



Department of  
**Infrastructure, Planning and Natural Resources**

**REPORT ON THE ASSESSMENT OF  
STAGE TWO OF THE MULTI-PURPOSE WHARF, AMMUNITIONING FACILITY  
AND COMMERCIAL EXPORT/IMPORT FACILITY DEVELOPMENT AND AN  
ASSESSMENT OF A MODIFICATION APPLICATION NO. MOD-99-9-2003-i  
PURSUANT TO SECTION 96(1A) OF THE ENVIRONMENTAL PLANNING AND  
ASSESSMENT ACT, 1979**

**PROPOSAL BY NSW WATERWAYS AUTHORITY TO  
MODIFY THE APPROVED MULTI-PURPOSE WHARF, AMMUNITIONING  
FACILITY AND COMMERCIAL FACILITY (DA 245-11-99) AND TO OBTAIN  
CONSENT FOR STAGE TWO OF THE DEVELOPMENT IN ACCORDANCE WITH  
CONDITION 6 OF THE MINISTER'S CONSENT**

**Department of Infrastructure, Planning and Natural Resources**

**August 2004**

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## 1. SUMMARY

On 1 September 2003, Waterways Authority (the Applicant) lodged an application under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the Act) to modify its development consent (DA-245-11-99), which was granted by the then Minister for Urban Affairs and Planning on 17 December 2000 for a joint proposal between the Department of Defence and NSW Waterways Authority. This approval granted consent for the construction and operation of a Multi-purpose Wharf, a Naval Ammunitioning Facility and the use of land for an export/import facility for commercial product, at Twofold Bay, Eden, in the Bega Valley local government area.

The proposed modification involves modifying the footprint of the commercial export/import facility. The Applicant states that this modification is required in order to avoid areas of vegetation that are of high ecological value.

The Department has considered the proposed modification, and has concluded that the development, as modified, would be substantially the same development as originally approved.

In conjunction with the modification application, the Applicant is also seeking the Minister's consent for the detailed design and operation of the facility (referred to as Stage Two) as required by condition 6 of the Minister's consent for the development.

The Minister's consent also required the Department to consult with relevant authorities prior to the Minister granting consent to Stage Two of these works. The Department consequently notified the Department of Environment and Conservation (DEC), Bega Valley Shire Council and the Natural Resources branch of the Department. The DEC and Council provided comments on Stage Two of the development, which have been considered in the Department's assessment of the proposal.

Due to the nature of this 'application' for Stage Two of the project, the Department is not required to undertake public exhibition and/or notification of the Stage Two application as normally required under the *Environmental Planning and Assessment Act 1979* (the Act).

The Department has assessed the proposed Section 96(1A) modification and the application for Stage Two of the development, and recommends that the Minister approve the proposed development and section 96(1A) modification, subject to conditions.

## 2. THE EXISTING SITUATION

On 17 December 2000, the then Minister for Urban Affairs and Planning approved a development application (DA 245-11-99) for the joint proposal between the Department of Defence and NSW Waterways Authority for the construction and operation of a Multi-purpose Wharf, a Naval Ammunitioning Facility and the use of land for a commercial export/import facility at Twofold Bay, Eden, in the Bega Valley local government area (refer to Figure 1a, tagged "D").

The approved development involves:

- construction and operation of a multi-purpose wharf and associated ancillary infrastructure at East Boyd Bay for naval and commercial export/import activities;
- construction and operation of a naval munitions storage depot comprising six explosives storehouses, a transit facility, administration buildings and other associated supporting infrastructure at Hut Forest Road, located some distance from the wharf;
- construction and operation of a commercial facility, located east of the wharf at the Edrom Road and Jetty Access Road intersection. This component covered only the footprint and conceptual use of this land, with the details of this component to be approved at a later stage (Stage Two) in accordance with condition 6 of the Minister's approval; and
- provision of supporting infrastructure, including road upgrades, electricity and security infrastructure.

The development involves a capital investment of \$43 million and would employ up to 20 employees during operation. As such, the Minister was the consent authority for the development in accordance with *State Environmental Planning Policy No.34 – Major Employment Generating Development* (SEPP 34). In addition, the Commonwealth Minister for Defence also granted development consent for the naval components of development, following advice from the Minister for the Environment and Heritage in accordance with the *Environmental Protection (Impact of*

Proposals) Act 1974. This approval was necessary and applied to multi-purpose wharf, ammunition depot and associated infrastructure components of the development due to its national interest and funding from the Commonwealth government.

The multi-purpose wharf and associated works were completed late last year, with naval operations commencing at the site in October 2003. The ammunition depot at Hut Forest Road is currently under construction.



Figure 1a: Site Regional Context

### **3. SITE CONTEXT**

#### **3.1 Stage One**

The approval granted by the Minister in 2000 enabled the construction and operation of the Multi-purpose wharf and the naval ammunition depot (refer to figure 1b). These elements have been discussed separately below.

#### **MULTI-PURPOSE WHARF**

The wharf, jetty and associated supporting infrastructure would be used for both naval and commercial export/import purposes. The wharf, located within East Boyd Bay, is accessed via Jetty Access Road (via Edrom Road) and is currently operational. The wharf would be used by Defence around 47 days per year on average, with capacity of up to some 70 days per year. Commercial operators would be able to use the wharf and jetty at other times.

#### **MUNITIONS DEPOT**

The depot, which is nearing completion, is located some distance from the wharf on Hut Forest Road, located to the south-west of the wharf and commercial export facility. The depot comprises of four truck holding bays, six explosives storehouses to store three naval ship fit-outs, a transit facility, an administration buildings, storehouses for non-explosives, a work shop and associated service infrastructure.

#### **3.2 Stage Two**

##### **SITE LOCATION**

The proposed Stage Two site is located on Lot 1 DP198217 and East Boyd State Forest No.127, located at the intersection of Edrom Road and Jetty Access Road (formally Edrom Lodge Road), at Kiah, in the Bega Valley local government area, as shown in Figure 1a.

##### **SITE DESCRIPTION**

The proposed development site comprises of approximately 10-12 hectares of land, and is located 400 metres inland from Fisheries Beach and southwest of Munganno Point. The site is situated on the upper and mid west facing slopes of the Jews Head ridgeline, with the site sloping to the south and west towards Fisheries Creek and Fisheries Beach (refer to Figure 1a).

With the exception of several trench garbage dumps, two cleared electrical easements and access tracks, the development site is currently covered in dense vegetation dominated by the Eden Dry Shrub Forest community.

The site has been disturbed in the past by various activities, namely the use of the site as a pine plantation in the 1920's which would have involved extensive ground surface disturbance, the clearance of native vegetation, the establishment of access tracks and tree planting.

##### **SURROUNDING LAND USES**

Land immediately surrounding the development site is dominated by densely vegetated land, which forms part of the Ben Boyd National Park (managed by NSW National Parks and Wildlife Service) or is used for forestry harvesting (State Forests). Fisheries Beach is located approximately 400 metres to the north, with the Fisheries Creek Estuary located to the west. This estuary contains wetlands covered by *State Environmental Planning Policy No.14 – Coastal Wetlands*.

Other landuses in close proximity of the site include:

- Edrom Lodge, a tourist facility, located approximately 800 metres to the north-east;
- the completed multi-purpose wharf to the north-east, located in East Boyd Bay; and
- the HDA woodchip mill, located on the southern headland of Twofold Bay to the east of the site.

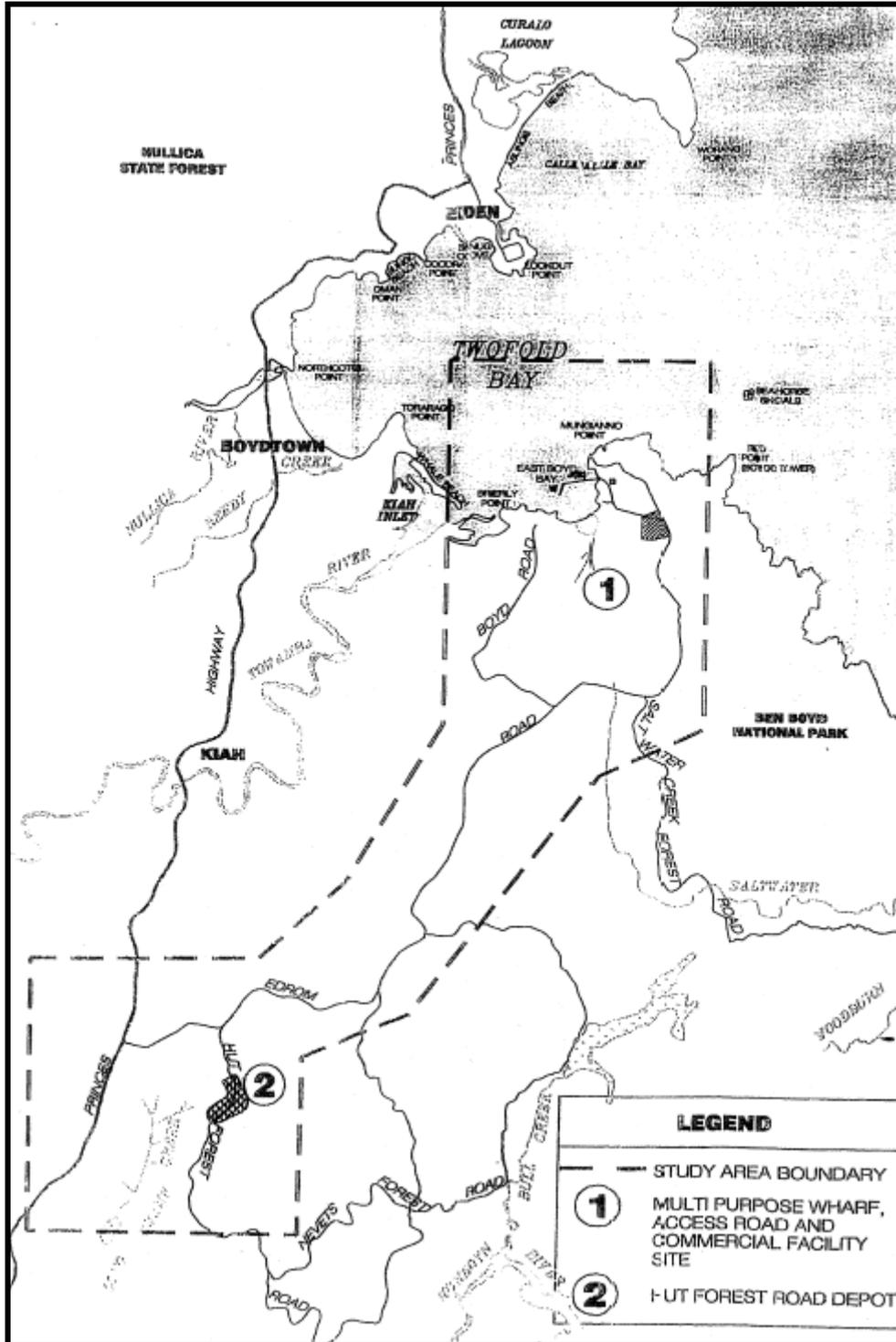


Figure 1b – Location of the three components of the Twofold Bay Multi-purpose Wharf Project

#### 4. DEVELOPMENT PROPOSAL

##### 4.1 Background

The Environmental Impact Statement (EIS) for the original development application for the Multi-purpose wharf project (DA 245-11-99) assessed multiple locations for the location of the three components of the project (wharf, depot and commercial export facility), with the final locations proposed in the supplementary report to the EIS. For example, three locations along Edrom Road were proposed and assessed for the commercial export facility, with Area C the preferred option (refer to figure 2).

The EIS for the project broadly assessed the impacts of the proposed export facility as the finer details regarding the proposed operations at the facility were unknown at that time. While the Department concluded in its assessment of the project that the proposed facility could be operated within acceptable environmental limits, the Department recommended that the Applicant be required to submit for the Minister's approval the details on the design and operation of the facility in order to verify the impact assessment of the facility. This was reflected in condition 6 of the Minister's 2000 consent, which requires the Applicant to obtain the Minister's approval of Stage Two (commercial export facility) prior to the commencement of work on this project component.

The Applicant is now seeking this approval in accordance with condition 6 of the Minister's consent, as well as an approval for a proposed section 96(1A) modification to the Minister's consent for DA 245-11-99 for the conceptual layout of the proposed commercial export facility. These two elements have been considered separately below.

#### **4.2 Section 96(1A) Modification**

On 1 September 2003, the Applicant lodged a section 96(1A) modification application with the Department to modify the development consent granted by the then Minister for Urban Affairs and Planning on 17 December 2000.

The approval granted by the Minister in 2000 permitted the use of an eight hectare area for the establishment of a commercial export facility, located along the frontages of Edrom Road and Jetty Access Road (refer to Figure 2). The consent granted approval to the use of Area C as the preferred site of the proposed facility.

The Applicant is seeking to amend the approved footprint of the facility in order to avoid areas of high ecological value located within the approved footprint while providing an additional area to compensate the areas now considered unavailable. The additional areas would ensure that the facility would be of a sufficient area in order to be economically viable, and would result in the proposed facility extending into the area defined as Area A in the original EIS (refer to figure 2).

The modified footprint would involve splitting the commercial export facility into two areas of four hectares each, with Area One largely located within the approved footprint of the commercial facility, and Area Two located directly adjacent to Area One to the north-east (refer to Figure 3).

The proposed modification would extend into an area that is covered by a covenant placed on the land by the then Minister for Urban Affairs and Planning in 1999. This land was originally purchased by the Department under the Coastal Lands Protection Scheme, with a positive covenant created for this land when it was transferred to NSW State Forests in 1999. The covenant requires the land owner to maintain the existing natural state of the land by fulfilling the following objectives:

- no harvesting activities;
- the maintenance and promotion of public access; and
- the preservation of the scenic and environmental quality.

The use of this land for a log storage facility would require the removal of this covenant, which the Applicant has requested the Minister to release in conjunction with the determination of the proposed section 96(1A) modification application. The issues associated with the removal of this covenant are discussed in section 5 and section 7 of this report.

#### **4.3 Stage Two**

##### **4.3.1 Outline of the Proposal**

The proposed development is for the construction and operation of a commercial export facility for the purposes of storage and handling of bulk commercial cargo for export/import at the multi-purpose wharf that was constructed as part of Stage One of the development. The Applicant has indicated that the facility would be used for a range of cargo, but is likely to be used for the export of commercial softwood log product sourced from various southern NSW forestry areas. The facility would have an annual capacity of approximately 500,000 tonnes per annum, with an average 10,000 tonnes supply of logs per week entering the facility.

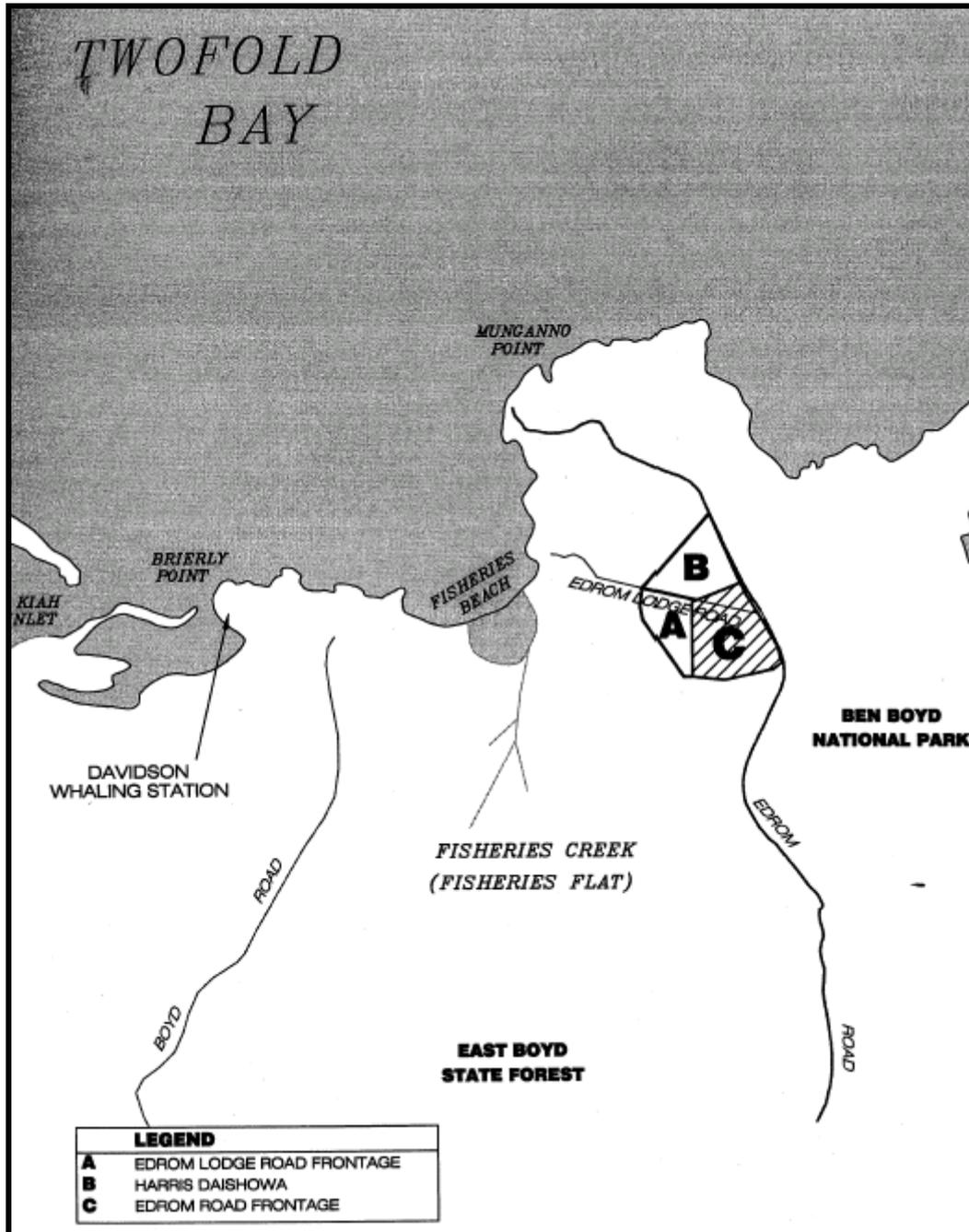


Figure 2: Commercial Facility Footprint as approved (Area C)

The facility covers approximately eight hectares and would comprise two separate storage areas located adjacent to one another, positioned alongside the Jetty Access Road (refer to Figure 3). Separate access points would be provided to each storage area. The entire area of Area One and Two would be sealed, with the majority of the site to be used for stockpiling purposes. An area would be used for the purposes of unloading/loading activities at the entrance to each area, which would be designed to provide sufficient space for the manoeuvring and temporary storage of 4-5 truckloads.

No significant structures would be constructed as part of the proposal, with logs stored externally in stockpiles no greater than 3 metres in height. Staff amenities and storage buildings would be constructed; however these would be low rise (single level) and located within Area One of the facility. Carparking for 20 cars would also be provided adjacent to the amenities building.

INSERT FIGURE 3

During standard operating periods (i.e. receipt of export product), the facility would operate during normal working hours with approximately five to six vehicle movements per hour. During export periods, the facility would operate on a twenty-four hour basis over a four to five day period, depending on the size of the export vessel, with an expected 20 shipments per year. This period would require approximately 15 vehicle movements per hour between the multi-purpose wharf and the facility (approximately 1,500 metre distance).

#### **4.3.2 Justification for the Proposal**

The proposed commercial facility was proposed as an original component of the multi-purpose wharf project at Eden. As stated in the original Environmental Impact Statement for the project, the need to establish an export port in the South East Region of NSW was identified in the *South East Development Strategy* prepared by the South East Economic Development Council in 1991. NSW Waterways and the Department of State and Regional Development identified that the provision of the multi-purpose wharf and a new facility catering primarily for the timber industry as a viable solution to the requirements of the abovementioned study. The naval wharf facility proposed by the Department of Defence at that time provided NSW Waterways with an opportunity for the NSW Government to establish this export facility, and as such, was combined as a project lodged with the Department (then DUAP) and the Commonwealth Government for a multi-purpose wharf and naval ammunition facility at Twofold Bay, Eden, in 1999.

The consent granted by the Minister for this project in 2000 gave approval for the conceptual use of the land at Munganno Point for the purposes of a commercial facility. NSW Waterways are now seeking the Minister's consent for Stage Two as required by the Minister's consent for the detailed design of the commercial facility to enable the construction and operation of this final component of the project to proceed.

## **5. STATUTORY PLANNING FRAMEWORK**

### **5.1 Condition 6 of the Minister Consent for DA 245-11-99**

The EIS for the project broadly assessed the impacts of the proposed export facility as the finer details regarding the proposed operations at the facility were unknown at that time. While the Department concluded in its assessment of the project that the proposed facility could be operated within acceptable environmental limits, the Department recommended that the Applicant be required to submit for the Minister's approval the details on the design and operation of the facility in order to verify the impact assessment of the facility. This was reflected in condition 6 of the Minister's 2000 consent, which requires the Applicant to obtain the Minister's approval of Stage Two (commercial export facility) prior to the commencement of work on this project component.

This additional approval did not constitute a formal development application, as defined under section 78A of the Act. For this reason, public notification and exhibition of the Stage Two 'application' in accordance with the Act was not required. However, condition 7 of the Minister's consent required the Department to consult with relevant authorities prior to the Minister determining the 'application' for Stage Two. The Department's consultation with relevant authorities with respect to Stage Two is detailed in section 6 of this report.

The Applicant has now submitted the information required for the commercial export facility and is seeking an approval from the Minister in accordance with condition 6 of the Minister's consent to enable the final component of the project to proceed.

### **5.2 Section 96(1A)**

In accordance with section 96(1A) of the *Environmental Planning and Assessment Act 1979*, the Minister may, on application being made by the Applicant or any other person entitled to act on a consent granted by the Minister and subject to and in accordance with the regulations, modify the consent if:

- a) *the Minister is satisfied that the development to which the consent as modified relates is substantially the same as the development for which consent was originally granted and before that consent as originally granted was modified (if at all);*

The proposed modification would not change the function or scale of the original development envisaged in the proposal approved by the then Minister for Urban Affairs and Planning on 17 December 2000, and would only serve to minimise the potential impacts on areas of

vegetation that are of high ecological value. Consequently, the Department is satisfied that the development (as modified) would be substantially the same development as approved on 17 December 2000.

b) *the Minister is satisfied that the proposed modification is of minimal environmental impact;*

The Department does not consider that the proposed modification would result in any additional environmental impacts. In fact, the Department considers that the proposed modifications would reduce the environmental impacts of the proposal, with the proposed modification avoiding areas of high ecological value. The proposal could be considered inconsistent with the objectives of the positive covenant on the land (i.e. 'to maintain the existing natural state of the land'). However, the Department is satisfied that the restriction of the proposal to the upper southern portion of this land would enable the principals of the Coastal Lands Protection Scheme to be maintained (refer to section 7 of this report).

c) *the modification application has been notified in accordance with the regulations or any relevant development control plan; and*

There are no requirements in the *Environmental Planning and Assessment Regulation 2000* or any development control plan in relation to the exhibition or notification of a modification under section 96(1A). However, the Department has consulted with relevant government authorities as required under the Minister's consent for Stage Two of the proposal. Submissions received in response to this consultation have been considered in sections 6 and 7 of this report.

d) *consideration has been given to any submissions made concerning the proposed modification within the period prescribed by the regulation or any relevant development control plan.*

Refer to the above.

### **5.3 Bega Valley Local Environmental Plan 2002**

#### **(a) Surrender of the Covenant**

A portion of the proposed facility site is covered by a positive covenant placed on the site to ensure that this parcel of land (Lot 1 DP198217) is managed in accordance with the objectives of the *Coastal Lands Protection Scheme* (refer to section 4.2 of this report).

This covenant states that it can only be released, varied or modified with the prior written approval of the Minister for Infrastructure and Planning. Consequently, as the use of this portion of land would be considered inconsistent with the objectives of the covenant, the Applicant applied to the Minister to partially release this covenant in conjunction with the proposed section 96(1A) modification.

However, under section 28 of the Act, provisions can be made under Environmental Planning Instruments (EPIs) to enable the suspension of an application of a regulatory instrument (in this case, a covenant) to a development and/or land, should development consent be granted.

Clause 87 of the *Bega Valley Local Environmental Plan 2002* (Bega LEP) states that

*for the purposes of enabling development to be carried out in accordance with this plan or in accordance with a consent granted under the Act, any covenant, agreement or similar instrument which purports to impose restrictions on the carrying out of the development, to the extent necessary to serve that purpose, shall not apply to the development.*

In this case, the granting of development consent (or approval of the section 96(1A) modification) would result in the suspension of the covenant over the land required for the proposed modified footprint in accordance with section 28 of the Act and clause 87 of the Bega LEP. Consequently, a formal partial removal of the covenant, as applied by the Applicant, is not required, should the Minister determine to approve the modification application.

Consequently, in assessing the proposed section 96(1A) modification, the Department has had regard to the covenant objectives and consistency with these objectives with the proposed development (refer to section 7.1 of this report). This assessment concluded that the proposed

modified footprint would not detrimentally impact on the objectives of the Coastal Lands Protection Scheme, and therefore the Department recommends that the Minister determine to approve the section 96(1A) modification, and as a result partially suspend the positive covenant on the proposed site.

**(b) Director-General Concurrence**

Prior to the Minister granting approval to the proposed modification and Stage Two of the proposal, the Director-General must grant concurrence to the proposal in accordance with clause 49 of the Bega LEP 2002 for the aspects of the development within zone 7(f2), which corresponds with the area covered by the positive covenant. In granting this concurrence, the Director-General must consider the following:

- a) *The extent to which the development would affect the scenic qualities of the coastal landscape, headlands, dune systems and areas where the original vegetation is still dominant; and*

As concluded in section 7 of this report, the Department is satisfied that the clearance of vegetation within this area and the establishment of the proposed commercial export facility would not have a detrimental impact on the scenic qualities of the coastal landscape, headlands or surrounding areas. The proposed mitigation measures and the recommended conditions of consent will ensure that the residual impacts are further minimised and managed in the long-term.

- b) *Whether the development would result in the degradation of, or restriction of access to, coastal recreational areas; and*

As concluded in section 7 of this report, the Department concluded that the preservation of the covenant on the remainder of the site will ensure that coastal access is maintained.

- c) *Any plan, policy or design adopted by resolution of the Coastal Council of New South Wales for the purposes of protecting coastal lands; and*

As this proposal would result in the surrendering of covenant on a portion of land originally purchased under the Coastal Lands Protection Scheme. As indicated in section 5.3(a) and section 7.1 of this report, the Department believes that the overall objectives of the CLPS and the application to Twofold Bay will not be detrimentally affected by the proposed facility. With respect to other policies, plans or designs adopted by the Coastal Council of NSW, which include *State Environmental Planning Policy No.71 – Coastal Protection*, *NSW Coastal Policy 1997*, and the *Coastal Design Guidelines for NSW*, the Department is satisfied that the proposal is consistent with relevant provisions of these policies and guidelines (refer to section 7 and Appendix A).

- d) *In the case of land within Zone 7 (f2), the imminence of acquisition of the land; and*

The portion of land zoned 7(f2) under the Bega LEP 2002, was acquired by the Department and transferred to State Forests in 1999. The Applicant (NSW Waterways) is currently under negotiations with State Forests to formally acquire this land.

- e) *The objects of the Environmental Planning and Assessment Act 1979.*

Satisfied through the Department's assessment of the proposal.

Consequently, as the Department is satisfied that the proposal would not have a detrimental impact on the outcomes of the above criteria, the Department recommends that the Director-General grant concurrence to the development in accordance with clause 49 of the Bega LEP 2002 to enable the proposal to proceed.

#### **5.4 Other Relevant Planning Instruments/Policies**

The modification and Stage Two of the proposal has been assessed against the relevant provisions in the following planning instruments/policies:

- *State Environmental Planning Policy No.14 – Coastal Wetlands;*
- *State Environmental Planning Policy No.33 – Hazardous and Offensive Development;*
- *State Environmental Planning Policy No. 71 – Coastal Protection;*
- *Lower South Coast Regional Environmental Plan No.1;*
- *Lower South Coast Regional Environmental Plan No.2;* and
- *Bega Valley Local Environmental Plan 2002.*

This assessment concludes that Stage Two and the proposed modification are considered to be consistent with the relevant aims and objectives of these instruments, and satisfies the relevant assessment criteria (refer to Appendix A of this report).

### **6. CONSULTATION AND EXHIBITION**

Under the Act, and for the purposes of the Minister's consent, granted on 17 December 2000, the Department was not required to publicly exhibit or notify the Stage Two application or the section 96(1A) modification application. However, in accordance with condition 7 of the Minister's consent, the Department consulted with a number of government agencies. This included the Department of Environment and Conservation (incorporating the Environment Protection Authority and National Parks and Wildlife Service), Bega Valley Shire Council and the Natural Resources regional branch of the Department.

Three submissions were received as a result of the Department's consultation. Of these submissions, one was from the Department of Environment and Conservation and two from Bega Valley Shire Council. These submissions did not object to the proposed commercial area or modification, but raised issues relating to sewage management, stormwater management, noise, archaeology, and flora and fauna issues.

The issues raised in the submissions received have been considered in the Department's assessment of the modification and commercial area (refer to section 7). A summary of the submissions has been provided in Appendix B of this report.

### **7. CONSIDERATION OF ENVIRONMENTAL ISSUES**

#### **7.1 Covenant Release**

The proposed modification to the commercial export facility footprint would result in Area Two extending into an area that is covered by a positive covenant placed on the land by the then Minister for Urban Affairs and Planning in 1999. A map of the affected parcel and covenant is attached (Figure 4). This land was originally purchased by the Department under the Coastal Lands Protection Scheme (CLPS), with a positive covenant created for this land when it was transferred to NSW State Forests in 1999. The objectives of the CLPS are broad, and can be summarised into the following three objectives:

- scenic quality – maintenance of the scenic quality of the coast so that degradation of scenic areas does not occur;
- public access – promoting public access to the coast; and
- recreation – providing opportunities for passive and active recreation on the coastal strip and foreshores.

These objectives were reflected in the covenant placed on the land, which requires the land owner to maintain the existing state of the land by fulfilling the following objectives:

- no harvesting activities;
- the maintenance and promotion of public access; and
- the preservation of the scenic and environmental quality.

As the development within this portion of the site would no longer be considered consistent with the objectives of the covenant, the Applicant has applied for the Minister to release it from the portion of land directly affected by the facility. Although, a formal release of the covenant is not necessary as a result of clause 87 of the Bega LEP 2002 (refer to section 5.3 of this report), the Department has considered the impacts of the proposed use of this land for a commercial export facility against the

Insert Figure 4

objectives of the covenant as part of its assessment of the proposed section 96(1A) modification. The three objectives and how these objectives apply to the proposed development have been considered separately below.

#### *Scenic Quality*

The key objective of the Coastal Land Protection Scheme is to protect the scenic quality of coastal areas along the NSW coast in an effort to minimise the intrusiveness of coastal development and to secure undeveloped coastal and headland areas to protect the natural character of coastal areas. The Applicant has identified Twofold Bay as a high scenic quality area that is characterised with visually prominent headlands and major ridgelines generally covered in dense vegetation. However, the Applicant does stress that the HDA Woodchip Mill and associated wharf infrastructure, located on the southern entrance to Twofold Bay, and the Eden Township on the northern side of the bay, both introduce significant contrasting elements to the natural character of Twofold Bay.

The removal of vegetation, and the establishment of proposed facility (namely the creation of two platforms at RL 55 and RL 75) approximately 400 metres from the coastline, was identified as a key issue that would need to be addressed to justify the release of the current covenant.

To assess the potential impacts of the proposal on the scenic quality of the area, the Applicant considered multiple viewpoints of the site from various locations around the bay to determine the visual intrusiveness of the development. This includes views from the Eden township, historic sites (ie Davidson Whaling Station, Boyd Tower), and other immediate locations such as Fisheries Brach and Torarago Point.

From this assessment, the Applicant concluded that the proposed development would not have a significant impact on the scenic quality of Twofold Bay as:

- the site is obscured from the majority of viewpoints due to existing vegetation and topography, including viewpoints located in close proximity to the site such as Fisheries Beach, Edrom Lodge and Torarago Point, as well as from distant view points such as the Eden township;
- the ridgelines and surrounding dense remnant vegetation (>15m) provides a high level of visual absorption to the proposed site, which would be further strengthened by the planting of screen vegetation along the perimeters of the proposed site;
- surrounding ridgelines that form the horizon line at RL 80-95, with the vegetation canopy extending a further 15 metres would provide a natural visual buffer to the proposed development and would render any potential contrast between the site and surrounding environment as negligible; and
- the site would only be highly visible on-approach to the proposed development site along Edrom Road and Jetty Access Road. While these visual impacts can be mitigated through the use of landscaping, this viewpoint is not considered to form part of the CLPS objective (i.e. viewpoints from coastal areas).

To further assist in minimising the visual impacts of the proposed development, the Applicant has proposed a number of controls, including extensive landscaping, use of low-intensity lighting, the minimisation of unnecessary land clearing, and planting of supplementary vegetation within natural breaks in the surrounding canopies. The Applicant concludes that these measures will ensure that the proposal would not have any significant impact on the scenic quality of areas within the vicinity of the site, and on a broader scale, Twofold Bay (refer to Figure 5).

The Department has considered the proposed facility with respect to the functions of the Coastal Lands Protection Scheme (CLPS), as well as the general visual amenity of the area, and is satisfied that the proposal would not have a detrimental impact on the objectives of the CLPS for this land or the overall scenic qualities of Twofold Bay. This conclusion has been reached by the Department on the basis that that visibility of the site is likely to be minimal from a number of key viewpoints due to the coastal setback, topography and vegetation, combined with the existing presence of highly-visible 'industrial' uses within the vicinity of the proposed facility. The Department believes that these dominant elements would assist in further reducing any residual intrusiveness this proposal could have on the scenic quality of Twofold Bay.

Nevertheless, the Department considers that any residual visual impact of the proposal can be properly mitigated through the Applicant's proposed mitigation measures and the recommended conditions of consent. These conditions include requirements for the Applicant to establish vegetation screens prior to the commencement of operations and the long-term management of

Insert figure 5

these in accordance with an Operational Environmental Management Plan, consideration of the external design of buildings at the facility to ensure that these structures blend with the surrounding landscape and the installation of external lighting in a manner that minimises light spill into surrounding areas. The Department is satisfied that these requirements would ensure minimal visual impact on the surrounding area and ensure the preservation of this CLPS objective for the proposed site.

*Vegetation Clearance/Environmental Quality*

The proposed use of this land for a commercial export facility (and the subsequent partial release of the CLPS covenant) would result in the removal of eight hectares of vegetation. This is in direct conflict with this objective of the CLPS. However, the removal of this vegetation within the area of the covenant can be easily justified with the outcome of the proposed footprint modification. That is, the preservation of areas of vegetation known to be of high ecological significance at the cost of areas containing vegetation of lesser significance. This is supported by the flora and fauna assessments of the proposed site that demonstrated that the proposal would not have any significant impacts on any protected species and/or habitat. For this reason, the Department is satisfied that the covenant can be released in spite of the objective of the CLPS, and that the outcomes and conditions of consent applicable for Stage One would ensure that the environmental quality of areas immediately surrounding the proposed site are protected in the long-term.

*Public Access/Recreational*

An objective of the CLPS is provide and/or maintain direct public access to the NSW coast line and to prevent the privatisation of coastlines for the purposes of ensuring the preservation of passive and/or active recreational uses of coastal areas. In this respect, the subject site currently provides limited access to Fisheries Beach due to topography restrictions, with other obvious access points provided to the coastline, namely Edrom Lodge. The Applicant states that although the use of a portion of the land covered by the covenant would eliminate public access to that portion, that this restriction would be satisfactorily mitigated through the provision of new public access to the bay along the Jetty Access Road. However, the Applicant does acknowledge that access via the Jetty Access Road would be limited during shipping loading/unloading activities associated with the naval and commercial operations.

The Department has considered the Applicant's position on this impact, and does acknowledge that improved access to the bay/coastal areas via the Jetty Access Road would mitigate this impact to an extent. However, it is the Department's opinion that as the proposed development would only impact on small portion of the site (and hence only a partial removal of the covenant), that public access to the coast would be continued via the remainder of the subject land and that the intent of the covenant would be maintained.

**CONCLUSION**

In light of the above, the Department is satisfied that the issues associated with the covenant in respect to scenic quality, vegetation/environmental quality and public access have been satisfactorily considered, and where possible, mitigated, to a manner that justifies the establishment of the proposed facility at the site. Furthermore, the Department is satisfied that the restriction of the proposal to the upper southern portion of this land would enable the principals of the Coastal Lands Protection Scheme to be maintained. Consequently, the Department recommends that the Minister approve the section 96(1A) modification application, and therefore suspend the subject covenant in accordance with clause 87 of the Bega LEP 2002.

The Department acknowledges that the regional planning team has indicated that the use of this land and the partial removal of the covenant should require the Applicant to provide compensation in the form of land and/or monetary funds. However, it is the Department's opinion that the proposed facility would not detrimentally impact on the outcome of the CLPS on the remainder of the site (which will remain in its current form), and that the proposed facility would only suspend the covenant on a small portion of the site located furthest from the coastline. For these reasons, the Department does not consider compensation is necessary for this proposal.

## 7.2 Noise

### CONSTRUCTION

The proposed construction works would require extensive site preparation works, and as such, has a significant potential to impact on the amenity of surrounding receptors during this construction period. The proposed construction period is expected to take approximately 15 weeks; however as the final construction program has not been finalised at the time of assessment, the range of construction noise criteria, outlined in the EPA's *Environmental Noise Control Manual* was considered in the assessment. This assessment concluded that the predicted noise levels would comply with the set noise criteria. As the predicted noise levels are likely to fall significantly below the set criteria (by approximately 15dBa), the Applicant has not recommended any mitigation measures with the exception of:

- resident notification prior to the commencement of construction work;
- use of quietest possible machinery; and
- restriction of noise intensive works to short periods.

The Department has reviewed the noise assessment and the proposed mitigation measures, and is satisfied that the proposed construction work would not result in any significant short-term impact on neighbouring receptors. However, to ensure construction works are undertaken in a manner that minimises construction noise to as low as reasonably possible, the Department has recommended that the Applicant implement a Noise Construction Environmental Management Plan for the works, should the Minister determine to approve the proposal.

### OPERATION

#### *Applicant's Position*

The Applicant states that noise generated during the proposed operations are expected to originate from a number of sources, specifically, site operations at the facility, movements between the facility and the wharf, and activities at the wharf during ship loading periods. In order to consider the impacts of the proposed development, the Applicant assessed the worst case scenario (i.e. concurrent commercial export facility and wharf operations) during a number of weather conditions in order to determine the likely potential impacts of the proposal.

This assessment, conducted to supplement the impact assessment undertaken in the original Environmental Impact Statement, concluded that the proposed operations would generally comply with the set noise criteria except during night time periods where the wharf and facility were operating concurrently under normal and adverse weather conditions. The Applicant states that these non-compliances exceed the criteria by approximately 2-7dBA at Edrom Lodge (the closest receptor), depending upon the weather conditions. The Applicant concluded that these non-compliances are attributed to activities at the wharf (not the commercial export facility) as a result of heavy vehicles movements along the jetty, use of ship-mounted cranes and noise emissions from berthed commercial vessels.

As the use of an acoustic barrier along the jetty and wharf is not a feasible option, the Applicant has proposed the following mitigation measures in order to minimise noise emissions during operational periods:

- use of acoustic shielding for loading cranes at the wharf to minimise noise levels and/or selection of wharf cranes to meet certain noise emission targets; and
- implementation of a noise management plan to limit night-time crane usage of the wharf cranes.

The Applicant subsequently concludes that these mitigation measures would ensure compliance with the set noise criteria during most commonly occurring weather and sea conditions, and as such, would not have a significant adverse impact on neighbouring receptors.

#### *Issues Raised in Submissions*

The DEC, who made a submission on the proposal, raised concerns with the noise assessment with respect to consistency with the EPA's *Industrial Noise Policy* (INP), which has come into effect following the initial noise assessments undertaken for the original Environmental Impact Statement.

#### *Department's Position*

The Department has reviewed the noise assessment conducted for Stage Two of the development, and is generally satisfied that the proposal could operate within permitted noise limits and would not

create any adverse impacts on neighbouring receptors. However, the Department agrees with the DEC's position on this matter, and believes that the noise assessment for the proposal should be consistent with the current noise policy requirements. Although it is preferable for these minor adjustments to the assessment methodologies are undertaken prior to determination, the Department does acknowledge that this adjustment in the noise impact assessment should not have significant ramifications on the assessment conclusions.

Consequently, to ensure consistency with the current noise policy and verification of minimal impact on surrounding receptors, the Department recommends that the Applicant must submit to the Director-General prior to the commencement of operations a report verifying that the operation of the development meets predicted noise levels and criteria, as outlined in the EPA's INP. Should the report identify any potential for the operation of the development to exceed the noise criteria, the Applicant should be required to submit for the approval of the Director-General, details of additional measures that would be implemented prior to the commencement of operations to ensure on-going compliance. These measures would then be further verified through a Noise Audit that would be conducted following three months of operations.

The Department has concluded that this robust framework for verifying noise emissions would ensure that the proposal would operate within permitted noise levels and ensure the minimisation of noise impacts on surrounding sensitive receptors.

### **7.3 Flora and Fauna**

The proposed development will require the clearance of approximately 8-10 hectares of vegetation, and is located in an area that several endangered or vulnerable species are known to occur in the vicinity of the proposed site. The proposed development site is also located within the Fisheries Creek catchment, in which a SEPP No.14 wetland is located within the lower reaches of this estuary.

An assessment of the flora and fauna impacts of the proposed commercial area was assessed within the original EIS for the overall project, and further assessed through the consent conditions imposed by the Minister in 2000 on Stage One of the project. This includes both the original and modified commercial export facility footprint.

The studies concluded that the proposal would not have a significant impact on any protected flora and fauna species, and/or areas of significant habitat. Furthermore, the Applicant states that the proposed section 96(1A) modification to the development would enable the reduction in any impacts by avoiding and protecting an area of vegetation that is of high ecological value.

Nevertheless, the Applicant has proposed a number of mitigation measures that were recommended in the original EIS to be implemented during construction and operation, including measures to protect in-stream and wetland habitats, stormwater controls and reestablishment of vegetation (where possible). This would ensure the protection of areas immediately surrounding the site as well as areas located downstream from the proposed facility.

The Department of Environment and Conservation (formerly National Parks and Wildlife) raised a number of issues with the assessment, specifically issues with the assessment of impacts on local habitats and on the Southern Brown Bandicoot, as well as recommending a number of consent conditions to ensure the control of pest species within the vicinity of the site. Additional information was provided by the Applicant with respect to the issues identified by the DEC. The DEC subsequently informed the Department that it was satisfied with the response and had no further issues.

In light of the resolution of the above issues, the Department is satisfied that the potential flora and fauna impacts have been satisfactorily addressed through the recommended controls and through the existing conditions of consent imposed on the overall project that would apply to this stage. The Department does not consider that any further conditions are required, other than the implementation of a Vegetation Operational Management Plan to ensure the long-term management of landscaped areas, and a requirement to consult with DEC with respect to the Applicant's contribution to the regional pest management strategies for the area.

#### **7.4 Traffic**

Heavy vehicles associated with the proposed development would access the site via the Princes Highway and Edrom Road. This road network has been designed in order to cater for frequent heavy vehicle movements associated with local forestry operations and the HDA woodchip mill located to the east of the proposed development site, which dominate the vehicle movements on this network. In addition, the Edrom Road and Jetty Access Road intersection, and the entire length of Jetty Access Road from the intersection to the wharf has been upgraded to cater for heavy vehicles movements associated with the overall project (Stage One and Two). For these reasons, the Applicant states that current safety and performance of the local road network will not be significantly affected by the completion of Stage Two of the project.

The Applicant has acknowledged that the amount of vehicle movements associated with the development would intensify during export periods, with an additional 15 heavy vehicles movements generated per hour between the proposed facility and wharf. While the Applicant states that the capacity and design of the road would sufficiently cater for these movements, the Applicant has recognised that this increase in movements and the nature of vehicles has the potential to create conflicts between passenger vehicles. To limit this conflict, the Applicant acknowledges that management procedures would be necessary and has identified one option of installing gates at the Edrom Lodge/Jetty Access Road intersection to limit public access to the road between the proposed storage area and the wharf during ship loading periods.

Submissions received by the Department did not raise any concerns with potential traffic impacts associated with the proposal.

The Department agrees with the Applicant that the existing road network would be sufficient to cater for the expected increase in heavy vehicle movements associated with Stage Two. In particular, the upgrade of the Jetty Access Road and the Edrom Road intersection, completed for Stage One of the project, would ensure that these heavy vehicles movements do not significantly impact on the safety and performance of these roads. However, the Department does agree with the Applicant that there is potential for conflicts between the general public and heavy vehicles associated the ship loading periods. Nevertheless, the Department is concerned that the Applicant has not confirmed the preferred option for managing this conflict, or assessed any potential impacts associated with the installation of gates and/or discussed management options to ensure access to Edrom Lodge is not detrimentally effected by these gates. However, as Jetty Access Road is in the ownership of the Applicant, the Department acknowledges that any installation of permanent gates is the final decision of the Applicant and the Department would assume that the Applicant would consult with the relevant stakeholders before proceeding with this approach.

Considering the ownership of this road and the lack of detail regarding this possible mitigation measure, the Department has recommended that a condition be incorporated into the consent to clearly state that any approval does not apply to this gate component. Yet, to ensure traffic movements are adequately managed, the Department has recommended that a Transport Code of Conduct be prepared and implemented to manage 24-hour operations (with respect to noise mitigation), and to reduce conflicts between heavy vehicles and non-commercial export facility related vehicles. This code would be incorporated in an overall Transport Operational Environmental Management Plan. The Department is satisfied that would ensure appropriate measures would be in place while the Applicant considers any permanent physical structure to manage this conflict in the long-term.

The Department has also recommended a number of additional transport related conditions to ensure that the site access points for the proposed facility met relevant safety requirements for the type of vehicles accessing/departing the site. This includes consideration and preservation of site distances recommended by RTA guidelines and design requirements to ensure that the largest vehicle accessing/departing the site is suitably catered for.

#### **7.5 Water Quality**

##### *Construction*

The proposed construction activities would require substantial cut and fill activities, and associated land clearing in these areas in order to establish the two proposed storage areas. This has the potential to generate significant levels of erosion and elevated levels of sediments in surface water flows from the site.

Although these activities have the potential to generate significant levels of erosion during construction work, the Department is satisfied that these impacts can be properly mitigated through the implementation of a detailed Erosion and Sediment Control Plan, as proposed by the Applicant. The Department has recommended, that should the Minister determine to approve Stage Two, that the requirement to prepare this plan be formalised through any conditions of consent to be imposed on the proposal.

#### *Operation*

The establishment of the two storage areas would increase stormwater discharges from the site, which have potential to contain pollutants that could impact on the receiving environment that would include tannins from timber stockpiles and spillages during operations. Furthermore, the establishment of an on-site septic system and storage of diesel at the proposed facility could introduce additional potential pollutants to surface water flows.

In order to manage stormwater flows from the site, the Applicant is proposing to install stormwater detention ponds downstream to each storage area, designed to capture and treat the 'first-flush' from each area. The Applicant states that water captured within these ponds would be treated (gross pollutant traps) and discharged or used on site during operations for either dust control or fire fighting purposes. During very high rainfall events, spill from these ponds should occur via an overflow channel and drain into an existing gully that would eventually discharge into Twofold Bay. These spillways would be design to minimise erosion and scouring as a result of these discharges.

Council did raise concerns with the discharge of stormwater from the site, particularly with respect to any potential flow-on effects onto marine flora and fauna. Council requested that the Applicant consider greater storm events during the design of the stormwater system to ensure adequate protection is afforded to the receiving environment. Council also requested that the Applicant obtain relevant approvals under the *Local Government Act 1993* for any on-site septic system, which has been incorporated into the recommended conditions of consent to ensure this component adequately meets environmental criteria set by Council.

The DEC raised concerns with water quality controls at the wharf during loading activities, and recommended a condition of consent to ensure adequate controls are in place during these periods. This condition has been incorporated into the recommended conditions of consent.

The Department has considered the proposed stormwater controls for the proposed facility, and acknowledges Council's concerns with respect to the proposed detention ponds and the need to cater for larger storm events. The Department does however accept that the likely content of discharges from the site would consist largely of tannins, a naturally occurring substance in forested areas, for which there are no current feasible treatment options available to a proposal of this scale. In this respect, the Department believes that the minimisation of water quality impacts on the surrounding environment would be better focused through the implementation of measures that target preventable pollutants such as the use of gross pollutant traps, installation of bunding in liquid storage areas and loading areas, and so forth.

However, the Department does recognise that the details on the design parameters of the stormwater system have not been provided in the Applicant's assessment for the Department to ensure that this system is adequately designed to cope with larger storm events, as opposed to functioning purely as a 'first-flush' system.

Consequently, the Department believes that the Applicant should be required to submit detailed plans of the stormwater system to ensure that the system is suitably designed to cater for an appropriate level of storm event to ensure the protection of downstream habitats. In addition, the Department recommends that the Applicant be required to conduct regular monitoring of stormwater discharges in order to confirm the appropriate retention and treatment of stormwater at the site in accordance with a Stormwater Operational Environmental Management Plan.

With respect to the minimisation of potential impacts at the wharf during ship loading activities, the Department is generally satisfied that measures implemented and/or conditioned as part of Stage One would sufficiently address the management of operations at this water/land interface.

Nevertheless, the Department has recommended the inclusion of a condition recommended by the DEC to address this agency's concerns.

## **7.6 Cultural Heritage**

The areas located in the vicinity of the commercial area is known to be significantly important in terms of Aboriginal and European heritage, with several whaling stations located in the region during the 1830's and 1840's. These stations in particular have a strong cultural history with the local Aboriginal communities as a result of the community's significant involvement in the whaling industry during that period.

The cultural assessment for the approved development application identified that the footprint of the commercial area was unlikely to impact upon any items of cultural heritage due to past disturbance to the site. However, the conditions of consent imposed on Stage One required the Applicant to undertake additional studies and to monitor the site during the construction works. Subsequent studies identified the presence of four heritage items within the modified commercial area, three of which were of Aboriginal origin and one of European origin.

### *Aboriginal Heritage*

The Aboriginal relics identified in the study consisted of scattered stone artefacts of minimal to low local significance. It was concluded that these items would not impede the proposal and recommended that an application be made to DEC (NPWS) for the removal of these items. This conclusion was supported by representatives of the Eden Local Aboriginal Land Council (ELALC) and the Bega Elders Council, who were present during the studies, with both groups indicating that they were satisfied that the presence of the relics did not pose a permanent constraint on the proposal. However, both groups recommended that the relics be removed prior to construction, and that the site be surveyed during site preparation works.

The submission from DEC (former NPWS) raised no issues with the heritage assessment, indicating that it was currently processing an application for a Consent to Destroy for these items from NSW Waterways, and that ELALC has indicated to DEC that it had no outstanding issues with respect to the proposal.

### *European Heritage*

The fourth site consisted of remains of an early to mid-twentieth century bush hut and is considered to be below assessment criteria for recognition for local or state heritage listing. Nevertheless, the Applicant has proposed to salvage and curate the item in a local institution in order to minimise the potential impacts of the proposal. Although the NSW Heritage Office considers that the item meets the thresholds for Local heritage significance due to the relevance of the item to past forestry and whaling industries, the authority has indicated that it would not object to the salvaging of the item. In addition, the item is exempt from requiring a permit under the *NSW Heritage Act 1977* subject to the Applicant salvaging the items in accordance with NSW Heritage Office guidelines and placement of these items in a local historic institution.

## **DEPARTMENT'S RECOMMENDATION**

The Department has reviewed the cultural assessment for the proposed modification, and subsequent correspondence from the NSW Heritage Council and the DEC, and is satisfied that the proposal would not have a significant impact on the regional and local heritage of the area, given the nature of the items and the requirements of the Heritage Council and DEC on the management of these relics. The Department has recommended that the requirements of the NSW Heritage Office and the DEC be incorporated into any conditions of consent for the commercial area. This will ensure that these agencies' requirements are met, and that the proposal would not result in any impacts on these relics.

## **8. PROPOSED MODIFICATIONS TO THE CONSENT**

To reflect the proposed modifications to the site layout, the Department recommends that the development consent be modified to include references to the documentation that accompanied the modification application.

These recommended modifications to the existing development consent are outlined in the recommended modification instrument attached (tagged "A").

## 9. SECTION 79C CONSIDERATION

In determining an application for the modification of a consent and Stage Two of the development, the Minister as consent authority is to take into consideration the relevant matters listed under Section 79C(1) of the *Environmental Planning and Assessment Act 1979*. Based on this evaluation (attached as Appendix A), it is recommended that the Minister should approve the proposed modification and Stage Two based on the merit of the application.

## 10. CONCLUSION

The original development application, and accompanying Environmental Impact Statement, broadly assessed the impacts of the proposed export facility as the finer details regarding the proposed operations at the facility were unknown at that time. While the Department concluded in its assessment of the project that the proposed facility could be operated within acceptable environmental limits, the Department recommended that the Applicant be required to submit for the Minister's approval the details of the design and operation of the facility in order to verify the impact assessment of the facility. This was reflected in condition 6 of the Minister's 2000 consent, which requires the Applicant to obtain the Minister's approval of Stage Two (commercial export facility) prior to the commencement of work on this project component.

The Applicant has now submitted the final design and operation of the commercial export facility, which the Department has assessed and concluded that the proposed facility could operate without any significant impacts on the surrounding environment. The Department is also satisfied that the residual impacts of the proposal can be minimised to low as reasonably possible through the recommended conditions of consent, which will also provide for the proper long-term management, monitoring and reporting of the operations at this site.

With respect to the proposed section 96(1A) modification, the Department is satisfied that the development, as modified, would be substantially the same development, and would not result in any detrimental impacts on the objectives of the Coastal Lands Protection Scheme, under which this land was originally purchased.

Consequently, the Department recommends that the Minister approve the modification and Stage Two of the development, subject to conditions.

## 11. RECOMMENDATIONS

It is recommended that the **Director-General**:

- a) consider the findings and recommendations presented in the Department's assessment report for Stage Two of DA No. 245-11-99 and modification application MOD-99-9-03-i (tagged "F"); and
- b) in accordance with clause 49 of the Bega Valley Local Environmental Plan 2002, grant concurrence to the development by signing the Ministerial Submission.

It is recommended that the **Minister**:

- (a) Consider the findings and recommendations of this report in relation to the modification application and Stage 2 of the development (tagged "F");
- (b) Agree that the development will be substantially the same should the proposed modification proceed;
- (c) Agree that the proposed modification will have a minimal environmental impact;
- (d) Pursuant to section 96(1A) of the Act, modify the development consent in accordance with the attached modifying instrument (tagged 'B') by signing the instrument; and
- (e) Pursuant to section 80 of the Act, approve Stage Two of the development, subject to conditions, by signing the attached instrument (tagged 'C').

Endorsed:

Caitlin Bennett  
**A/Senior Environmental Planning Officer**

Sam Haddad  
**Deputy Director-General**

**APPENDIX A – SECTION 79C(1) CONSIDERATIONS**

The following assessment is based on the matters listed for consideration under section 79C(1) of the amended *Environmental Planning and Assessment Act 1979*.

**(c) The provisions of:**

**(i) any environmental planning instrument;**

<b>State Environmental Planning Policy No.14 – Coastal Wetlands</b>		
1.	<p>This policy applies to land identified on specified maps. Clause 7 of this policy states that a consent authority must not grant consent to a development without the concurrence of the Director –General with respect to the following works within SEPP 14 wetlands:</p> <ul style="list-style-type: none"> <li>a) clear that land,</li> <li>b) construct a levee on that land,</li> <li>c) drain that land, or</li> <li>d) fill that land.</li> </ul>	<p>The proposal will not involve any activities that trigger the provisions of this policy. Measures have however been incorporated into the consent to capture and treat stormwater from the site.</p>
<b>State Environmental Planning Policy No. 33 – Hazardous And Offensive Development</b>		
1.	<p>This policy gives a number of definitions of ‘potentially hazardous industry’ and ‘potentially offensive’ industry, and requires consideration to be given to current circulars or guidelines published by the Department of Planning relating to hazardous and offensive industry.</p>	<p>The storage of diesel at the site does not trigger the definition of ‘potentially hazardous industry’, and therefore does not apply to Stage Two or the proposed modification.</p>
<b>State Environmental Planning Policy No.71 – Coastal Protection</b>		
1.	<p>SEPP No. 71 – Coastal Protection has been made to ensure:</p> <ul style="list-style-type: none"> <li>▪ development in the NSW coastal zone is appropriate and suitably located;</li> <li>▪ there is a consistent and strategic approach to coastal planning and management;</li> <li>▪ there is a clear development assessment framework for the coastal zone.</li> </ul> <p>The matters for consideration are the following:</p> <ul style="list-style-type: none"> <li>a) the aims of this Policy set out in clause 2,</li> <li>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,</li> <li>c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,</li> <li>d) the suitability of development given its type, location and design and its relationship with the surrounding area,</li> <li>e) any detrimental impact that development</li> </ul>	<p>The proposal does not have frontage to the coastal foreshore. The remainder of the site, which is protected by a covenant, would be maintained in this state to achieve this objective.</p> <p>The remainder of the site is to be preserved for this purpose under the existing covenant for the site.</p> <p>The proposal is considered appropriate given the context of the facility with the establishment of the multi-purpose wharf, as well as Council’s long-term strategic plans for the area in the vicinity (that is for the purposes export/import industries). With respect to the suitability of the site in terms of environmental or scenic quality considerations, these aspects are considered in section 7 of the report.</p> <p>The proposed development has a setback of</p>

	<p>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,</p> <p>f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,</p> <p>g) measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u>) and plants (within the meaning of that Act), and their habitats,</p> <p>h) measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u>) and marine vegetation (within the meaning of that Part), and their habitats</p> <p>i) existing wildlife corridors and the impact of development on these corridors,</p> <p>j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,</p> <p>k) measures to reduce the potential for conflict between land-based and water-based coastal activities,</p> <p>l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,</p> <p>m) likely impacts of development on the water quality of coastal waterbodies,</p> <p>n) the conservation and preservation of items of heritage, archaeological or historic significance,</p> <p>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,</p> <p>p) only in cases in which a development application in relation to proposed development is determined:</p> <p>(i) the cumulative impacts of the proposed development on the environment, and</p> <p>(ii) measures to ensure that water and energy usage by the proposed development is efficient</p>	<p>400 metres from the coastal foreshore. The site does not current afford views of the coastal foreshore.</p> <p>Refer to section 7 of this report.</p> <p>Assessments undertaken for Stage One and Stage Two of the project have concluded that there would not be any significant impact on any threatened species and their habitats. In fact, the proposed modification would enable the preservation of an area of high ecological value.</p> <p>N/A</p> <p>Refer to the above.</p> <p>N/A.</p> <p>Refer to section 7 of this report.</p> <p>Refer to section 7 of this report.</p> <p>Refer to section 7 of this report.</p> <p>N/A</p> <p>N/A</p>
2.	<p>Part 4 of this policy sets out development control provisions that a consent authority must consider in determining a development application. These provisions relate to the:</p> <p>a) preservation of public access;</p> <p>b) adequacy of effluent disposal</p> <p>c) management of stormwater flows</p>	<p>The Department has considered these in it assessment (Refer to section 7 of this report), and is satisfied that the proposal would meet these development controls.</p>

**Lower South Coast Regional Environmental Plan No.1**

1.	<p>The aims, objectives, policies and strategies of this plan are, in relation to the Lower South Coast Region:</p> <ul style="list-style-type: none"> <li>(a) to conserve the scenic and environmental character of the Region,</li> <li>(b) to maintain the scale and character of the built environment,</li> <li>(c) to preserve views to and from public places,</li> <li>(d) to protect public places from overshadowing,</li> <li>(e) to encourage development sympathetic to the natural landform, and</li> <li>(f) to enable flexibility in building design consistent with the general aims and objectives of this plan.</li> </ul>	<p>Issues relating to the impacts of the proposal on the scenic quality and access to public areas are discussed in section 7 of this report.</p>
2.	<p>A person shall not erect a building on land to which this plan applies if the building has a height of more than 14 metres.</p>	<p>The proposal involves the construction of an amenities building and storage shed. These buildings are one storey, and as such will comply with this clause.</p>
<b>Lower South Coast Regional Environmental Plan No.2</b>		
1.	<p>This policy main aim is towards the strategic planning of the lower south coast, however some development controls are provided in this policy.</p>	
2.	<p>Clause 13 states that a consent authority must take into respect the following to ensure the protection of coastal and waterway environments. Clause 13(1) lists a number of guidelines to be taken into consideration during the assessment of a development application.</p>	<p>Satisfied.</p>
<b>Bega Valley Local Environmental Plan 2002</b>		
1.	<p>The proposed development is zoned as 7(f2) (Coastal Lands Acquisition Zone) and 1(f) (Rural forestry Zone).</p>	<p>Under each zoning, the proposed facility is classified as prohibited development. However, as the proposal forms part of an overall State Significant Development Project, this prohibited aspect of the proposal in the context of the overall project is considered to be permissible with development consent.</p>
	<p>Clause 49 of the LEP states that development consent cannot be approved in zone 7(f2) unless concurrence is granted by the Director-General. In considering whether or not to grant concurrence, the Director-General must take into consideration the following:</p> <ul style="list-style-type: none"> <li>(a) the extent to which the development would affect the scenic qualities of the coastal landscape, headlands, dune systems and areas where the original vegetation is still dominant, and</li> <li>(b) whether the development would result in the degradation of, or restriction of access to, coastal recreation areas, and</li> <li>(c) any plan, policy or design adopted by resolution of the Coastal Council of New South Wales for the purpose of protecting coastal lands, and</li> <li>(d) in the case of land within Zone 7 (f2), the imminence of acquisition of the land, and</li> <li>(e) the objects of the <i>Environmental Planning and Assessment Act 1979</i>.</li> </ul>	<p>Refer to section 7 of this report.</p> <p>Refer to section 7 of this report.</p> <p>Considered to be consistent with the Coastal Lands Protection Scheme</p> <p>The site was acquired by DUAP in 1999 under the CLPS and transferred to the property to State Forests. Therefore the property is not considered to be acquired any time in the future.</p> <p>Satisfied through this assessment.</p>

**(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority;**

None.

**(iii) any development control plan;**

None.

**(iv) any matters prescribed by the regulations that apply to the land to which the development application relates.**

None.

**(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,**

Natural Environment

Refer to Section 6 of the report.

Built Environment

Refer to Section 6 of the report.

Social and Economic Impacts

The proposed modification does not effect the conclusions made in the original assessment for the proposal.

Amenity

Refer to Section 6 of the report.

**(c) the suitability of the site for the development,**

The site is considered to be suitable for development, considering its proximity of the proposal to the multi-purpose wharf, and Council's long-term future strategic planning for this area to be further developed for export/import industries. Potential impacts on the surrounding development, and the mitigation of these impacts have concluded that the proposed development at this site would not have any detrimental impacts on the surrounding development.

**(d) any submissions made in accordance with this Act or the regulations,**

Issues raised by the government authorities and Council in submissions are discussed in Sections 7 of this report, and summarised in Appendix B. It is considered that all the issues in these submissions have been satisfactorily addressed, and that there are no outstanding issues that would preclude the granting of development consent with conditions.

**(e) the public interest.**

The proposal does not effect the conclusions made in the original assessment for the proposal.

## APPENDIX B - SUMMARY OF SUBMISSIONS

### GOVERNMENT AUTHORITIES

No.	Authority	Issues Raised
1.	Mr Trevor Jones Regional Manager South Coast Environment Protection and Regulation Division Department of Environment and Conservation PO Box 513 WOLLONGONG EAST NSW 2520	<ul style="list-style-type: none"> <li>▪ Acknowledges receipt and processing of application from Applicant for the works that would disturb aboriginal relics. DEC have been advised by the local aboriginal land council that it has no outstanding issues on the proposal.</li> <li>▪ Recommends conditions with respect to the handling of loose materials at the wharf</li> <li>▪ Inadequacies with the noise assessment with respect to the INP and clarification on inputs to the noise model</li> <li>▪ Requests further information on the impact assessment of flora and fauna relating to habitats, roosting trees, feed trees, and an assessment of the endangered Southern Brown Bandicoot.</li> <li>▪ Recommends a number of conditions to control or restrict pest species at the site.</li> </ul>
2.	Mr G J Barry Director of Environment, Planning and Development Services Bega Valley Shire Council PO Box 492 BEGA NSW 2550	<ul style="list-style-type: none"> <li>▪ satisfied with the proposed mitigation measures, given adequate monitoring during construction works</li> <li>▪ Applicant would need to obtain an approval from Council for the on-site septic tank system</li> <li>▪ Is supportive of the establishment of the facility</li> </ul>
3.	Mr G J Barry Director of Environment, Planning and Development Services Bega Valley Shire Council PO Box 492 BEGA NSW 2550	<ul style="list-style-type: none"> <li>▪ requests sufficient water/stormwater controls are provided to cater for longer storm events to ensure adequate protection of downstream habitats.</li> </ul>