

Modification of Minister's Approval

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

As delegate of the Minister for Planning and Infrastructure under delegation executed on 10 November 2014, we, the Planning Assessment Commission approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.

Member of the Commission

Member of the Commission

Sydney

2015

File No. 14/040721-2

SCHEDULE 1

PART A - TABLE

Application Number:	DA 172-7-2005 MOD 3
Application made by:	Canberra Investment Corporation Ltd
On land comprising:	Lot 2 in Deposited Plan 865527 and Lot 10, in Deposited Plan 1015889 Kings and Princes Highway, Batemans Bay
Local Government Area	Eurobodalla
For the carrying out of:	Subdivision of the site into 157 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 the existing lots within stage 2B to create 31 lots (10 additional lots); ▪ alter the building envelope criteria for the lots within Stage 2B; ▪ creation of sub-stages 2B1 and 2B2 within Stage 2B; and ▪ revised road infrastructure to accommodate the additional lots.
Development consent granted by:	Minister for Planning
On:	7 December 2006
Type of development:	State Significant Development
S.119 Public inquiry held:	No
As modified by:	DA172-7-2005 MOD 1 (Mod 16-3-2007) approved 25 June 2008 DA172-7-2005 MOD 2 approved 14 September 2012

SCHEDULE 2

1. **Delete** the definitions of 'Department' and 'Director-General' in Schedule 1, Part C – Definitions and **replace** with the following definition in alphabetical order:

Department means the Department of Planning and Environment or its successors.

Secretary means the Secretary of the Department of Planning and Environment or his/her nominee.

2. **Replace** all references to 'Director-General' in Schedule 2 with 'Secretary'.
3. **Replace** all references to 'RTA' in Schedule 2 with 'RMS'.
4. **Replace** all references to the 'NSW Department of Natural Resources' and 'NSW Department of Environment and Conservation' in Schedule 2 with the 'NSW Office of Environment and Heritage'.
5. **Delete** Condition 1.1B in its entirety and **replace** it with the following:

1.1B Development Description

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

- a) Subdivision of Lot 2 in Deposited Plan 865527 and Lot 10 in Deposited Plan 1015889 into 157 rural residential lots under Torrens title:-
 - (i) Lot sizes – from 1,347 m² to 31,811 m²;
 - (ii) Building Envelopes – generally 400 m² for each designated lot, with the exception of Lots 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, within stage 2B1 and lots 110 to 141 within Stage 2B2, which must be designed in accordance with the site planning provisions contained in section 2.1 of the *Eurobodalla Residential Zones Development Control Plan 2012*;
 - (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 seven stages, with Stage 2B sub-staged into stage 2B1 and Stage 2B2;
 - (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 Road No 1 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 40 m 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.
6. **Insert** new Condition 1.2.1A after Condition 1.2.1 as follows:

1.2.1A Approved Modifying Plans and Supporting Documentation

All development within stage 2B shall be in accordance with the request to modify Development Application number DA 172-7-2005 prepared by Mitchell Alexander of CIC Australia Ltd Dated 25 February 2014 (DA 172-7-2005 MOD 3), as amended by the Applicants Response to Submissions prepared by Mitchell Alexander dated 4 July 2014, and in accordance with the following, except where amended by other conditions of this development consent:

Planning Report prepared by Mitchell Alexander of CIC Australia Ltd dated 25 February 2014			
Consultant Studies (contained in Appendices of the Planning Report);			
Document Title	Author	Ref No.	Date
Appendix A - Pressure Sewerage System Increased Density in Spotted Gum Place	Pressure Sewer Solutions Pty Ltd	-	16 July 2013
Appendix B - Stormwater Drainage for Additional Lots at Spotted Gum Place	GHD	23/14123/72524	15 November 2013
Letter Report – APZ Compliance Amended Stage 2B Bay Ridge Estate	Bushfire Protection Planning & Assessment Services	-	28 January 2014
Consultant Studies (contained in Appendices of the Response to Submissions);			
Document Title	Author	Ref No.	Date

Supplementary Letter Report APZ/BAL 29 Compliance – Amended Stage 2B Bay Ridge Estate	Bushfire Protection Planning & Assessment Services	-	15 May 2014
Subdivision and Site Plans prepared by GHD			
Drawing No.	Revision	Name of Plan	Date
23-11848-C001	O	Site Plan – APZ, Contours, Trees with Hollows	24 June 2014
23-11848-C003	G	Typical Sections	25 February 2014
23-11947C002B	M	Staging Plan	24 June 2014
Subdivision Layout and Survey Plans prepared by Conway Burrows + Hancock Consulting Surveyors, Project No 10703			
Drawing No.	Revision	Name of Plan	Date
10703-1	E	Amended Subdivision Layout	19 December 2013
10703B-1	E	Amended Subdivision Layout	19 December 2013
10703B-2	B	Subdivision Layout – Slope Analysis	19 December 2013
Services Plan prepared by GHD			
Drawing No.	Revision	Name of Plan	Date
23-11848-C200	L	Services Plan – Proposed Services Sheet 1 of 4	25 February 2014
23-11848-C201	J	Services Plan – Proposed Services Sheet 2 of 4	25 February 2014

7. Delete Condition 1.7A and replace with the following:

1.7A Staging of the Development

The staging of the development is to occur in accordance with the Staging Plan, prepared by GHD, Drawing Number 23-11947-C002B, Revision M dated 24 June 2014, except as amended by the conditions of this consent, in particular the following conditions:

- (i) The proposed northern access point with the Kings Highway and Road No 1 must be constructed in Stage 2 of the subdivision;
- (ii) The pedestrian and cyclist facilities required by this development consent at the intersection of Proposed Road No 1 and Old Punt Road must be provided in Stage 2 of the subdivision;
- (iii) Public transport infrastructure in accordance with the 'Transport Plan' prepared by GHD Drawing No 23-11848-C005 Revision F dated 29 September 2006 shall be provided in stage 3 of the subdivision;
- (iv) The grade-separated pedestrian crossing point for the Princes Highway is to be completed in Stage 3 of the subdivision; and
- (v) All services are to be provided to each individual allotment prior to their release, with the exception of Stage 1 which only requires telecommunications and electricity services.

8. **Delete** Condition 1.12A and **replace** it with the following:

1.12A Bushfire Safety Authority

The development must comply with all of the conditions of the Bushfire Safety Authority issued by the NSW Rural Fire Service on 16 October 2007 and 14 June 2007, as superseded by the conditions issued by the Rural Fire Service in its letter dated 31 March 2014.

9. After Condition 1.13 **insert** new Condition 1.13A as follows:

1.13A Archaeological Assessment for Works Outside Stages 2B1 and 2B2

- a) Prior to any new excavation works occurring outside of stages 1, 2B1 and 2B2, the Proponent must prepare an Aboriginal Cultural Heritage Assessment in consultation with the OEH and for the approval of the Secretary. The assessment must identify:
- (i) all consultation undertaken in accordance with the OEH's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*;
 - (ii) a copy of all submissions received from any registered Aboriginal party;
 - (iii) a response to each submission received as a result of consultation with Aboriginal stakeholders;
 - (iv) the significance of the Aboriginal objects or Aboriginal places within the application area that are potentially impacted by the works;
 - (v) the actual or likely harm to those Aboriginal objects or Aboriginal places as a result of the proposed works;
 - (vi) any practical measures that may be taken to protect and conserve those Aboriginal objects or Aboriginal places; and
 - (vii) any practical measures that may be taken to avoid or mitigate any actual or likely harm to those Aboriginal objects or Aboriginal places.

Note: A cultural heritage assessment is not required for proposed works that are to take place in Aboriginal sites of Potential Archaeological Deposits classified as destroyed.

10. **Delete** Condition 2.21 and **replace** it with the following condition:

2.21 Bushfire

The recommendations of the '*Bushfire Protection Assessment*' prepared by Bushfire Protection Planning & Assessment Services (undated), the '*Mapping of Black She-Oak Stands and Consideration of Bushfire Issues*' prepared by BES: Bushfire and Environmental Services, Reference No 5458, dated March 2006, and the '*Revised APZ Impact Assessment*' prepared by Bushfire Protection and Planning Assessment Services dated 23 October 2006, and as amended by the '*Supplementary Letter Report APZ/BAL Compliance – Amended Stage 2B Bay Ridge Estate*', prepared by Bushfire Protection and Planning Assessment Services dated 15 May 2014 shall be implemented and maintained except where amended by other conditions of this consent. This requirement shall be reflected in the Construction Certificate plans for each stage of the subdivision.

11. **Delete** Condition 5.15 and **replace** it with the following new condition:

5.15 Restrictions on Building Form, Materials, Earthworks, and Ancillary Structures – Section 88B Restrictions to be Created

The following restriction pursuant to Section 88B of the *Conveyancing Act 1919* in the form prescribed by Clause 33 of the *Conveyancing (General) Regulation 2003* must be created for the relevant lots and stages of the subdivision to restrict the building form, building materials, building envelopes, cut and fill extents and the design and siting of ancillary structures in accordance with North Batemans Bay Masterplan adopted on 5 May 2005 for the site via a restrictive covenant.

The following terms must be included on the restriction:

“The Proprietor of the burdened lot must comply with the building form, building materials, building envelopes, cut and fill extents and the design and siting of ancillary structures in accordance with the North Batemans Bay Masterplan adopted on 5 May 2005, as amended from time to time, and any subsequent Council policy adopted for this site within the land so burdened”.

Evidence of this restriction on the title of the relevant allotments must be provided to the PCA prior to the issue of the Subdivision Certificate for the relevant stage(s) of the subdivision.

12. **Insert** new Condition 5.15A after Condition 5.15 as follows:

5.15A Revisions to the North Batemans Bay Masterplan

The Proponent shall amend the North Batemans Bay Masterplan, as adopted on 5 May 2005, prior to the issue of any Subdivision Certificate for Stage 2B to:

- (i) reflect the subdivision layout for Stage 2B as approved under DA 172-7-2005 MOD 3;
- (ii) update section I of the Masterplan to permit the creation of building envelopes under 400 m² on lots within Stage 2B provided that the envelopes meet the performance criteria for lots under 2,500 m² as outlined in the *Eurobodalla Residential Zones Development Control Plan*; and
- (iii) update Section I of the Masterplan to ensure the minimum setback requirements for lots under 2,500 m² within Stage 2B are consistent with the requirements of the *Eurobodalla Residential Zones Development Control Plan*.

13. **Delete** Condition 1 in Section 6.1 NSW Rural Fire Service – Bushfire Safety Authority in its entirety and **replace** it with the following:

1. The proposed new roads shall comply with the following minimum access requirements, unless superseded by the specific requirements applicable for stages 2B1 and 2B2 outlined in Condition 1a below:

- (i) All access roads servicing more than 4 dwellings are considered public access roads;
- (ii) All public access roads 8 metres wide shall locate services outside parking reserves to ensure accessibility to reticulated water for fire suppression;

- (iii) All public access roads between 8 metres and 7 metres wide shall be "No parking" on one side with services (hydrants) located opposite parking side to ensure accessibility to reticulated water for fire suppression;
- (iv) All public access roads between 7 metres and 5.5 metres wide shall provide parking within parking bays and locate services outside of the parking bays to ensure accessibility to reticulated water for fire suppression;
- (v) No two way public access roads are permitted less than 5.5 metres wide;
- (vi) One way only public access roads shall be no less than 4 metres wide and provide parking within parking bays and locate services outside of the parking bays to ensure accessibility to reticulated water for fire suppression;
- (vii) Parking bays shall be a minimum of 2.6 metres wide from kerb edge to road pavement. No services or hydrants are to be located within parking bays;
- (viii) All access roads directly interfacing the bushfire hazard vegetation shall provide roll top kerbing to the hazard side of the road;
- (ix) All provisions for public access roads, other than where modified by the above provisions, detailed within section 4.3 of Planning for Bushfire Protection 2001 shall be complied with; and
- (x) Turning heads within the subdivision shall comply with section 4.3.1 of Planning for Bushfire Protection 2006 or consult with the RFS for a performance based alternate.

14. **Insert** new Condition 1a in Section 6.1 as follows:

- 1a. Road 2 (Spotted Gum Place) shall be constructed in accordance with section 4.1.3 (1) Public Roads of '*Planning for Bushfire Protection 2006*', except for the requirement that Road 2 shall not exceed 200 m in length.

15. **Delete** Condition 4 in Section 6.1 and **replace** with new Condition 4 as follows:

- 4. The recommendations detailed in the Bushfire Protection Assessment prepared by Bushfire Protection Planning and Assessment Services, included with your letter dated 3 August 2005 shall be complied with, unless superseded by the specific requirements applicable for stages 2B1 and 2B2 as outlined in:
 - (i) 'Bushfire Protection Planning and Assessment Services Pty Ltd', Dated 28/1/2014, Titled '*Bushfire Compliance Advice for the Proposed (Revised) Residential Subdivision Development of Bay Ridge Estate (stage 2B) North Batemans Bay*'
 - (ii) section 4.1.3 and Appendix 5 of '*Planning for Bushfire Protection 2006*'; and
 - (iii) NSW Rural Fire Service's document '*Standards for asset protection zones*' for the life of the development.

16. **Insert** Condition 5 in Section 6.1 as follows:

- 5. Prior to the release of a Subdivision Certificate for stages 2B1 and 2B2, the applicant shall submit an addendum to the Bushfire Compliance Advice, prepared by a suitably qualified Bushfire Consultant, and submitted to the satisfaction of the Secretary. The addendum shall clearly outline any reciprocal

APZ easements required for stage 2B1 and 2B2 lots in order to facilitate the APZs required under Table A2.4 of '*Planning for Bushfire Protection 2006*'. This addendum shall include the articulated terms for any proposed easements for creating these APZs and a notation that the easements shall be subsequently registered on the title of affected allotments prior to subdivision. The terms of the easement shall provide for the creation and maintenance of the land as an APZ unless the land is developed such that the hazard is removed, whereby the easement may be extinguished.

Council to Note: Any future residential development application lodged for proposed lots within this subdivision, identified as bush fire prone land on the Councils Bush Fire Prone Land map, may be subject to section 79BA of the EP& A Act and must meet the requirements of *Planning for Bush Fire Protection 2006*.

End of Modification (DA 172-7-2005 MOD 3)