included in assessing a development application? Before granting a consent required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item	YES	Discussed in Section 6.2.12 of the report.

or heritage conservation area concerned. (5) What extra documentation is needed? The assessment must include consideration of a heritage impact statement that addresses at least the following issues (but is not to be limited to assessment of those issues, if the heritage significance concerned involves other issues). The consent authority may also decline to grant such a consent until it has considered a conservation management plan, if it considers the development proposed should be assessed with regard to such a plan. (6) The minimum number of issues that must be addressed by the heritage impact statement are: a) for development that would affect a heritage item: (i) the heritage significance of the item as part of the environmental heritage of Eurobodalla Shire, and (ii) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and (iii) the measures proposed to conserve the heritage significance of the item and its setting, and (iv) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and (v) the extent to which the carrying out of the proposed development would affect the form of any historic subdivision, and b) for development that would be carried out in a heritage conservation area: (i) the heritage significance of the heritage conservation area and the contribution which any building, work, relic, tree or place affected by the proposed development makes to this heritage significance, and (ii) the impact that the proposed development would have on the heritage significance of the heritage conservation area, and (iii) the compatibility of any proposed development with nearby original buildings and the character of the heritage conservation area, taking into account the size, form, scale, orientation, setbacks, materials and detailing of the proposed development, and (iv) the measures proposed to conserve the significance of the heritage conservation area and its setting, and		
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(v) whether any landscape or horticultural features would be affected by the proposed development, and (vi) whether any archaeological site or potential archaeological site would be affected by the proposed development, and (vii) the extent to which the carrying out of the proposed development in accordance with the consent would affect any historic subdivision pattern, and (viii) the issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.		
Clause 28A – Development affecting places or sites of known or potential Aboriginal heritage significance		
Before granting consent for development that is likely to have an impact on a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, the consent authority must: a) consider a heritage impact statement explaining how the proposed development would affect the conservation of the place or site and any relic known or reasonably likely to be located at the place or site, and b) except where the proposed development is integrated development, notify the local Aboriginal communities (in such way as it thinks appropriate) and the Director-General of National Parks and Wildlife of its intention to do so and take into consideration any comments received in response within 28 days after the relevant notice is sent.	YES	Discussed in Section 6.2.12 of the report.
Clause 28B – Development affecting known or potential archaeological sites of relics of non-Aboriginal heritage significance		
(1) Before granting consent for development that will be carried out on an archaeological site or a potential archaeological site of a relic that has non-Aboriginal heritage significance (whether or not it is, or has the potential to be, also the site of a relic of Aboriginal heritage significance), the consent authority must: a) consider a heritage impact statement explaining how the proposed development will affect the conservation of the site and any relic known or reasonably likely to be located at the site, and b) notify the Heritage Council of its intention to do so and take into consideration any comments received in response within 28 days after the notice is sent. (2) This clause does not apply if the proposed development:	YES	Discussed in Section 6.2.12 of the report.

a) does not involve disturbance of below-ground deposits and the consent authority is of the opinion that the heritage significance of any above-ground relics would not be adversely affected by the proposed development, or		
b) is integrated development.		

8. Development Control Plan No 165 – Rural Small Holdings

MATTERS	COMPLY	COMMENTS
Clause 3 – Land to which the Plan applies		
Plan applies to land marked on the map.	YES	The subject site is included in the map marked "DCP 165".
Clause 7 – Statement of Objectives		
The objectives of this Plan are:- a) To identify development constraints applying to the land; b) To locate development areas taking into account constraints of the land; c) To ensure that rural residential development is adequately buffered from the Princes Highway and the Kings highway (MR51); d) To determine access and services required for the proposed development of the land; e) To ensure that adequate erosion and sediment controls apply to the land and that development will not adversely affect the Cullendulla and Surfside wetlands on the east side of the Princes Highway; f) To limit access to arterial roads in the area to prevent ribbon development, indicate a proposed realignment of MR51 and provide for long term transport safety and efficiency in the area; g) To provide guidelines for removal of trees from the land.	YES	The proposed development satisfies these objectives as the proposal identifies constraints and locates development in relation to such constraints (including slope, bushfire and vegetation retention) and provides access in accordance with the RTA and Council requirements. Relevant conditions of development consent have been recommended in Appendix A in relation to erosion and sediment control and limiting access to the approved access points.
Clause 10 – Land uses, subdivision and dwelling-house performance standards		
Clause 10.1 – Land Uses		
The land is most suitable for rural residential use.	YES	The proposal involves rural residential subdivision development of the site.
Clause 10.2 – Lot sizes and Performance Criteria		
Lot design should have regard to the natural features and hazards of the land, the rural character proposed for development and the level of services proposed to be provided.	YES	The proposed lots have been sited having regard to the site constraints including slope, vegetation retention, access, bushfire and visual amenity. The rural character of the site is retained given the large lot sizes, particularly in the northern

		portion and the level of services to be provided is acceptable to Council and adequate for the level of development proposed.
Lot sizes over 2 hectares (20,000m ²) would be generally suitable for the DCP area with smaller lots possible where reticulated water supply was provided. However, larger lots sizes may be required in areas where:- a) Steep landform and the risk of landslip or erosion was evident; b) Buffer areas were required due to proximity of non-residential uses, roads, bushfire prone areas or sensitive wetlands, forest or stream catchments.	NO	The proposed lot sizes range from 2500m ² to 31,811m ² with the average lot size being 5000m ² . While this area is below the recommended minimum area under the DCP, it is considered that given the proximity to the town centre and the servicing of the lots with reticulated services, these lot sizes are acceptable. Furthermore, the majority of small lots are located in the southern portion of the site, which is less constrained than the northern portion and located closer to the centre of Batemans Bay.
Generally no development or land clearing should occur on slopes equal to or greater than 25%.	YES	Generally, there is no clearing on slopes greater than 35%.
A development envelope should be nominated for each proposed lot suitable for building and accommodation of ancillary development and accessible to an access road. The development envelope should generally be approximately 600m ² or greater in area and of a natural slope of 15% or less.	YES	The proposal nominates building envelopes which are 400m ² in area, which will accommodate the dwelling and outbuildings. These envelopes are generally located on land less than 25% slope and away from the vegetation reserves and buffer zones. This is considered to be satisfactory for the subject site.
The nominated building envelope described above must be on flood free land and must be reasonably and safely accessible to an access road.	YES	The building envelopes are located above the 1 in 100 year flood line.
No driveway or right-of-way within the lot may exceed grades of 17% with a maximum permissible grade of 10% being used adjacent to intersections with access roads to the land.	YES	The majority of access ways are located on land less than 175 slope.
Clause 10.3 – Dwelling – Houses, Dual Occupancies and Other buildings		
a) Setbacks – 10m front b) Car parking – 2 spaces c) Height – 9m	N/A	To be assessed in DAs for individual dwelling houses, however, the built form controls discussed in section 6.2.14 of the report are generally compliance with these controls.
Clause 11 – Realignment of Main Road 51 (Kings Highway)		
Realignment of this road is required as indicated on the map. Any application for subdivision or development on the land must take this realignment into account.	YES	The RTA has advised that this section of the site is no longer required for realignment purposes.
Clause 12 – Access		
Clause 12.1 – External Access		
Generally, no direct access to main road MR51 or Princes Highway will be permitted. Any new lots created and where practicable all existing lots should have access to roads within the DCP area. Recommended	YES	This issue is discussed in Section 6.2.7 of the report.

access points shown on map.		
A 15 metre buffer will generally be required along any lot frontage with the Princes Highway and MR51.	YES	This issue is discussed in Section 6.2.11 of the report as this setback is provided in the visual buffer.
Clause 12.2 – Internal Roads		
All internal roads to be dedicated as public roads are to be sealed and constructed at the developers expense and designed to comply with the requirements of Council. Refer Development Manual No 1 – Subdivision Guidelines. The standard of internal private roads will be determined at the time of consideration of any subdivision application.	YES	This issue is discussed in Section 6.2.7 of the report.
Clause 13 – Services		
a) <u>Electricity</u> – shall be provided to all allotments in accordance with requirements if supplier. b) <u>Water supply</u> – shall be provided on site to satisfaction of Council and shall include sufficient reserve for fire fighting. Reticulated water may be provided by developer providing a connection to Council mains. A peak elevation of about RL 50 metres could be service from connection with need for reservoir. c) <u>Dams</u> – n/a d) <u>Effluent disposal</u> – to be disposed of on-site. e) <u>Drainage</u> - detailed drainage calculations by a practising and suitably experienced Civil Engineer should be provided prior to endorsement of any plan of subdivision. Such information to show impact of storm flows or location of proposed development envelopes and roads.	YES	This issue is discussed in Section 6.2.1 to 6.2.5 of the report.
Clause 14 – Tree Preservation		
Trees shall not be removed on the area of the map shown as having slopes greater than 25% except where necessary for access to a dwelling. Trees should generally be retained on ridgetops, and on all buffer zones shown on the map.	YES	This issue is discussed in Section 6.2.1 and 6.2.2 of the report.
Clause 16 – Aboriginal Artefacts		
The NPWS shall, be consulted on appropriate measure to determine the likelihood of Aboriginal Artefacts occurring on the land. If an archaeological survey is deemed necessary by the NPWS, this shall be provided prior to the determination of a subdivision application on the land.	YES	This issue is discussed in Section 6.2.12 of the report.
Clause 17 –Fire Hazard		
The DCP area is considered to be subject to a high level of risk, of bushfire. Any subdivision application shall be subject to examination by	YES	This issue is discussed in Section 6.2.13 of the report.

Council's Fire Control Officer.		
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9. Coastal Design Guidelines of NSW, 2003

MATTERS	COMPLY	COMMENTS
Part 1 Determining a hierarchy of settlements		
Coastal Town	√	Batemans Bay is classified as a Coastal Town.
Part 2 Design principles for coastal settlements		
Defining the footprint and boundary	YES	The proposal continues the urban structure of existing development as although the area is predominantly rural in character with large areas of bushland, the existing town centre of Batemans Bay is located within 500 metres of the southern end of the site and the adjoining development to the site consists of residential detached housing.
Connecting open spaces	YES	Public access is enhanced by the proposal given the improvements in the locality and within the site (this is discussed further in Section 6.2.8 of the report.
Protecting then natural edges	YES	The natural edges are protected in the proposal as it involves the retention of large areas of natural vegetation within gullies and buffer zones
Reinforcing the street pattern	YES	A street pattern is established by the proposal (this is discussed further in section 6.2.7 of the report.
Appropriate buildings for a coastal context	YES	The proposal involves buildings which are of an appropriate scale for the site given the existing residential development and rural uses in the area being limited to 2 storeys.

10. NSW Coastal Policy, 1997

MATTERS	COMPLIANCE	COMMENTS
Protecting, rehabilitating and improving the natural environment of the coastal zone.	YES	The proposed development will not adversely affect the natural environment of the coastal zone (see 6.2.1 and 6.2.2 of the report).
Recognising and accommodating the natural processes of the coastal zone.	YES	The proposed development will not affect coastal processes given the distance from the coast.
Protecting and enhancing the aesthetic qualities of the coastal zone	YES	The proposed development will not adversely affect the visual amenity of the locality given the topographical setting

		of the site and the retention of existing vegetation along the edges of the site.
Protecting and conserving the cultural heritage of the coastal zone.	YES	The potential heritage and cultural significance of the site has been adequately assessed and will be conserved (see section 6.2.12 of the report).
Providing for ecologically sustainable development and use of resources.	YES	The proposed development does not involve a significant impact on threatened species or corridor values and provides for energy efficiency to be incorporated into the proposal in these ways, the proposal considered to be ecologically sustainable development (further discussed in section 6.2.1, 6.2.2 and 6.2.17 of the report).
Providing for ecologically sustainable human settlement in the coastal zone.	YES	See above.
Providing for appropriate public access and use.	YES	The development does not adversely affect public access or use of the coastal zone and provides further pedestrian and cyclist access in the vicinity of the site (further discussed in section 6.2.6 and 6.2.8 of the report).
Providing information to enable effective management of the coastal zone.	YES	The proposal adequately identified site constraints and has designed the allotment having regard to such constraints.

APPENDIX D. SUBMISSIONS SUMMARY

Issues addressed in Section 6.2 of the Planning Assessment Report

No	Date	Issues Raised	Main Issues
1	22/8/05	- Concerns that the proposal is not designated development under the Act, if it is not allowed under the Act it should not be allowed; - Corruption –property development in Australia is corrupt; - Traffic Generation – chaotic conditions currently on the highway when the Clyde River Bridge opens for water traffic – this situation will be exacerbated by the proposal.	Traffic generation – Clyde River Bridge
2	24/8/05	Traffic generation – major impact of this proposal and the 'Country Comfort' proposal on the major intersection of the Kings and Princes Highways	Traffic generation
3	3/9/05	- Concern that the decision already made; - Concern works already carried out – roads, batters, etc already constructed; - Traffic generation – highways are in urgent need of upgrades and there are bottlenecks already on these roads, the proposal will exacerbate these problems; - Concern over water supply given current water restrictions.	- Traffic generation - Water supply
4	20/2/05	- Concern works already carried out – roads, batters, etc already constructed; - Traffic generation – increased traffic using the Clyde River Bridge which may block emergency vehicles et; - Lack of infrastructure – the local services are already stretched i.e. sewerage system and water supply.	- Works carried out - Traffic generation - Infrastructure provision
5	8/9/05	- Concerns over the destruction of flora and fauna habitat and more animals in other properties; - Clearing of vegetation will increase highway noise as well as more noise from an increase in residential properties within the development for properties on Clyde Road; 3 adjoining properties to objectors which will increase fencing costs; - Increase in domestic animals will interfere with amenity of their land; - Additional lighting will affect their amenity	- Impacts on flora and fauna - Noise - Increase in domestic animals
6	8/9/05	- Concerns over heavy traffic build up at the Kings and Princes Highway intersections under existing conditions, making it difficult to access this intersection from Old Punt road; - Concerns over infrastructure - the current system cannot handle the existing sewerage for the area and a water tank on every property is unlikely to be enough water for the development and there is limited water available.	- Traffic Generation; - Infrastructure provision – sewer and water supply.

APPENDIX E. PLANS OF THE SITE AND PROPOSED DEVELOPMENT

APPENDIX F. SUMMARY OF ARCHAEOLOGICAL REPORTS AND CONSULTATION IN RELATION TO CULTURAL HERITAGE

Summary of the Archaeological Reports and Consultation with DEC on Cultural Heritage

The potential impact of the proposal on cultural heritage was assessed in the “*Archaeological Survey*” prepared by Patricia Saunders of Archaeology Heritage Surveys dated October 2002 and June 2004 (“the Archaeological survey”). The Archaeological survey aimed to locate, record and assess any Aboriginal and European archaeological sites visible in the study area, to identify any areas of Aboriginal archaeological potential within the study area and to involve the Batemans Bay Local Aboriginal Land Council (“BBLALC”) in the site survey and assessment. The BBLALC participated in the surveying and required an Archaeological survey to be carried out.

An assessment of significance is carried out in relation to the site’s scientific/archaeological significance, significance to the Aboriginal community and the educational significance. The archaeological significance is considered in accordance with the site’s research potential, representativeness and rarity, while the educational significance is assessed in relation to whether it can provide information that will contribute significantly to wide understanding of Aboriginal history. Significance to the Aboriginal community considers the potential cultural, social, archaeological and/or sacred significance, which can only be assessed by the Aboriginal community (i.e. LALCs).

An initial walk-over of the site was carried out by the consultant and the BBLALC to determine whether there were any sites or areas of high archaeological sensitivity within the site and to identify any issues of concern to the BBLALC. In particular, focus was on areas where Aboriginal sites could be expected such as drainage lines and basal slopes near the principal creek lines along the eastern boundary of the site. Walking trails, vehicle tracks and other areas of ground disturbance (including the electricity easement) were inspected, however, it was considered further survey of the forested areas would not be carried out due to access constraints.

Areas of archaeological potential were also identified, which are described as areas where Aboriginal sites have the potential to occur, based on regional site location and local topography, but where the ground surface cannot be inspected due to vegetation cover or recent deposition.

The NSW National Parks and Wildlife Service Aboriginal Heritage Information Management System revealed 63 registered sites within the 20Km² area within the vicinity of the subject site, which includes the subject site. The sites comprised 32 middens, 24 open campsites, 4 isolated finds and two burial sites. No previously recorded Aboriginal sites were recorded on the subject site, but a scatter of two artefacts was recorded at the Clyde Road boundary (NPWS 58-4-659 & NPWS 58-4-660).

The potential for artefact scatters and isolated finds to be present on the site is considered to be high, while scatters are likely to be sparse but may be extensive and may be associated with small midden deposits. Artefact scatters and isolated finds are most likely to be found on spur crests and on level to gently sloping areas near watercourses. The potential for scarred trees and undisturbed archaeological sites was considered to be low by the Archaeological survey.

Aboriginal Archaeological Sites

The following Aboriginal archaeological sites were recorded on the site by the Archaeological survey:-

1. Aboriginal Sites

(a) Kings/Princes Highway 1 (KPH 1) – open artefact scatter (Site No: 58-4-0954)

KPH 1 is located in the southern corner of the site, adjoining proposed Road No 1 and consists of a sparse scatter of stone artefacts and small areas of surface shell midden located along a 350m x 2.5m section of vehicle track on a low, narrow ridgeline crest and south eastern slopes. KPH 1 is considered to be an extension of a previously recorded site on an adjoining site (NPWS 58-4-0149). Twenty eight artefacts were noted and comprised flaked pieces, flakes and a core as well as 3 small patches of surface middens. KPH 1 was assessed as having low archaeological significance at a local level as site content and context were typical of other artefact scatters recorded in the region and the sites did not represent a rare site type. The site is, however, culturally significant to the local Aboriginal community.

(b) Kings/Princes Highway 2 (KPH 2) – open artefact scatter (Site No: 58-4-0955)

KPH 2 is located adjoining the existing electricity easement in the middle portion of the site and consists of a single low density artefact scatter located in an area of approximately 100m x 30m on the vehicle and pedestrian trail in and adjoining the easement. The site is located on low gradient basal slopes of a ridgeline spur sloping down to the principal watercourse, at the eastern boundary of the site. Thirty stone artefacts were noted and comprised flakes, flaked pieces, blades and cores. KPH 2 was considered to be similar in content and context to numerous other artefact scatters recorded in the region and does not represent a rare site type, was considered to be within a highly disturbed site due to the easement and therefore is considered to have low archaeological significance. It is culturally significant to the local Aboriginal community.

(c) Kings/Princes Highway 3 (KPH 3) – open artefact scatter (Site No: 58-4-0956)

KPH 3 is located to the north of the drainage feature in the southern portion of the site and consists of a low density scatter of 14 stone artefacts located near the end of a narrow, level spur crest and on an upper slope between two steep-sided gullies. The artefacts were located in a 20m x 10m area on two adjacent vehicle tracks and consisted of flakes and flaked pieces. KPH 3 was considered to be similar in content and topographic location to many other sites recorded in the region and does not represent a rare site type and therefore is considered to have low archaeological significance. It is culturally significant to the local Aboriginal community.

(d) Kings/Princes Highway 4 (KPH 4) – isolated find (Site No: 58-4-1009)

KPH 4 is located in the southern portion of the site between the southern entry point and the southernmost drainage feature and consists of light grey flake located on a gravelly surface near the junction of two vehicle tracks on the crest of the main ridgeline. This find was not considered to be a rare artefact type or the use of an uncommon raw material, the site context is typical of numerous other sites recorded in the vicinity and therefore has very low archaeological significance. However, is considered culturally significant to the local Aboriginal community.

(e) Kings/Princes Highway 5 (KPH 5) – isolated find

KPH 5 is located adjoining the eastern boundary of the site near the SEPP 14 wetland and consists of a silcrete flaked piece located on a disused section of an old road

crossing and has been disturbed by highway construction. This find was not considered to be a rare artefact type or the use of an uncommon raw material, the site context is typical of numerous other sites recorded in the vicinity and therefore has very low archaeological significance. However, is considered culturally significant to the local Aboriginal community.

2. Areas of Aboriginal Archaeological Potential

Seven areas of Aboriginal archaeological potential were identified on the site (PADs 1 to 7), three of these areas were associated with KPH 1, KPH 2 and KPH 5 sites. The remaining areas are located on low gradient basal spur slopes in the vicinity of the watercourses along the western boundary of the site. The soil is shallow and the potential is for surface artefacts rather than subsurface archaeological deposits. The archaeological potential of spur crests leading off the main ridgelines has been significantly reduced by the electricity easement.

Recommendations of the Archaeological survey

The following recommendations were made following the initial archaeological survey:-

General

- *Disturbance of Aboriginal sites should be avoided wherever possible.*
- *Management decisions regarding Aboriginal sites should be made in consultation with the BBLALC and the NPWS Southern Cultural Heritage Unit.*
- *The developer is responsible for the management of Aboriginal sites impacted by development work associated with the subdivision.*
- *Purchases of individual blocks are responsible for the management of Aboriginal sites located in areas that will be impacted by any subsequent work they may undertake including house construction;*

Management of Aboriginal Sites on the subject site

- 1. Disturbance of the Aboriginal sites recorded in the development area be avoided where possible;*
- 2. Sites that will not be impacted by development be left undisturbed;*
- 3. Sites that will be impacted by development be salvaged by a representative of the BBLALC prior to commencement of development in that area if this remains the wish of the BBLALC. Salvage would require a Heritage Impact Permit from the Director-General of the NSW NPWS;*
- 4. If BBLALC does not wish to salvage sites to be impacted by development, a Heritage Impact Permit from the Director-General of the NSW NPWS be obtained prior to impact.*
- 5. A program of surface testing or of development monitoring be undertaken in any area of archaeological potential to be impacted by development. This would require a Preliminary Research permit from the Director-General of the NSW NPWS. If Aboriginal artefacts are found, a Heritage Impact Permit would then be required;*
- 6. If any previously undetected Aboriginal site or relic is uncovered or unearthed during development activity, work at that location cease immediately and advice on appropriate action be obtained from the NSDW NPWS, Southern Cultural Heritage Unit.*

Further Archaeological Survey

Following this initial archaeological survey, it was considered that the majority of the Aboriginal sites and areas of potential Aboriginal archaeological areas would be impacted by the proposed development. This impact was largely due to the construction of roads, services, allotments building envelopes and asset protection zones.

Accordingly, further archaeological surveying was undertaken and a further report, "*Archaeological Investigation of Six PADS*", was prepared by Patricia Saunders dated June 2004 which aimed to undertake a program of subsurface testing to determine whether Aboriginal artefacts were present in PADS 2-7. This additional survey was prepared as the Southern Aboriginal Heritage Unit of the NSW Department of Environment and Conservation required a program of surface testing be carried out since PADS were to be impacted by the proposed development. This additional survey was undertaken in June 2004 in accordance with the DEC's Preliminary Research Permit No 1927. The BBLALC participated in this additional survey.

PAD Results of Further Archaeological Survey

A total of eight Aboriginal stone artefacts was recovered during the investigation, 3 from PAD 3, 1 from PAD 4, 3 from PAD 5 and 1 from PAD 6. A sparse localised occurrence of shell fragments (midden) was found on the surface of PAD 5. No artefacts were found in the test areas in PADS 2 or 7.

- (a) PAD 1 (Site No: 58-4-0954) - was investigated in March 2004 and 39 Aboriginal stone artefacts with surface midden were discovered.
- (b) PAD 2 - is situated on the low gradient basal slopes of a ridgeline spur between two intermittent drainage lines and is associated with KPH 5. No Aboriginal artefacts were recovered from the test areas in PAD 2.
- (c) PAD 3 (Site No: 58-4-1069) - is located on the low gradient basal slopes of a broad spur between two intermittent drainage lines and is associated with KPH 2 (scatter), which extends to at low density down the spur slope north of PAD 3. Three artefacts were recovered during this investigation from PAD 3 (all from test area 3 at the base of a spur approximately 70m from the creek adjoining the eastern boundary of the site), which includes KPH 2.
- (d) PAD 4 (Site No: 58-4-1070) - is located on the low gradient basal slopes of a ridgeline spur between two intermittent watercourses which join at the base of the spur and drain into the creek along the eastern boundary of the site. A single grey silcrete flake was recorded on the surface of an existing spoil heap beside a former logging track on low gradient basal spur slopes approximately 45m from the drainage line. No artefacts were found in test areas in the vicinity of the spoil heap or elsewhere in the PAD.
- (e) PAD 5 (Site No: 58-4-1071) - is located on a narrow spur crest and low gradient upper slopes terminating at the eastern boundary of the site above a low to moderate gradient descent to the creek in the east of the site adjoining existing properties along Clyde Road. Three stone artefacts were located on PAD 5 which included a quartz flake, a hammerstone and a volcanic flake. A sparse scatter of shell fragments (midden) was noted in the area adjoining a former plant nursery on adjoining land.

- (f) PAD 6 (Site No: 58-4-1072) - is located in a level to gently sloping area higher up the crest of the spur line on which PAD 5 is located, in the northern section of the site. Test area 1 within PAD 6 was found to be highly disturbed and appeared to be a former log dump site which greatly reduced the archaeological potential of approximately 25% of the PAD. A grey silcrete flake fragment was recovered.
- (g) PAD 7 - is located on the low gradient basal slopes of a spur between an intermittent drainage line and the upper reaches of a creek which rises in the site and flows south. The PAD is located near the junction of the drainage line and the creek. No artefacts were recovered from the test pots in PAD 7.

Management Recommendations of Further Archaeological Survey

The following management recommendations were made in relation to the additional survey:-

1. *An application for a Section 90 consent in respect of sites KPH 2 (NPWS Site No 58-4-0955/56), KPH 6, KPH 7 and KPH 8 and PADs 3, 4, 5 and 6 be submitted to the Manager, Southern Aboriginal Heritage Unit, NSW DEC prior to commencement of development in these areas. Work must not commence until consent has been issued.*
2. *No further action is required in respect of PADs 2 and 7.*
3. *prior to commencement of road construction within the subdivision, the developer consult BBLALC regarding their request to monitor roadwork's monitoring of development activity in areas outside registered Aboriginal sites and PADs is not a DEC requirement;*
4. *If any previously undetected Aboriginal site or relic is uncovered or unearthed during development activity, work at that location must cease immediately and advice on appropriate action be obtained from the Southern Aboriginal Heritage Unit of the NSW DEC.*

Summary and Section 90 Consent from DEC

The proposal is likely to require the removal of sites KPH 1, KPH 2, KPH 3, KPH 4, KPH 6, KPH 7, KPH 8 and PAD 1, PAD 3, PAD 4, PAD 5 and PAD 6. Accordingly, the applicant applied to DEC for Section 90 consent to destroy with salvage these items which were to be impacted by the proposed development. It was noted that KPH 5 was to be preserved on the site and that PAD 2 and PAD 7 did not contain any sites and therefore a permit was not required for these areas.

The DEC issued Section 90 consent on 12 January 2004 permitting the salvage of KPH 1/PAD 1, KPH 2/PAD 3, KPH 3, KPH 4, KPH 6/PAD 4, KPH 7/PAD 5 and KPH 8/PAD 6 from the site as they were likely to be impacted by the proposed development.

The BBLALC participated in the field survey and provided comments to DEC in relation to the Section 90 consent. In addition, the archaeological reports considers that the sites have low archaeological significance and are generally located within a highly disturbed environment given the construction of the electricity easement, the highway and the past logging operations on the site. The sites are also considered not be rare site types since there were numerous other examples in relation to site content and consent in the vicinity of the subject site.