

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Development Application

Proposed Development	Tourist facility (6 cabins), studio workshop, access roads, car parking spaces, landscaping and water tanks.
File No:	W02/00164 Pt.1
Application Number:	DA 173-4-2003
Date of lodgement:	24 April 2003
On land comprising:	Lot 4, DP1016359, 3023 Princess Highway, Millingandi
Application made by:	Mr Bryan Zagar and Mrs Jenny Zagar 41 Halloran Drive, Jerrabomberra NSW 2619
Application made to:	Minister for Infrastructure, Planning & Natural Resources
Local government area:	Bega Valley Shire Council
State electorate:	Andrew Constance MP Member for Bega The views of the Member are not known.
Notification:	Advertised in Bega District News on Friday 16 May 2003.
Public Exhibition	Start: 16 May 2003 End: 13 June 2003.
For the carrying out of:	Tourist facility (6 cabins) and studio workshop/reception building.
Estimated cost of works:	\$500,000
FTE Jobs created:	2 full time equivalent operational jobs
Type of development:	State Significant Development, Integrated Development.
Was a public inquiry held?	An inquiry under s.119 of the Act was not held.
Integrated approval bodies:	New South Wales Rural Fire Service
Main Issues:	Refer to attached page.
Compliance with the Act	The application has been considered with regard to the matters raised in section 79C of the Act. The application was notified in accordance with the Regulations and all submissions received in the period have been considered. On balance, it is considered that the proposed development is acceptable and that development consent be granted.
Applicant views on draft conditions:	Applicant expressed general support for proposed draft conditions.

Recommendation

It is recommended that the Minister assisting the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy 71 – Coastal Protection:

- (A) grant **consent** to the application subject to conditions (Tagged “A”), and
- (B) authorise the Department to carry out post-determination notification.

Approved:

Sam Haddad

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

Craig Knowles

**Minister for Infrastructure Planning and Natural
Resources**

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Development Application: Supplementary Information

Proposed Development

The proposed development seeks consent for:

- The construction of a Tourist Facility comprising of six (6) cabins - 5 x 2 bedroom single storey cabins and a 1 x 3 bedroom double storey cabin, studio workshop, access roads, car parking spaces, landscaping and water tanks.

Summary of Significant Issues

(1) Effluent Disposal

- Issue:** The subject site effectively abuts Merimbula Lake (a Crown Reserve separates the site from the edge of the lake) and no reticulated sewage system is available.
- Raised by:** Applicant, Public Submissions, Coastal Council.
- Consideration:** The application was accompanied by a report from a suitably qualified person detailing the sites suitability to accommodate effluent disposal. The proponent has advised that an aerated wastewater treatment (AWTS) system is proposed. Council has a detailed Effluent Disposal Policy, which will form the basis of assessment of any application for on site waste disposal system.
- Resolution:** By imposition of condition requiring the approval of an on site waste system by Council prior to the release of construction certificate.

(2) Character and visual impact

- Issue:** The site is located between the Princes Highway and Merimbula Lake and is considered to be relatively visible.
- Raised by:** Applicant, Public Submissions, Coastal Council.
- Consideration:** It is considered that the proposed development will not prejudice the scenic quality of the area. The cabins are mainly single storey, are of an appropriate size and scale, have employed good design and appropriate colours and materials.
- Resolution:** It is considered the proposed development adequately responds to the locality and will not have an adverse impact on the aesthetic qualities of the area.

(3) SEPP 14 – Coastal Wetland (Freshwater Meadow)

- Issue:** A portion of the site contains a SEPP 14 Wetland
- Raised by:** Bega Valley Shire Council, DIPNR (former DLWC)
- Consideration:** The application was initially integrated development under the *Rivers and Foreshores Improvement Act, 1948* (excavation within 40 metres of a natural watercourse). Accordingly, the application was referred to the former Department of Land & Water Conservation (DLWC) for comment. General Terms of Approval were issued however management of the wetland had not been fully considered (uncertainty regarding its actual location and any possible works been undertaking

within it). To clarify this issue an inspection was conducted by an officer from the Department's Bega Office who confirmed that a "Freshwater Meadow" existed on a portion of the land. The application was amended to ensure no development takes place within this area. Consequently, this integrated development component of the development was no longer required. Natural Resources raised no other concerns.

Resolution: Plans amended deleting development in the wetland area.

(4) Flooding

Issue: A portion of the site, that which fronts Merimbula Lake is identified as being flood prone. A portion of cabins 3 and 4 encroach into the flood prone area.

Raised by: Coastal Council, Bega Valley Shire Council

Consideration: Bega Valley Shire Council requires finished floor level to be 500mm above the 1 in 100 year flood level. The application has responded to this requirement and raised the finished floor levels accordingly. This is considered to be satisfactory given it is a minor encroachment and it is not envisaged the structures will have a significant impact on floodwaters.

Resolution: Condition requiring submission from a Structural Engineer a certificate confirming the development will adequately withstand flood waters.



Planning Assessment Report

Development Application No. 173-4-2003

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 173-4-2003.

The application seeks consent for a Tourist Facility comprising 6 cabins, a studio workshop and associated facilities. Pursuant to Bega Valley Local Environmental Plan 2002 the land is zoned 2(c) Residential Tourist. The proposed development is permissible in the zone subject to formal planning approval.

The Minister for Infrastructure Planning and Natural Resources is consent authority under clause 10 of State Environmental Planning Policy No 71 – Coastal Protection.

It is recommended that the development application be granted conditional **consent**.

2 BACKGROUND

2.1 Site Context

The site is located at 3023 Princess Highway, Millingandi in the Bega Valley Local Government area.

The development application was lodged with the Department on 24 April 2003 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site is described as Lot 4 in DP1016359 and has an area of approximately 1.56 hectares and is rectangular in shape. The topography of the land is relatively level and slopes gently towards a Crown Reserve which separates the site from the lake. The lower portion of the site is identified as being flood prone and is identified as being a wetland under State Environmental Planning Policy No. 14 – Coastal Wetlands. No development is proposed within that part identified as being wetland.

Access is from the Princes Highway via a battleaxe driveway. The property is effectively cleared with 2 or 3 mature gums located towards the eastern end. Land to the south of the site however does contain native vegetation, thus the need to seek an Integrated Approval from New South Wales Rural Fire Service. Surrounding landuses are predominately rural-residential but also comprise of tourist accommodation.

2.2 Relevant approvals

A Bush Fire Safety Authority from the New South Wales Rural Fire Service (RFS) is required under the *Rural Fires Act, 1997*.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- The construction of a Tourist Facility comprising of 6 cabins - 5 x 2 bedroom single storey cabins and a 1 x 3 bedroom double storey cabin, studio workshop, access roads (internal driveways), car parking spaces, landscaping and water tanks.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

Pursuant to Bega Valley Local Environmental Plan 2002 the subject land is zoned 2(c) Residential Tourist. The proposed development falls within the definition of “tourist accommodation”. Tourist facilities are permissible in the zone subject to formal planning approval.

4.2 Instrument of consent and other relevant planning instruments

Pursuant to clause 10 of State Environmental Planning Policy No. 71 – Coastal Protection the Minister is the consent authority for this development application.

The following planning instruments apply:

- State Environmental Planning Policy No. 71 – Coastal Protection;
- Lower South Coast Regional Environmental Plan (REP) No.2; and,
- Bega Valley Local Environmental Plan 2002.

4.3 Legislative context

The proposed development is classified as State significant by virtue of clause 10 of State Environmental Planning Policy No. 71 – Coastal Protection. Under Section 91 of the Act the development is “integrated development” (New South Wales Rural Fire Service).

4.4 Other statutory provisions

The following Development Control Plans apply:

- Development Control Plan No. 5 – On-Site Sewage Management
- Development Control Plan No. 6 – Minimum Setbacks to Roads and Nominated Waterways
- Bega Valley Section 94 Contribution Plans

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations and Great Lakes Notification Policy including:

Notifications – landowners/occupiers	6 adjoining and nearby landowners. The following stakeholders were also notified of the application: • Pambula Oyster Growers Association • Merimbula Area Committee • Merimbula Lakes and Foreshores Committee • Eden Local Aboriginal Land Council
Newspaper advertisements	Advertised in the Bega District News on Friday 16 May 2003.

Site notice	16 May 2003
Exhibition dates	Start: 16 May 2003 End: 13 June 2003.
Exhibition venues	▪ DIPNR - Sydney Office ▪ DIPNR – Wollongong Office ▪ DIPNR – Queanbeyan Office ▪ Bega Valley Shire Council – Bega Administration Centre ▪ Bega Valley Shire Council – Merimbula Office

A total of 2 submissions were received. A summary of submissions is at **Attachment 1**. Issues are considered in Section 5.4 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

New South Wales Rural Fire Service

The application is 'integrated development' under the *Rural Fires Act, 1997*. The New South Wales Rural Fire Service has considered an evacuation plan for the development and deemed it to be satisfactory. Accordingly, a Bush Fire Safety Authority has been issued.

5.2.2 Other Agencies

DIPNR (former Department of Land & Water Conservation)

The application was initially integrated development under the *Rivers and Foreshores Improvement Act, 1948* (excavation within 40 metres of a natural watercourse). Accordingly, the application was referred to the former Department of Land & Water Conservation (DLWC) for comment. General Terms of Approval were issued however management of the wetland had not been fully considered (uncertainty regarding its actual location and any possible works been undertaking within it). To clarify this issue an inspection was conducted by an officer from the Department's Bega Office who confirmed that a "Freshwater Meadow" existed on a portion of the land. The application was amended to ensure no development takes place within this area (SEPP 14 – Coastal Wetlands would require an Environmental Impact Statement (EIS) to be prepared). Consequently, this integrated development component of the development was no longer required. DLWC raised no other concerns.

New South Wales Fisheries

Given the site's proximity to Merimbula Lake (an oyster lease is nearby) the application was referred to New South Wales Fisheries for comment. No objections were raised provided the Soil and Water Management Plan is implemented appropriately (telephone conversation with Alan Lugg).

New South Wales Coastal Council

The application was referred to the Coastal Council for comment. Issues raised related to effluent disposal, siting of cabins within a floodprone area, access to public foreshore

through the site, potential impact on oyster leases. Issues raised are discussed in further detail in Section 5.4 of this report.

Bega Valley Shire Council

The application was referred to Bega Valley Shire Council for comment. Council raised issues relating to building setbacks from the lake, effluent disposal and flooding. Issues raised are discussed in further detail in Section 0 of this report.

Other Stakeholders

The application was notified to the Pambula Oyster Growers Association, Merimbula Area Committee, Merimbula Lakes and Foreshores Committee and Eden Local Aboriginal Land Council. No submissions were received.

5.3 The Environmental Planning & Assessment Act, 1979

5.3.1 Section 79C – Matters for consideration

The application and the likely impacts of the proposed development have been considered in accordance with section 79C of the Act. Significant issues are discussed below in Section 5.4, and, where relevant, a detailed assessment is provided as noted in the table below.

Instrument / Policy	
PLANNING INSTRUMENT(S) [s79C(1)(a)(i)] • State Environmental Planning Policy No. 71 – Coastal Protection • Lower South Coast Regional Environmental Planning Policy No. 2 • Bega Valley Local Environmental Plan 2002	Refer to attached assessment report

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 5.4. On balance, the proposed development is considered to be in the public interest.

5.4 Issues

Issue 1. Effluent Disposal

Raised by: Public Submissions, New South Wales Coastal Council

Consideration: The application was accompanied by a report from a suitably qualified person detailing the sites suitability to accommodate effluent disposal. The proponent has advised that an aerated wastewater treatment (AWTS) system is proposed. Council has a detailed Effluent Disposal Policy, which will form the basis of assessment of any application for on site waste disposal system.

Resolution: By imposition of condition requiring the approval of an on site waste system by Council prior to the release of construction certificate.

Issue 2. Building setbacks from lake

Raised by: Bega Valley Shire Council

Consideration: Bega Valley Shire Council made reference in correspondence dated 19 June 2003 that a section 88B Instrument imposed on the Deposited Plan 1016359 a minimum building line setback of 75 metres from the high water mark of Merimbula Lake. The proposed development complies with this requirement.

Resolution: It is considered the application adequately responds to the setback requirements.

Issue 3. *Siting of cabins in floodprone area*

Raised by: Bega Valley Shire Council, New South Wales Coastal Council

Consideration: Bega Valley Shire Council requires finished floor level to be 500mm above the 1 in 100 year flood level. The application has responded to this requirement and raised the finished floor levels accordingly. This is considered to be satisfactory given it is a minor encroachment and it is not envisaged the structures will have a significant impact on floodwaters.

Resolution: Condition requiring submission from a Structural Engineer a certificate confirming the development will adequately withstand flood waters.

Issue 4. *Access to public foreshore*

Raised by: New South Wales Coastal Council

Consideration: The proposed development will not inhibit the public from gaining access to the foreshore of Lake Merimbula. An existing Crown road provides public access to the foreshore reserve which separates the site from the lake. It is considered these arrangements are satisfactory.

Resolution: It is considered the existing access arrangements are satisfactory.

Issue 5. *Potential impact on oyster leases*

Raised by: Given the site's proximity to Merimbula Lake (an oyster lease is nearby) the application was referred to New South Wales Fisheries for comment. No objections were raised provided the soil and water management plan is implemented appropriately (information faxed to Fisheries and follow up telephone call with Mr Allan Lugg). It should also be noted that Pambula Oyster Growers Association, Merimbula Area Committee and Merimbula Lakes and Foreshores Committee were notified of the development application yet did not make submissions.

Consideration:

Resolution: It is considered that provided the site and development is managed appropriately the oyster leases will not be affected.

6 CONCLUSION

The Minister for Infrastructure Planning and Natural Resources is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the *Environmental Planning & Assessment Act, 1979* and by DIPNR (former DLWC), New South Wales Rural Fire Service, New South Wales Fisheries, Coastal Council and Bega Valley Shire Council.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 12 January 2004. The applicant responded on 15 January 2004 and described the proposed conditions as acceptable, subject to minor changes.

8 RECOMMENDATION

It is recommended that the Minister assisting the Minister for Infrastructure and Planning pursuant to section 80 (1) *and 80A of the Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy 71 – Coastal Protection:

- (A) grant **consent** to the application subject to conditions (Tagged “A”), and
- (B) authorise the Department to carry out post-determination notification.

For Ministerial Approval

Prepared by

Endorsed:

Philip Carroll
Environmental Planning Officer
Urban Assessments

David Mutton
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