



MODIFICATION REQUEST:

***Bay Ridge subdivision, Cnr Princes &
Kings Highway, Batemans Bay***

***MOD 2 – Request to Modify DA 172-7-
2005***

*Request to re-subdivide 6 approved allotments, to
create 11 allotments*

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

September 2012

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EXECUTIVE SUMMARY

This report provides an assessment of a request to modify DA 172-7-2005 under Section 75W (in accordance with the transitional provisions relating to the repealed Part 3A). DA172-7-2005 was approved on 7 December 2006 and consists of 142 rural residential lots.

The proposal relates to a relatively small area (Stage 2A), within the existing approved subdivision. It is proposed to re-subdivide 6 approved allotments to create 11 lots (an additional 5 lots). Two of the proposed lots (lots 269 and 270) will not meet the 1500m² minimum site area requirements of the Eurobodalla LEP 2011, having respective areas of 1,347m² and 1,474m².

The inability of Lots 269 and 270 to achieve the minimum lot size of 1,500m² is a consequence of them being bounded on three sides by roadway and effectively landlocked by approved Lot 213 (which has been sold and was not able to be included within the proposed modification). The proposal relies on the lot averaging provisions of clause 4.1E of Eurobodalla LEP 2011, in order to overcome the insufficient site area of Lots 269 and 270. The Department is satisfied that the smaller lots are suitable for future development and will not cause unreasonable environmental impact.

Under the existing approval, each lot has a defined building envelope within which future development must occur. It is not proposed to apply envelopes to the proposed new lots and instead the developable area / siting of dwellings will be determined by performance based environmental measures in accordance with the provisions of Eurobodalla's Residential Development Control Plan.

The requested modification was not publicly exhibited as it is likely to have little or no environmental impact in addition to that already taken into consideration as part of the assessment of the original development application. However, it was referred to Eurobodalla Council and the Department's southern regional office, neither of whom raised concern.

Under the instrument of delegation dated 14 September 2011 it is considered appropriate that the application be determined under delegation by the Director, Metropolitan and Regional Projects South.

It is recommended that the modification application be **approved, subject to conditions.**

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1. BACKGROUND

On 7 December 2006, the Minister approved DA172-7-2005 for the subdivision of two lots into 142 rural residential lots and the construction of services and infrastructure (see Figure 1).

The approved development included:

- Lot sizes ranging in size between 2,500m² and 31,811m²;
- Building envelopes generally 400m² in area, for each designated lot;
- Visual buffers 25m wide, along the Princess and Kings Highway boundaries of the site;
- Vegetation buffers generally comprising 40m retained vegetation on either side of the valleys containing intermittent watercourses on the site (approximately 80m in total width);
- The phasing of the development in 8 stages;
- Construction of an internal road and pedestrian/cycle network;
- Provision of potable water supply through the extension to the existing reticulated system;
- A low pressure sewerage system for collection and transportation to Council's treatment plant;
- A stormwater design solution involving the construction of detention basins and an inter-lot of drainage system discharging to natural galleys within the site; and
- Electricity and telecommunications infrastructure.

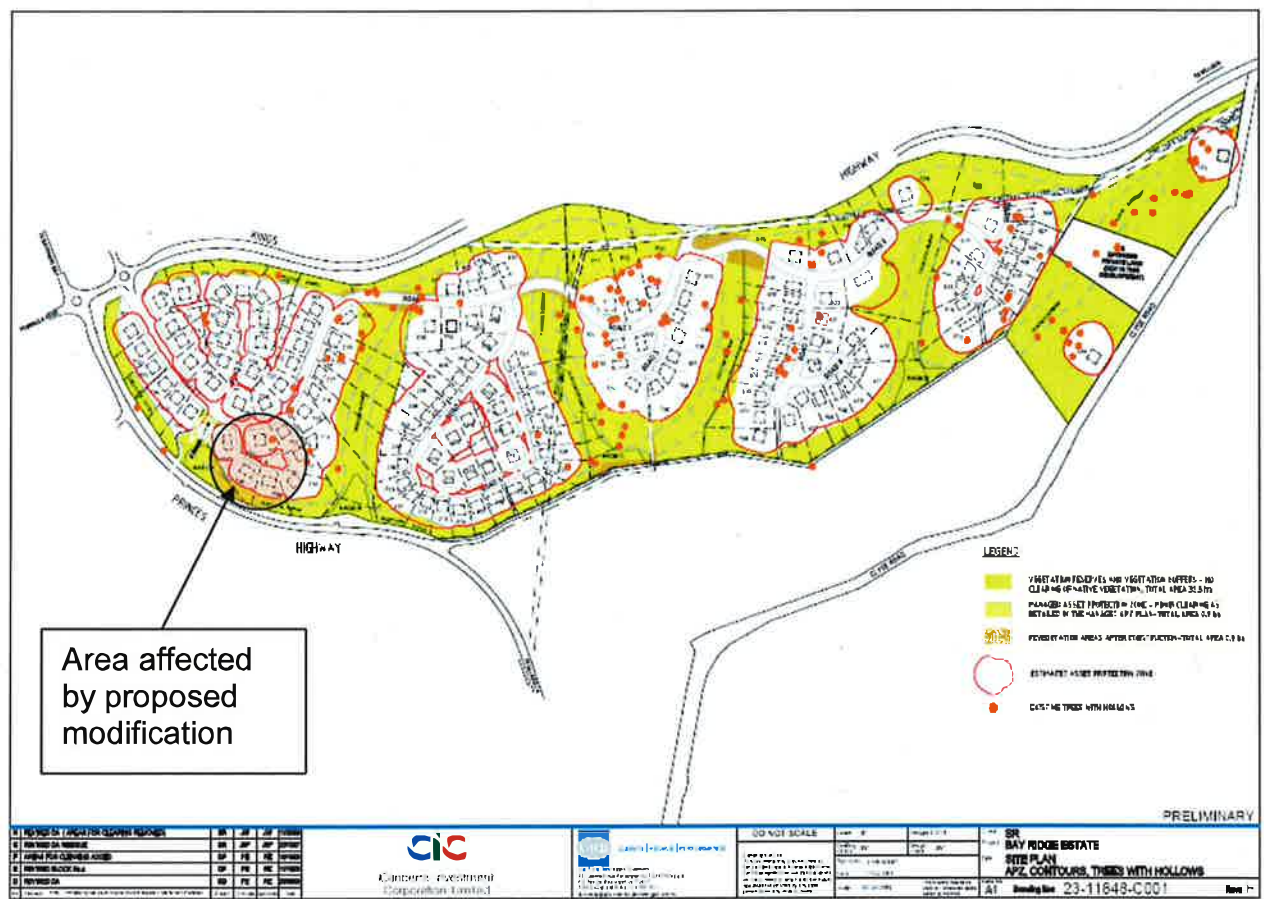


Figure 1 – Approved Subdivision Layout

New Eurobodalla Local Environmental Plan

On 20 July 2012, Eurobodalla LEP 2012 commenced and superseded Eurobodalla Rural Local Environmental Plan 1987. The zoning of the site has changed from *1(c) Small Rural Holdings* (with a minimum of site area of 5,000 m²) to *R5 Large Lot Residential* (with the minimum lot size of 1,500 m²). The change in zoning and the provision of a minimum lot size of 1,500 m², allowing for the creation of smaller lot sizes, was the catalyst for the current modification request.

Previous Modifications

On 25 June 2008, the Minister approved a request from CIC Australia to modify the existing consent. The approved modification includes the following:

- Changes to the staging;
- Realignment of part of Road 6 to reduce the extent of cut during construction;
- Enlargement of the drainage reserve to the south-eastern frontage of the Princes Highway; and
- Realignment of the lot boundaries relative to the drainage easements.

2. PROPOSED MODIFICATION

2.1 Modification Description

On 21 August 2012, CIC Australia lodged an application with the Department, seeking approval to modify their approval as follows:

- Re-subdivision of 6 approved allotments (**refer to figure 3 below**) (Lots 707, 708, 709, 17, 711, and 712) to create of 11 new allotments (lots 260, 261, 262, 263, 264, 265, 266, 267, 269, 270, 271, and 272 - a net increase of 5 allotments). The 11 new allotments range in area from 1,347 m² to 4,482 m². The number of approved allotments will increase from 142 to 147. The proposed new allotments will be known as Stage 2A1.
- The existing approved lots include designated building envelopes. Rather than create envelopes for each of the new lots it proposed that the developable area/siting of dwellings on each allotment should be determined by performance based environmental constraints, such as vegetation and slope, together with boundary setbacks, in accordance with the provisions of Eurobodalla's adopted Residential Zones Development Control Plan.

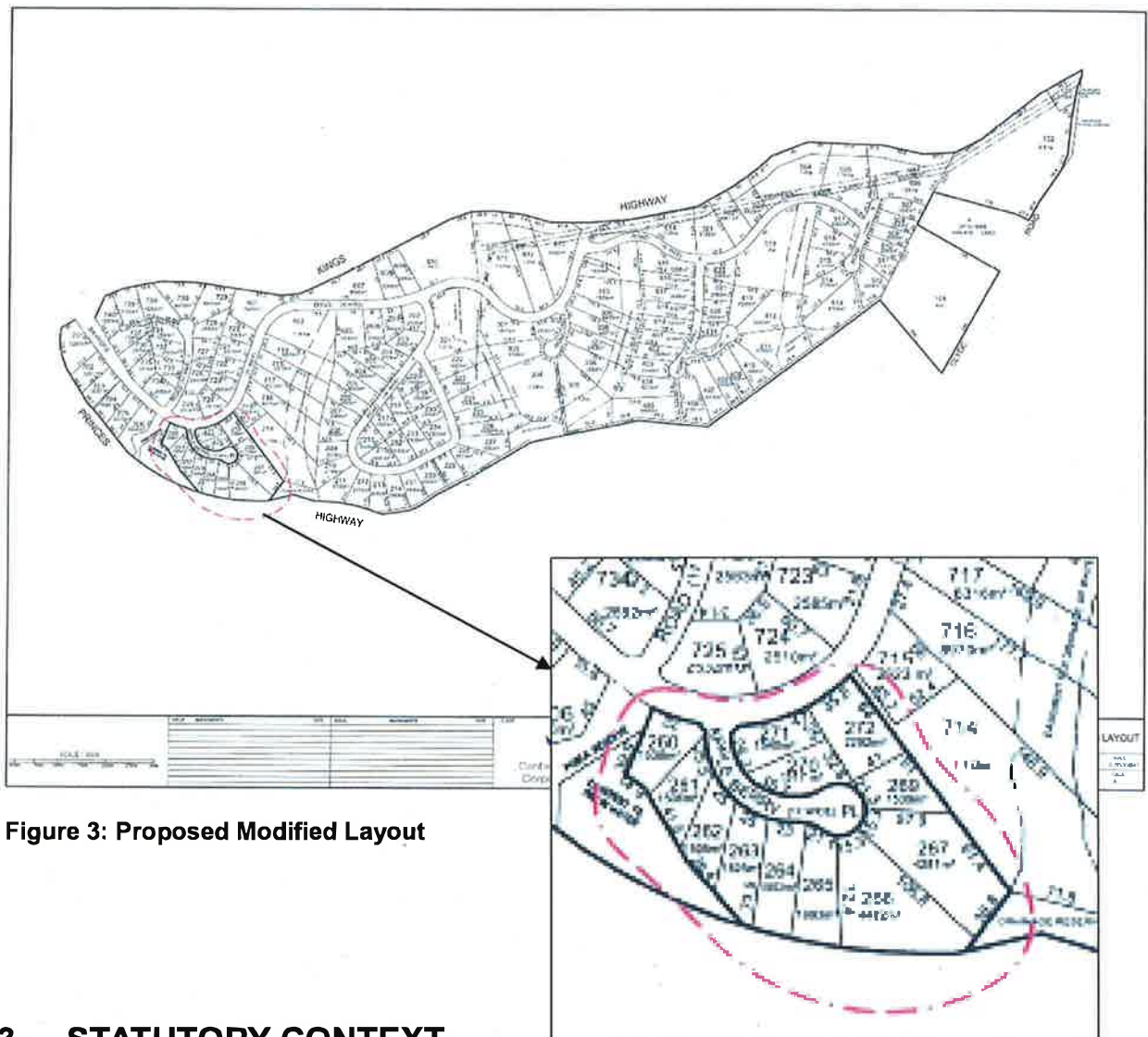


Figure 3: Proposed Modified Layout

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The modification application was lodged with the Director-General pursuant to the transitional provisions of Section 8J(8) of the EP & A Regulation. The application is to be assessed under Section 75W of the Act, which provides for the modification of a Minister's approval including *'revoking or varying a condition of the approval or imposing an additional condition of the approval'*.

The Minister's approval for a modification is not required if the project, as modified, would be consistent with the existing approval under this Part. In this instance, approval is required as it relates to a number of conditions imposed on the approval.

3.2 Delegated Authority

On 14 September 2011, the Minister delegated his powers and functions under Section 75W of the EP&A Act to the Director - Metropolitan and Regional Projects South, in cases where there are less than 10 public submissions, where Council does not object and where no political donations have been made.

No public submissions have been received, no objection has been raised by Council and the Proponent has confirmed they have not made any declarable political donations. Accordingly the A/Director, Metropolitan and Regional Projects South may determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

In accordance with Section 75X (2) (f) of the EP&A Act, the Director-General is required to make the modification request publicly available. The request was made available on the Department's website and referred to Eurobodalla Council and the Department's Southern Regional office.

4.2 Public Authority Submissions

Eurobodalla Council and the Department's Southern Regional Office raised no concerns and indicated that the proposed modification was consistent with the lot averaging subdivision provisions of CI4.1E of Eurobodalla LEP 2012.

5. ASSESSMENT

The Department considers the key issues for assessment to be:

- Consistency with the provisions of the recently adopted Eurobodalla LEP 2012;
- Capacity of the approved low pressure sewerage system; and
- Maintenance of the environmental outcomes as originally approved.

5.1 Consistency with the Eurobodalla LEP 2012

The site is zoned *R5 - Large Lot Residential* under the Eurobodalla LEP 2012 which requires a minimum site area of 1,500 m². Proposed lots 269 and 270 do not meet this requirement having areas of 1,347m² and 1,474m² respectively.

The proposal relies on the lot averaging provisions of clause 4.1E of Eurobodalla LEP 2011, in order to overcome the insufficient site area of lots 269 and 270. Clause 4.1E allows lots of any size to be created if the land to be subdivided would be used for residential purposes, the total number of lots resulting from the subdivision would not exceed the number of lots that would otherwise be created by subdivision of the same land strictly in accordance with the relevant minimum site area and the development would retain and be complimentary to the environmental attributes of the land and its surroundings. The proposed modification is consistent with these objectives as:

- the lots are proposed to be used for residential purposes;
- the environmental outcomes resulting from the original approval will not be altered as no further clearing is proposed, approved vegetation and visual buffers would be maintained and hollow trees and habitat for threatened species would still be conserved; and
- the total number of lots resulting from the subdivision will not exceed the number of lots that could be created by a subdivision of the same land in strict accordance

with the 1,500 m² minimum site area. The average lot size across the entire approved subdivision would be approximately 2,500 m².

It is not proposed to apply building envelopes to the lots, as occurred under the original approval. The siting of new dwellings/structures will be determined in accordance with the site planning provisions contained in Section 2.1 of the Eurobodalla Residential Zones Development Control Plan. This DCP has been designed to support the new LEP and it is appropriate that the envelopes for the proposed new smaller size lots comply with the relevant provisions.

5.2 The capacity of the approved Low Pressure Sewerage System (LPSS)

The modification request was accompanied by a statement by Pressure Sewer Solutions which indicates that the approved LPSS has capacity to deal with the additional 5 lots. Council has raised no concerns in relation to the capacity of the approved LPSS to service the minor intensification involved in the proposed re-subdivision.

5.3 Environmental Outcomes

The modification request was accompanied by a statement prepared by GHD, which indicates that the stormwater infrastructure constructed in Appleberry Place has capacity to service the additional 5 residential lots. Stormwater run-off from the proposed lots will follow the same flow path as for the lots created previously, with no significant change to run-off characteristics.

The approved vegetation buffers and visual buffers would be unaffected by the proposed modification. Other environmental outcomes, such as the preservation of native vegetation in accordance with the Native Vegetation Conservation Act 1997 (permit for limited clearing issued by DNR on 31 October 2006), in accordance with the original approval would remain unaffected by the proposed modification.

6. CONCLUSION AND RECOMMENDATIONS

The proposed modification involves the re-subdivision of 6 approved lots in Appleberry Place to create 11 new residential lots, resulting in an additional 5 residential lots. The proposed modification would result in 2 lots with the areas of 1,424m² and 1,347m², both of which are below the minimum site area of 1,500 m² provided for by Eurobodalla LEP 2012. However, the proposal is consistent with the lot averaging provisions of clause 4.1 E of Eurobodalla LEP 2012. Given that the average lot size across the entire subdivision would be approximately 2,500m², and the fact that the proposal satisfies the objective and other provisions of clause 4.1E, the proposal is considered to be satisfactory in this regard.

The Eurobodalla Residential Zones Development Control Plan has been designed to support Council's new LEP and it is appropriate that the siting of future dwellings on the proposed new lots comply with the relevant provisions of the plan.

The proposed modification is confined to a relatively small area of the approved subdivision, and would not alter the environmental outcomes of the original approval,

despite the minor intensification. The proposed modification is considered to be reasonable and acceptable, and is recommended for approval.

Prepared by:

 14/9/12
Robert Byrne
Senior Planner

I concur:

 14/9/12
David Rohloff
A/Team Leader

Approved by:

 14/9/12
Mark Schofield
A/Director

APPENDIX A MODIFICATION REQUEST

See the Department's website at www.planning@nsw.gov.au

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

MODIFICATION (MOD 2) OF DEVELOPMENT CONSENT (DA 172-7-2005)

**Lot 2 DP 865527 & Lot 10 DP 1015889
CNR PRINCES & KINGS HIGHWAY, BATEMANS BAY**

SUBDIVISION OF SITE INTO 142 RURAL RESIDENTIAL LOTS AND CONSTRUCTION OF ASSOCIATED SERVICES, INTERNAL ROADS AND INFRASTRUCTURE

I, Mark Schofield, A/Director, Metropolitan and Regional Projects South, as delegate of the Minister for Planning, under Instrument of Delegation dated 14 September 2011, pursuant to Section 75W of the *Environmental Planning & Assessment Act, 1979*, modify the development consent referred to in the attached Schedule 1 in the manner set out in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) To maintain the amenity of the local area;
- (2) To preserve the environmental attributes of the site; and
- (3) To ensure consistency with the provisions of Eurobodalla LEP 2012 and other relevant planning controls of Eurobodalla Council;



Mark Schofield
A/Director,
Metropolitan & Regional Projects South

Sydney,

14 / 9 / 2012

SCHEDULE 1

PART A—TABLE

Application Number:	MOD 2 modifying DA 172-7-2005
Application made by:	Canberra Investment Corporation Ltd
On land comprising:	Lot 2, DP865527 and Lot 10, DP1015889 Kings and Princes Highway, Batemans Bay
Local Government Area	Eurobodalla
For the carrying out of:	Subdivision of the site into 142 rural residential lots and construction of associated services, infrastructure and internal roads.
Section 75W Application	To modify DA 172-7-2005 in the following manner: • Re-subdivide 6 existing lots within Stage 2A, to create 11 new lots (5 additional lots). • Modification of the building envelopes of the 11 new lots so that the siting of future dwellings is in accordance with the site planning provisions contained in Section 2.1 of the Eurobodalla Residential Zones Development Control Plan.
Development consent granted by:	Minister for Planning
On:	6 December 2006
Type of development:	State Significant Development
S.119 Public inquiry held:	No
As modified:	Mod 1 (Mod 16-3-2007) approved 25 June 2008

PART B - NOTES RELATING TO THIS MODIFICATION

Responsibility for other approvals / agreements

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

Appeals

The Applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid, for a development application, within **12** months after the date on which the Applicant received this notice.

Appeals—Third Party

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

Legal notices

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

SCHEDULE 2

MODIFICATION (MOD 2) OF DA 172-7-2005

THE DEVELOPMENT CONSENT IS MODIFIED AS FOLLOWS:

1. GENERAL MATTERS

- (i) **DELETE Condition 1.1A Development Description** and
INSERT Condition 1.1B Development Description as follows:

1.1B Development Description

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

- a) Subdivision of Lot 2 in DP 865527 and Lot 10 DP 1015889 into 142 rural residential lots under Torrens title:-
- (i) Lot sizes – from 1,347m² to 31,811m²;
 - (ii) Building Envelopes – generally 400m² for each designated lot, with the exception of Lots 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, within stage 2A1, which will be designed in accordance with the site planning provisions contained in Section 2.1 of the Eurobodalla Residential Zones Development Control Plan;
 - (iii) Visual buffers – from 25 metres wide along the Princes and Kings Highway boundaries of the site;
 - (iv) Vegetation buffers – generally comprising 40 metres of retained vegetation on either side of the gullies containing intermittent watercourses on the site (approximately 80 metres total width);
 - (v) Phasing - to be constructed over 7 stages;
 - (vi) The construction of the Princes Highway pedestrian underpass is to be undertaken no later than Stage 3 of the development.
- b) Construction of an internal road and pedestrian/cycle network involving:-
- (i) Existing collector "spine" road running along upper north-south axis of the site known as Road No 1 and Road No 6;
 - (ii) Local access roads generally sited along the east-west ridges to the individual allotments 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 (cul-de-sac), and Road No 8 (cul-de-sac);
 - (iii) A southern access point at the existing roundabout intersection with Old Punt Road and a northern access point in a left in/left out intersection with the Kings Highway, approximately 1.5 Kilometres north of the Princes Highway intersection;
 - (iv) Pedestrian/cyclist refuges 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, and
 - (v) Fire trail along the eastern boundary of the site and at termination of Road No 6 towards Clyde Road.
- c) Construction and installation of the following services:-
- (i) Water supply – 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, including a reservoir and booster pump station;
- (ii) Sewerage – 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;
 - (iii) Stormwater – a water sensitive urban design system involving construction of detention Basins A, B and C and a street and inter-allotment drainage system discharging to the natural gullies;
 - (iv) Electricity – underground reticulation of high and low voltage electrical supply, street lights at both access points on the Kings Highway only in accordance with AS/NZ 1158.3 and AS 4282 and pad mount substations; and
 - (v) Telecommunications – telephone infrastructure to be provided from Old Punt Road intersection.
- d) Provision of Asset Protection Zones for individual allotments and adjoining the vegetation reserves and vegetation/visual buffer zones.
- e) Temporary Sales Office – the design and location of the Temporary Sales Office is to be in accordance with Council's requirements.

(ii) INSERT NEW Condition 1.2.1 after Condition 1.2A as follows:

1.2.1 Approved Modifying Plans and Supporting Documentation

The development shall be in accordance with the request to modify Development Application number DA 172-7-2005 submitted by the applicant to the Department on 21 August 2012 and in accordance with the following, except where amended by other conditions of this development consent:-

Planning Report prepared by David B Seymour of urPlan, dated August 2012			
Consultant Studies (contained in Appendices of the Planning Report);			
Document Title	Author	Ref No	Date
Appendix A - Pressure Sewerage System Increased Density in Apple Berry Place	Pressure Sewer Solutions Pty Ltd	-	28 May 2012
Appendix B - Stormwater Drainage for Additional Lots at Apple Berry Place	GHD	23/14123/67945	6 June 2012
Subdivision and Site Plans prepared by GHD			
Drawing No.	Revision	Name of Plan	Date
23-11848-C001	K	Site Plan – APZ, Contours, Trees with Hollows	6 August 2012
Subdivision Layout and Survey Plans prepared by Conway Burrows + Hancock Consulting Surveyors, Project No 10703			
Drawing No.	Revision	Name of Plan	Date
10703B-1A	A	Amended Subdivision Layout	30 July 2012
10703B-2A	A	Subdivision	30 July 2012

Services Plan prepared by GHD			
		Revision	Name of Plan
Drawing No.	23-11848-C200	I	Services Plan
			- Proposed
			Services
			Sheet 1 of 4
			6 August 2012
			Date
			Layout -
			Slope Analysis