

**MAJOR PROJECT ASSESSMENT:
RURAL RESIDENTIAL SUBDIVISION AT 13
MILLINGANDI RD, MILLINGANDI
(MP06_0032)**



Director-General's
Environmental Assessment Report
Section 75I of the
Environmental Planning and Assessment Act 1979
October 2010

Abbreviations

CIV	Capital Investment Value
Department	Department of Planning
DGRs	Director-General's Requirements
Director-General	Director-General of the Department of Planning
EA	Environmental Assessment Report
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
MD SEPP	State Environmental Planning Policy (Major Development) 2005
Minister	Minister for Planning
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PPR	Preferred Project Report
Proponent	Planning Group NSW Pty Ltd
RiS	Response to Submissions

Cover Photograph: View of proposed subdivision site. Courtesy of Proponent's EA.

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EXECUTIVE SUMMARY

RW Surveying and Valuations ('the Proponent') on behalf of the owners, Gregory and Kristine Clements, submitted an application to the Director-General seeking approval to subdivide 13 Millingandi Road, Millingandi (Lot 101 DP1087389) into 11 rural lots (Figure 3). The Proponent, in response to issues raised in submissions, provided a PPR that amended the project layout by removing one lot. The subdivision will therefore create 10 lots ranging in size from 0.6 to 1.7 hectares. A proposed public road will provide access to the new lots from Millingandi Road. The proposal aims to supplement the supply of small rural holdings close to urban areas in the Bega LGA, whilst achieving compliance with environmental planning instruments in order to allow for the orderly and economic development of the land. Dwellings are not part of this project application. The estimated CIV of the development is \$275,000.

On 22 February 2006, the Director-General as delegate for the Minister for Planning formed the opinion that the project is a development of a kind described in Schedule 2 of MDSEPP (as it existed), namely subdivision of rural-zoned land into more than 5 lots in a coastal zone and is therefore a project to which Part 3A of the EP&A Act applies. Consequently, the Minister for Planning is the approval authority for the project.

During the exhibition period, the Department received a total of eight submissions, six from public authorities and two from the public. Public submissions and agency submissions did not provide opinion on the project and instead raised issues for consideration. Key issues considered in the Department's assessment include water quality and supply impacts, as well as subdivision restrictions and access impacts.

The Department has assessed the merits of the project and taken into consideration existing plans and zonings for land use in the area, as well as all relevant documents in accordance with the objects of the EP&A Act and ecologically sustainable development. The Department is satisfied that the impacts of the proposed development have been addressed via the Proponent's Statement of Commitments and the Department's recommended conditions of approval. Impacts of the proposed development can therefore be suitably mitigated and managed to ensure an appropriate level of environmental performance. On these grounds, the Department is satisfied that the site is suitable for the proposed development and that the project will provide sustainable social and economic benefits to the region balanced against the areas environmental sensitivity. The Department therefore recommends the project be approved, subject to conditions.

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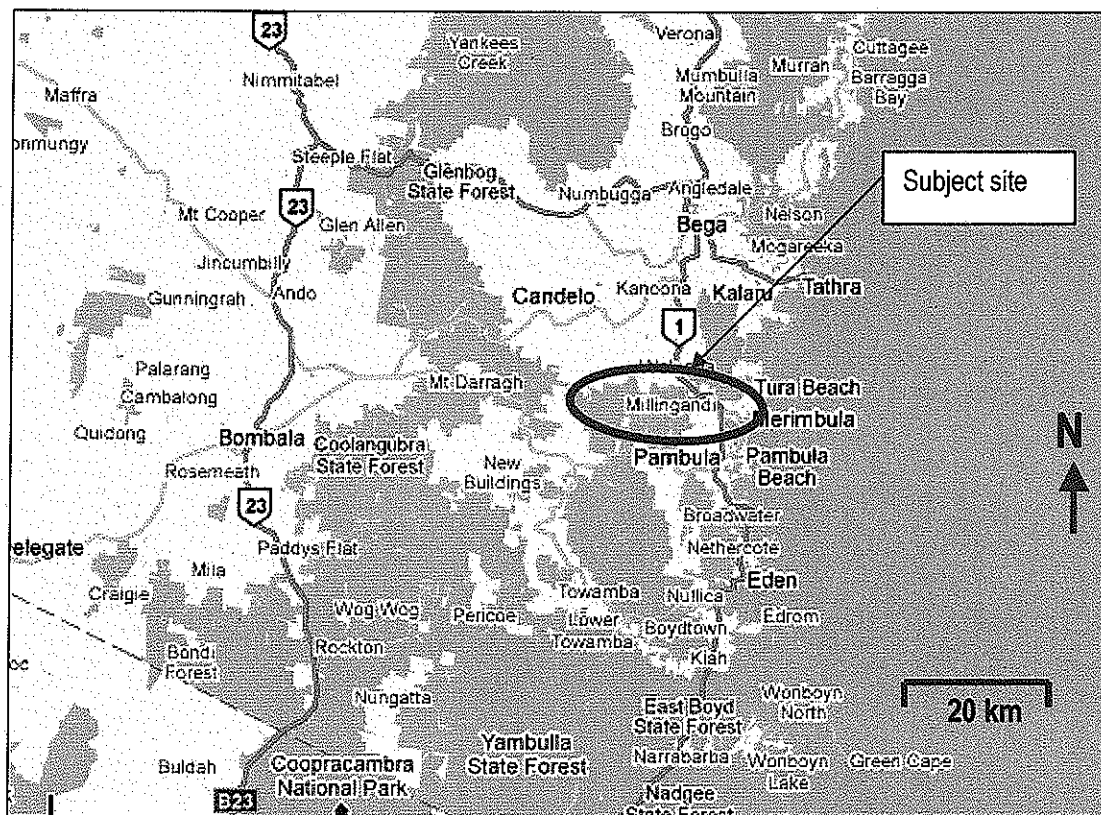
1. BACKGROUND

1.1. Location

RW Surveying and Valuations ('the Proponent') on behalf of the owners, Gregory and Kristine Clements, propose to subdivide 13 Millingandi Road, Millingandi (Lot 101 DP1087389) ('the site'). The site is located in the Bega Valley local government area.

Millingandi is a rural/residential enclave situated on the south-east coast of New South Wales, 473km south of Sydney, 5km north of Pambula and 4km west of Merimbula (Figure 1). The site has an area of 10.77ha and is bounded to the east, south and west by rural residential properties. Access to the site is via Millingandi Road.

Figure 1: Site Location



1.2. Surrounding Land Use

The site is bounded to the north, east and west by cleared lands. These lands have been subdivided into lots similar in size to the proposed lots and are predominately used for residential purposes, but also used for grazing. These properties are best described as weekend hobby farms.

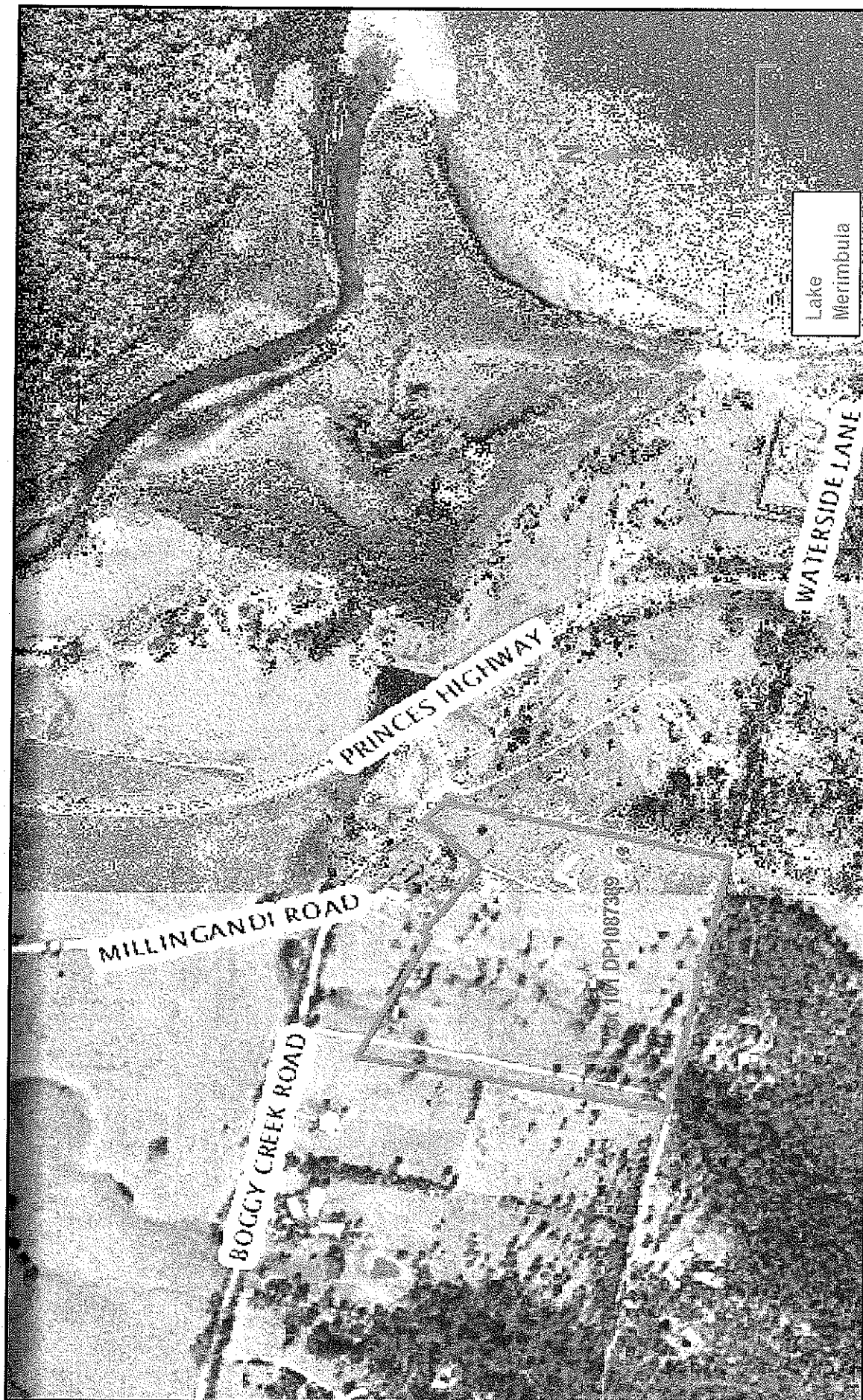
The site is bounded on the south by a forested area.

The Princess Highway lies 80m to the east of the site. Lake Merimbula lies 620m to the east of the site and contains six SEPP14 Coastal Wetlands, as well as Priority Oyster Aquaculture Areas and recreational fishing activities.

Merimbula is the closest major town with a population of 3851 (Census 2006). Merimbula is known as a tourist destination and service centre with an airport, retail, commercial and recreational services.

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Figure 2: The Surrounding Area



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2. THE PROPOSED DEVELOPMENT

2.1. Project Description

The Proponent originally sort approval to carry out an 11 lot rural-residential subdivision, however after public exhibition, reduced the number of lots to 10. The lots range in size from 0.6 to 1.7 hectares. The subdivision is to be constructed in one stage (Figure 3). The majority of the proposed lots are located on the eastern side of the gully which runs through the property, with three lots to be located on its western side.

It is not proposed to connect to the reticulated sewer system and future dwellings will therefore utilise a form of onsite sewerage disposal.

The main traffic entry will be via a proposed public road gaining access directly from Millingandi Road. Lots 1, 5, 6 and 7 will have frontage to this road. A right of access is proposed along the north / south boundary of lots 5 and 6 to provide lots 9 and 10 with legal access to the new road. A right of access is also proposed to service lot 8 via the northern boundary of lot 7. While a third right of access extending from the proposed public road will service Lots 3 and 4.

The existing overhead electricity supply will be relocated to intercept the northern boundary of Lot 7 and then extended to service all lots.

2.2. Project Amendments

In response to issues raised in submissions, a PPR was submitted and accepted on 23 August 2010 incorporating the following amendments:

- The number of lots was reduced from 11 to 10. The lots are of varying size and no more than 2 hectares in size. This amendment was a response to agency submissions that raised concerns regarding appropriate setbacks for building envelopes;
- Access to each lot has been reconfigured to remove the proposed right of carriageway along the western boundary of the site and instead facilitate access via the proposed public road and a series of right of access to individual lots as described above; and
- A Core Riparian Zone and vegetation buffer has been proposed, extending 30 metres either side of the gully, to assist in addressing water quality issues.

The PPR was made public via the Department's website on 23 August 2010, however it was not advertised. Comments regarding the PPR were sought from certain agencies that provided submissions during the public exhibition period.

2.3. Project Need and Justification

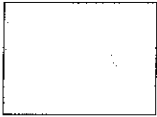
Any residential development located along the south coast is to be consistent with the *South Coast Regional Strategy 2007*. The primary purpose of the Strategy is to ensure that adequate land is available and appropriately located to sustainably accommodate the projected housing and employment needs of the Region's population over the next 25 years. In order to sustainably accommodate population growth, the Strategy aims to maintain the South Coast's coastal and rural villages as well as its pristine natural landscapes. For the Bega Valley Local Government Area, the Strategy indicates any new housing development should assist the economic base of existing villages and effectively use existing infrastructure. This project is consistent with the Strategy in that it provides additional lots for housing in the Merimbula area on the scale sought by the rural small holding zoning which applies to the site.

The proposed subdivision will not detract from the rural/residential nature of the area, being consistent with this character. Instead the development will likely assist development of Millingandi's economic base by allowing for the provision of additional population. The development will also provide for its own infrastructure needs thereby reducing any stress on existing infrastructure within the locality.

The subdivision will not unduly impact on the nearby sensitive landscapes, including Lake Merimbula and the SEPP 14 Wetlands, as water quality mitigation measures are proposed that will result in there being a neutral impact on the water quality. The subdivision layout is also proposed on land that is already cleared. Mitigation measures proposed by the Proponent will revegetate land on the lots and will therefore improve the sites existing biodiversity value.

PLAN OF PROPOSED SUBDIVISION

LOT 101 DP 1087389
MILLINGANDI ROAD, MILLINGANDI

- E — E — ELECTRICITY LINES
- - - - - TELSTRA CABLES
-  PROPOSED BUILDING ENVELOPE
 MAINTAINING 20 METRE SETBACK
 FROM LOT BOUNDARIES & 15 METRE
 SETBACK FROM VEGETATED BUFFER
- * PROPOSED EASEMENT FOR RIGHT OF
 ACCESS 7.50 METRES WIDE
- o — o — o — o — o — EFFLUENT BUFFER
 (AS PER SEEC PLAN)
- - - - - VEGETATED BUFFER
 (AS PER SEEC PLAN)
- ==== CORE RIPARIAN ZONE
 (AS PER SEEC PLAN)

NOTES

NO SURVEY HAS BEEN MADE OF THE BOUNDARIES.

THE BOUNDARIES HAVE NOT BEEN MARKED.

AREAS AND DIMENSIONS ARE SUBJECT TO SURVEY.

NO INVESTIGATION OF UNDERGROUND SERVICES HAS BEEN MADE.
 ALL RELEVANT AUTHORITIES SHOULD BE NOTIFIED PRIOR TO ANY
 EXCAVATION ON OR NEAR THE SITE.

STRUCTURES AND FEATURES SHOWN ON THIS PLAN ARE
 REPRESENTED AS INDICATIVE ONLY AND HAVE NOT BEEN
 LOCATED OR SHOWN FOR DESIGN OR CONSTRUCTION PURPOSES.

SCALE 1:1500



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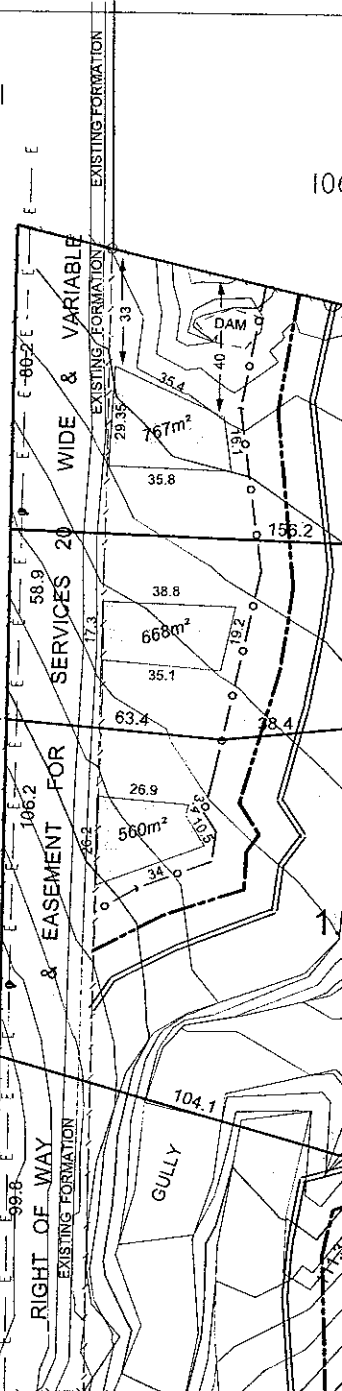
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21

DP

100

BOGGY CREEK



3. STATUTORY CONTEXT

3.1. Major Project

The proposal is a major project under Part 3A of the EP&A Act because it is development for the purpose of subdivision of land in a rural/residential zone into more than 5 lots in a coastal zone where the future development created by the subdivision will not be connected to an approved sewage treatment work or system contained in the State Environmental Planning Policy (Major Projects) 2005 at the time of project application. Therefore the Minister for Planning is the approval authority.

3.2. Permissibility

Under the *Bega Valley Local Environmental Plan 2002* ("LEP 2002"), the site is zoned 1 (c) Rural Small Holdings. The proposed development complies with the objectives of zone 1 (c), which include the following:

- (a) to facilitate and provide rural residential development in appropriate locations, taking into account natural constraints and agricultural land;*
- (b) to maintain and enhance the character, amenity and landscape quality of rural residential areas;*
- (c) to control the intensity of rural residential development having regard to the physical limitations of the land and the costs and limitations of the provision of public amenities and services; and*
- (d) to provide opportunities for an agricultural use of the land that is compatible with surrounding residential development.*

In accordance with the requirements of clause 19, subclause (1) of the Bega Valley Shire LEP the proposed lots do not have an area of less than 5000m². The proposal also complies with clause 19, subclause (2) and subclause (3) which stipulate planning matters for consideration of the consent authority. These have been considered in chapter 4 and Chapter 5 of this report. In addition the Department has given consideration to impacts on surrounding land uses and the environment in accordance with clause 65 subclause (1).

3.3. Environmental Planning Instruments (EPIs)

To satisfy the requirements of section 75I of the EP&A Act, this report includes references to the provisions of the EPIs that substantially govern the carrying out of the project and have been taken into consideration in the Department's assessment of the project, the relevant EPIs for this project include:

- State Environmental Planning Policy (Major Projects) 2005;
- State Environmental Planning Policy No. 14 – Coastal Wetlands;
- State Environmental Planning Policy No. 62 – Sustainable Aquaculture;
- State Environmental Planning Policy – Rural Lands 2008;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- South Coast Regional Strategy 2007; and
- Bega Valley Local Environmental Plan 2002.

The Department's consideration of relevant SEPPs and EPIs is provided in Appendix C. The proposal is generally consistent with the objectives of these controls.

3.4. Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects of the Act, as set out in Section 5 of the Act. The relevant objects are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,

- (iii) the protection, provision and co-ordination of communication and utility services,
- (iv) the provision of land for public purposes,
- (v) the provision and co-ordination of community services and facilities, and
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (vii) ecologically sustainable development, and
- (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Relevant objects of the EP&A Act are explained in the following table:

Table 1: Objects of the EP&A Act	
Objects of the EP&A Act	Applicability
(ii) the promotion and co-ordination of the orderly and economic use and development of land,	The project is an orderly development being consistent with the zoning for the site and with the surrounding land use pattern. The project provides its own infrastructure.
(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats,	The project includes water quality controls measures to minimise impacts on nearby sensitive environments. Rehabilitation of riparian zones will improve the on-site environment.
(vii) ecologically sustainable development,	

3.5. Ecologically Sustainable Development

The EP&A Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle,
- (b) inter-generational equity,
- (c) conservation of biological diversity and ecological integrity,
- (d) improved valuation, pricing and incentive mechanisms.

For the purpose of this report ESD principles are addressed in the Department's assessment contained in Section 5.

3.6. Statement of Compliance

In accordance with section 75I of the EP&A Act, the Department is satisfied that the Director-General's environmental assessment requirements have been complied with.

4. CONSULTATION AND SUBMISSIONS

4.1. Exhibition

Under section 75H(3) of the EP&A Act, the Director-General is required to make the environmental assessment (EA) of an application publicly available for at least 30 days. After accepting the EA, the Department publicly exhibited it from 30 July 2009 until 30 August 2009 (31 days) on the Department's website, and at the following locations:

- Department of Planning Information Centre, Sydney;
- Department of Planning Southern Regional Office, Wollongong; and
- Bega Valley Shire Council.

The Department also advertised the public exhibition in the Bega District News (28/07/2009), Merimbula News Weekly (29/07/2009) and notified landholders, and relevant State and local government authorities in writing.

The Department received 8 submissions during the exhibition of the EA - 6 from public authorities and 2 from the general public.

A summary of the issues raised in submissions is provided below.

4.2. Summary of Issues Raised in Public Submissions

The following issues were raised by the two public submissions received:

- It is suggested that the description of the "Yellow Pinch" soil type is misleading as it states that the soil is "not readily erodible and allows percolation of surface flow". It is stated that the erosion hazard for urban development on the Yellow Pinch Soil landscape is high to very high.
- There is a lack of design criteria and information on the proposed low-level access crossing to Lots 8,9,10 and 11.
- There is no statement regarding the social impact that the proposal may have on ongoing farming operations by adjoining landowners to the west and north.
- It is suggested that the proposed lots will attract residents who have domestic animals. There is concern that the holdings cannot support this as there is a loss in groundcover and severe compaction problems arise. This will lead to increased movement of soil, nutrients and biological contaminants into the drainage system.
- There is concern that there is no reference to the New South Wales Oyster Industry Sustainable Aquaculture Strategy, 2006 (OISAS) in the formulation of the subdivision proposal.
- There are concerns of privacy issues in relation to the proposed lots overlooking existing properties.

4.3. Public Authority Submissions

Six submissions were received from public agencies including, the Bega Valley Shire Council, Department of Environment, Climate Change and Water, Office of Water, Industry and Investment, Southern Rivers Catchment Management Authority and the Rural Fire Service. Agency submissions did not provide an opinion regarding the project and instead raised issues for consideration based on the information contained in the EA. A summary of submissions is provided below:

Bega Valley Shire Council (Council)

In correspondence dated 3 September 2009, Council advised it was unable to provide an opinion regarding the project based on the information provided in the exhibited Environmental Assessment and subsequently raised the following concerns:

- On site effluent disposal – the assessment does not comply with Council's provisions relating to onsite effluent and contains a number of deficiencies such as incorrect percolation rates and lack of water balances;
- Impact of the development of the Oyster industry – concern was raised on the cumulative impact of the proposed development on the oyster growing catchment;
- Compliance with Council's DCP subdivision standards – the proposed right of carriageway does not comply with the DCP; and

- Adequacy of asset protection zones – concern raised with the allowable construction standards on some of the lots and whether adequate APZ have been provided.

Department of Environment, Climate Change and Water (DECCW)

In a letter dated 2 September 2009 in response to the exhibition of the Environmental Assessment, DECCW advised it did not support the proposal and recommended the following concerns be addressed prior to any endorsement:

- Onsite Effluent Disposal – inadequate assessment of the potential water quality impacts of the project including management and treatment of sewage generated by the project. DECCW does not support the proposal to treat sewage on site due to the site's proximity to reticulated sewerage;
- Proposed Stormwater Treatment System and Offsite Water Quality Impacts – concern that the EA does not adequately address the potential offsite impacts from the development on the downstream sensitive receiving environments including Endangered Ecological Communities, SEPP 14 wetlands and Merimbula Lake. DECCW require sufficient demonstration that there should be no change to the hydrological regime (including quality and quantity of stormwater runoff) which is being released to the downstream receiving environment using best practice urban stormwater modelling;
- Riparian buffers – requirement for a riparian buffer of at least 20m from the edge of the creek bank in order to protect water quality in the creek and down stream;
- Sediment and Erosion Control – lack of detail with the proposed sediment and erosion control measures and requested an amended plan; and
- Aboriginal Cultural Heritage – insufficient assessment of Aboriginal Cultural Heritage values which may be impacted by the proposal and requested an Aboriginal Cultural Heritage Assessment to be undertaken by an 'independent archaeologist'.

Industry and Investment (I&I)

In a letter dated 4 September 2009 in response to the exhibition of the Environmental Assessment, I&I raised the following issues:

- Priority Oyster Aquaculture Areas are located in Merimbula Lake;
- Sewerage Management – concern with inadequate analysis undertaken in the 'On site Wastewater Disposal report' which does not meet minimum requirements for soil investigation for new subdivision in accordance with Table 7 of Environment and Health Protection Guidelines – On site Sewerage Management for Single Households (DLG, 1998) and requirement for minimum buffer distances to water courses (at least 40m to adjacent waters). Proponent also needs to demonstrate the proposed on site disposal system will not result in the transport of virus from the site to adjacent wetland, Boggy Creek or Merimbula Lake; and
- Stormwater and Water Quality Management – need for best practice water sensitive urban design in the development of all allotments and the need for a comprehensive erosion sediment control plan.

NSW Office of Water

In a letter dated 28 August 2009 based on the exhibited Environmental Assessment, the Office of Water raised the following issues:-

- The protection and enhancement of the watercourse and riparian land on the site;
- The source and availability of a sustainable water supply for this proposal is an issue of high importance. The availability of a sustainable water supply should be demonstrated prior to consent being determined with minimal reliance on accessing valuable surface and groundwater resources. Concern was also raised with harvestable water rights incurred by the site;
- The proposed subdivision should not result in the proliferation of basic landholder rights under the Water Management Act 2000 along the frontage of the waterway. Innovative subdivision design is required so that the subdivision does not increase lot frontage to the waterway and the creation of new basic landholder rights; and
- Conditions of approval were recommended for asset protection zones, public access, water supply and construction of future dwellings.

Southern Rivers Catchment Management Authority (CMA)

In a letter dated 4 September 2009 based on the exhibited Environmental Assessment, the CMA raised the following issues:-

- Impact on Oyster lease – consideration of the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS) and the potential impacts of the development on oyster aquaculture in Merimbula Lake;
- Water quality impacts and Merimbula Lake – concern with water quality impacts on Merimbula Lake and the availability of suitable land for septic disposal with the constraints of drainage lines, steeper areas and the proposed lot size;
- Riparian Corridor Management Objectives – the drainage line within the development area needs to be managed to ensure protection of water quality, the maintenance of soil stability and the enhancement of natural habitat. CMA recommend a riparian buffer zone be established at least 20m on either side of the creek; and
- Wetland and endangered ecological community protection – suitable protection of the foreshore environment and quality of waters entering Merimbula Lake is required.

Rural Fire Service (RFS)

In a letter dated 27 August 2009 in response to the exhibition of the Environmental Assessment, the RFS raised no objection and provided a number of standard conditions for inclusion in any approval, relating to asset protection zones and public road access.

4.4. Proponent's Response to Submissions

The Proponent provided a response to the issues raised in submissions in the form of a PPR (Appendix A). The Department accepted the PPR on 23 August 2010. The PPR addressed issues raised in submissions in the following way;

- The project has been amended to subdivide 10 lots in order to address concerns regarding access to individual lots;
- Access to each lot has subsequently been reconfigured to account for the amendment;
- The Core Riparian Zone Buffer width has been increased and an additional vegetation buffer has been proposed;
- Vegetation buffers are to be revegetated as part of the Proponent's water quality impact mitigation measures;
- Water quality modelling was revised and re-assessed for the site incorporating new proposed mitigation measures; and
- An aboriginal archaeological assessment was conducted in accordance with the *Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation 2005*.

The report (including finalised Statement of Commitments) was made publicly available on the Department's website on 23 August 2010. Copies were provided to relevant agencies and Council for comment. **The PPR subsequently addressed agency and Council concerns such that only minor recommendations were made regarding drafting of conditions of approval.**

4.5. Department's Consideration

The Department's consideration of issues raised in public and agency submissions is summarised in Table 2.

Table 2: Department's consideration of issues raised in Submissions

Issue	Department's Consideration
Water quality and Supply	Section 5.1
Subdivision Restrictions and Access	Section 5.2
Other issues: Flora and Fauna, Soil Erosion, Weed Management, Bushfire and Flooding,	The Department has recommended conditions of approval incorporating, flora and fauna, Soil Erosion, Weed Management and Bushfires. The Department is satisfied that all other matters have been adequately addressed in the Proponent's Preferred Project Report and / or Final Statement of Commitments.

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5. ASSESSMENT OF ENVIRONMENTAL IMPACTS

The key issues considered in the Department's assessment of the Environmental Assessment, Preferred Project Report and the proponent's draft Statement of Commitments include the following:

- Water Quality and Supply; and
- Subdivision, restrictions and access

5.1. Water Quality and Supply

Issue

Maintaining water quality of receiving waters immediately downstream of the site is considered a key issue due to the sensitive nature of Lake Merimbula. The Lake supports a variety of uses including Priority Oyster Aquaculture Areas, recreational tourist uses and contains abundant biodiversity reflected in six SEPP 14- Wetland areas being located in the Lake. Impacts resulting from the project have the potential to adversely affect Lake Merimbula water quality resulting in potential adverse impacts to dependent industries and biodiversity.

Submissions

Key issues regarding water quality impacts were raised by agency submissions subsequent to public exhibition of the Environmental Assessment. These included:

- Potential for offsite impacts to aquatic habitat, fish communities, oyster aquaculture and recreational fishing industries at Merimbula Lake as a result of the development's onsite wastewater management and stormwater management;
- The need for a riparian buffer surrounding the natural watercourse that runs through the site in order to mitigate water quality impacts; and
- The source and availability of a sustainable water supply for the development.

Consideration

The Proponent's consideration of water quality issues raised by submissions is identified in its Preferred Project Report (PPR) which broadly encompassed the following;

- Site analysis;
- Water cycle management;
- Modelling of impacts on receiving waters; and
- Maintaining water supply for dwellings.

Assessment by the Proponent concluded that a neutral or beneficial effect would occur as a result of this development. This conclusion was based on results derived from water quality modelling that utilised the Model for Urban Stormwater Improvement Conceptualisation (MUSIC) and incorporated various assumptions regarding the development. Assumptions utilised in the model included water quality management measures that also form part of the Proponent's water quality management plan. Measures included appropriate riparian setbacks of subdivided lots, onsite effluent and wastewater management to protect Merimbula Lake, water sensitive urban design (WSUD) management measures, and road and pavement design modification. The Department is satisfied with the approach taken by the Proponent for the following reasons:

Riparian setbacks

The EA makes reference to the watercourse which traverses through the western portion of the site, however no riparian buffer was proposed to ameliorate water quality impacts. The watercourse is considered to be a Category 2 stream (as defined by the Riparian Corridor Objective Setting stream classification) and is primarily cleared. As a response to submissions, the Proponent in their PPR has proposed to create a riparian buffer and re-vegetate the base of the watercourse and extend the revegetation up the bank and to a distance of 20m. This will be designated as the Core Riparian Zone (CRZ). An additional 10m vegetated zone will extend from the CRZ to act as a buffer. Native vegetation species suitable for the purposes of establishing a CRZ are proposed. The Proponent has

committed to providing a positive covenant on each lot in order to ensure the CRZ is protected indefinitely from disturbance.

The Department in consultation with the Department of Environment, Climate Change and Water as well as Industry and Investment NSW is satisfied that the CRZ proposed by the Proponent is adequate to assist in protecting water quality flowing into Merimbula Lake and therefore recommends the proposed CRZ and associated buffer be conditioned as part of any approval in the form of an 88B instrument on the title to all relevant lots as shown in the plans contained in the PPR. This will secure the nominated area into perpetuity. In order that the entire CRZ functions uniformly across the entire subdivision, the Department also recommends the Proponent be required to prepare and implement a Vegetation Management Plan (VMP). The VMP should detail the type of species used in re-vegetation of the CRZ as well as how effective establishment of re-vegetation is to occur. A maintenance and management schedule should also be included as part of any Plan. In this manner the Department considers the CRZ will function accordingly and achieve its aims in mitigating water quality impacts as a result of the project. The Department also considers a CRZ will improve the ecological integrity of the site as it is currently cleared agricultural land with low ecological value.

Onsite effluent and wastewater management

The Proponent in their PPR has addressed concerns regarding the effluent management system by providing details of system requirements consisting of secondary and advanced secondary treatment with chlorine or UV disinfection. In addition the Proponent has further conducted an assessment of cumulative nutrient impact and cumulative pathogen impact. In doing so the Proponent has developed an Effluent Management Area (EMA) for each system that is 500m² in size. These EMAs are to be located away from the principle watercourse running through the site. The development of the EMAs and proposed effluent system requirements is predicted by the Proponent to accommodate most nutrient loads. The Department supports the appropriate location and sizing of these EMAs and considers these along with the proposed on-site sewerage management will mitigate against water quality impacts. Regarding the sensitive nature of the receiving environment, the Department also recommends any on-site sewerage treatment systems should be in accordance with the Bega Valley Shire Council's On-site Sewerage Management Strategy and that at minimum they be assessed annually by a suitably qualified expert as a precaution to the occurrence of any unforeseen wastewater impacts on downstream waters.

Water sensitive urban design (WSUD) management measures, and road and pavement design

WSUD measures committed to by the Proponent that minimise water use at the site include measures to reduce potable water use such as water saving fixtures on fittings and AAA rated toilets with at minimum dual flush cisterns. The proposed rainwater re-charged water tanks are also considered a WSUD measure. Stormwater flowing from impervious sources aside from roofs will be treated through the CRZ. Road and pavement design is to be mitigated during construction utilising appropriate sediment control measures and the actual design of this infrastructure is to include vegetated table drains with appropriate pavement design so that water is effectively drained. These drains are also to include tail outs at grade to encourage ponding and subsequent infiltration.

The road layout is proposed to include two shallow watercourse crossings in order to access lots located on the western side of the subdivision. The Proponent has committed to construct these crossings based on a 100-year storm event. The crossings will allow for trickle flow to continue downstream of the watercourse and will be designed in such away as to dissipate flow moving through the crossings and thereby reduce erosion potential. The site also contains a dam within the proposed CRZ. The Proponent has committed to infill this dam and revegetate the area as part of the CRZ.

MUSIC modelling conducted by the Proponent shows the inclusion of these mitigation measures would likely result in neutral water quality impacts. The Department is satisfied that the MUSIC modelling has been appropriately undertaken, utilising adequate assumptions and that subsequently the WSUD management measures and road and pavement design shall reduce water quality impacts. In order to further ensure watercourse crossings are adequately designed and constructed the Department recommends that the *Department of Energy and Water Guidelines for Controlled Activities- Water Crossings (2008)* be adhered to when such design and construction occurs. The Department therefore considers inclusion of these guidelines and adherence to the proposed WSUD management measures and road and pavement design shall further reduce water quality impacts as a result of this development.

Water supply

In relation to the source and availability of a sustainable water supply for the development, the Proponent has committed to supply potable water sourced from on-site roof areas, stored in a 100kL tank for each dwelling. A security analysis was undertaken to ensure an adequate supply of water was provided. It found that for a usage rate of 690 litres a day the tanks would be expected to supply 81% of demand. Whereas for a usage rate of 460 litres a day, 99 percent of demand would be met.

The Department considers the size of proposed water tanks to be satisfactory to meet expected demand. Shortfalls shown to occur will be mitigated by the Proponents commitments to install WSUD measures such as water saving fixtures for fittings and at minimum AAA rated toilets with dual flush cisterns.

Conclusion

In summary, the Department in consultation with Industry and Investment NSW considers water quality at Merimbula Lake will not be unreasonably impacted as a result of this development and that therefore the project will not place at risk, Priority Oyster Aquaculture Areas located in the lake. The Proponent in their PPR has suggested a range of measures to ensure this outcome occurs and has subsequently conducted modelling that verifies the effectiveness of such measures. The Department is satisfied that appropriate modelling has been conducted and that therefore the proposed measures including an appropriately sized CRZ, EMA and WSUD are sufficient in themselves to achieve an at least neutral effect on water quality entering Merimbula Lake from this site. In order to ensure this occurs throughout the life of the project the Department recommends the CRZ be protected into perpetuity and that the effluent management system be audited annually, notwithstanding appropriate erosion control measures are to be recommended in the conditions of approval for site development during construction. This will enable the development to maintain its proposed outcomes on water quality and thereby maintain the biological value and dependent industries currently existing at Merimbula Lake.

5.2. Subdivision Restrictions and Access**Issue**

In order that a project adhere to objectives of the EP&A Act primarily the promotion and co-ordination of the orderly and economic use and development of land and ecologically sustainable development, subdivision layout should give appropriate consideration to relevant planning instruments.

Submissions

Key issues regarding Subdivision Restrictions and Access were raised by agency submissions subsequent to public exhibition of the Environmental Assessment. These included:

- The proposed subdivision layout including location and size of building envelopes and associated access did not comply with Bega Valley Shire Council's Development Control Plan (DCP) No. 9 (Subdivision Standards) and DCP No. 6 (Rural Residential Development); and
- The road design and proposed right-of-carriageway along the western boundary of the site will service more than four properties. This is inconsistent with the requirements of clause 11 of Council's DCP No.2 (Subdivision Standards) which allows for only a maximum of four lots to be serviced by a right- of- carriageway.

Consideration

In response to issues raised in submissions, the Proponent in their PPR revised the development layout in order to achieve the appropriate setback distances for building envelopes and access ways in order to comply with Council road design requirements. In summary the number of lots were reduced from 11 to 10 in number and the subdivision layout modified. Individual building envelopes were increased in area to allow for appropriately sized rural/residential dwellings and associated infrastructure. This in turn allowed for each new lot to achieve the required setback distances from their respective boundaries as suggested by Council DCP No.9 and No.6. Access to the sites was also modified to remove the right of carriageway on the western border of the site and instead allow for access to western lots via the public road and connected right of access.

The Department considers in this case the relevant DCPs for this project are appropriate as they aim to avoid amenity impacts to residents and road infrastructure constraints. The Department assessed the revised subdivision layout and access and considers it to fit accordingly to the relevant DCPs of Council. Based on the information and plans contained in the PPR the revised subdivision layout is considered by the Department to be feasible for construction and inhabitation. As a result of these amendments future residents shall avoid amenity constraints when siting dwellings and also maintain the carrying capacity of associated road infrastructure. On this basis the Department recommends the revised layout included in the PPR be approved. Subsequently the Department is satisfied the revised layout is suitable to ensure the project meets the relevant objectives of the EP&A Act.

6. RECOMMENDATION


The Department has assessed the EA and PPR and considered the submissions in response to the proposal. The key issues raised in submissions related to Water Quality and supply as well as subdivision restriction and access. The Department has considered these issues and a number of conditions are recommended in conjunction with the proponent's Statement of Commitments to ensure these issues are satisfactorily addressed.

The proposed development will allow for the orderly and economic use and development of land according to the principles contained within the *South Coast Regional Strategy 2007*. Balanced against this the Project shall also have minimal impacts on surrounding land uses, particularly the ecological integrity of adjacent Lake Merimbula. Furthermore, the proposal has largely demonstrated compliance with the existing environmental planning instruments.

On these grounds, the Department considers the site to be suitable for the proposed rural residential subdivision at Millingandi. Consequently, the Department recommends the project be approved, subject to the conditions of approval and the Proponent's Statement of Commitments.



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Regional Projects



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Major Projects Assessment

29/10/2010



Chris Wilson
A/Deputy Director-General
Development Assessment & Systems Performance

29.10.10

APPENDIX A - RECOMMENDED CONDITIONS OF APPROVAL

SUMMARY OF KEY RECOMMENDED CONDITIONS OF APPROVAL

Condition 2.3- As part of the Construction Environmental Management Plan required under condition 2.2 of this approval, the Proponent shall also prepare and implement:

a) A **Vegetation Management Plan** for the re-establishment of riparian vegetation at the site. The Plan shall identify methods of establishment and management of a Core Riparian Zone as described in the Preferred Project Report contained in condition 1.1 c) and associated vegetation buffer into perpetuity to the satisfaction of the DECCW prior to the issue of a construction certificate.

b) A **Stormwater and Drainage Works Design Plan** that demonstrates the final design plans and management measures within the proposed subdivision have a neutral or beneficial effect on wastewater leaving the site as described in the Preferred project Report, condition 1.1 c). The Plan is to be prepared by a suitably qualified person in accordance with the requirements of Council and shall be submitted to and approved by the Certifying Authority prior to issue of a Construction Certificate.

Condition 5.13- The creations of easements for services, public road, right of access, easement and restrictions as to user are applicable under Section 88B of the Conveyancing Act 1919, including (but not limited to) the following:

- a) easements for sewer, water supply and drainage over all public services/infrastructure on private property;
- b) drainage easements are to be placed over all subsurface drains and inter allotment drainage, benefiting and burdening the property owners. Maintenance of the subsurface drains is to be included in the 88B instrument;
- c) lots 3,8,9 and 10 shall be prohibited from vehicular access to and from Boggy Creek Road;
- d) creation of the Core Riparian Zone and Vegetation Buffer area as will be defined in the Vegetation Management Plan of condition 2.3 a) on the title to lots 3, 4, 5, 6, 7, 8, 9 and 10.
- e) erection of any building, structure or disposal of effluent shall be prohibited on the title to all lots within the Core Riparian Zone and Vegetation Buffer;
- f) a 100 kilolitre water tank shall service each lot. Ten kilolitres of water shall be made available at all times for the purposes of firefighting; and
- g) the erection of a dwelling on any lot shall require the installation and maintenance of an on-site sewerage management system and on-site effluent management area in accordance with the commitments contained in the Preferred Project Report contained in condition 1.1 c) and meet at minimum, performance criteria and appropriate locations specified by Council including at least annual inspection of each system.

The subject S88B Instrument shall be submitted to the Principal Certifying Authority with the final plan of subdivision as a prerequisite to the endorsement of the Subdivision Certificate by the Principal Certifying Authority.

APPENDIX B - ENVIRONMENTAL ASSESSMENT

APPENDIX C – PROPONENT'S RESPONSE TO SUBMISSIONS

APPENDIX D – CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Major Projects) 2005

The project is a Major Project under *State Environmental Planning Policy (Major Projects) 2005* ("the MP SEPP"), being for subdivision of land in a rural/residential zone into more than 5 lots (Schedule 2, 1(1)(i) – Coastal Areas). The opinion was formed by the Director-General as delegate for the Minister on 16 June 2006.

Recent changes to the classes of regional development and Part 3A projects were made through the establishment of the *State Environmental Planning Policy (Major Developments) 2005* ("the MD SEPP"). Under the provisions of MD SEPP, the project would no longer be considered a Major Project since the threshold for rural lots has been increased to more than 25 lots (Schedule 2, 1(1)(c)) and subdivision of land that is not connected to an approved sewage treatment work or system has been increased to more than 100 lots (Schedule 2, 1(1)(a)). The changes to the classes of Part 3A projects in the MD SEPP do not apply to any Part 3A applications that have been made but not determined prior to 1 July 2009 (in accordance with Part 4 clause 16 of the MD SEPP). As this project was made on 7 April 2006 the changes for Part 3A do not apply and the proposal is considered a Major Project.

State Environmental Planning Policy No. 14 – Coastal Wetlands

State Environmental Planning Policy No 14 – Coastal Wetlands ("SEPP 14") aims to ensure that identified coastal wetlands are preserved and protected in the environmental and economic interests of the State. The site does not contain any wetlands listed under SEPP 14, however six SEPP 14 wetlands are contained immediately downstream of the site in Lake Merimbula. A Category 2 Stream runs through the site and therefore water quality runoff is of concern as it may adversely affect the SEPP 14 wetlands contained in the Lake. Water Quality issues are considered in Chapter 5 of the Report.

State Environmental Planning Policy No 62 – Sustainable Aquaculture

State Environmental Planning Policy No 62 – Sustainable Aquaculture ("SEPP 62") aims to encourage sustainable aquaculture in the State, namely, aquaculture development which uses, conserves and enhances the community's resources so that the total quality of life now and in the future can be preserved and enhanced. SEPP 62 requires consideration of any adverse effect on oyster aquaculture development or a priority oyster aquaculture area. The potential impact on oyster leases is considered in Section 5 of this Report.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land ("SEPP 55") deals with the remediation of contaminated land. Investigations indicate that the site has not been subject to potentially contaminated uses and therefore the site is suitable for the intended use.

State Environmental Planning Policy – Rural Lands 2008

State Environmental Planning Policy – Rural Lands aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes. The land is zoned 1 (c) Rural Small Holdings. The site does not support full time farming activities. The Proponent seeks to subdivide the lot to conform to the relevant zoning. Surrounding lots are primarily used as recreational farms. The Department considers the aims of this policy have been met in that subdivision of the land will not impact significant agricultural land whilst maintaining the rural character of land in which the project proposal is sited.

South Coast Regional Strategy, 2007

The *South Coast Regional Strategy, 2007* is a 25-year land-use blueprint and covers the Shoalhaven, Eurobodalla and Bega Valley local government areas and will guide sustainable growth, providing places to live and work while protecting valuable agricultural and natural assets. The Strategy caters for a population increase of 60,000 by 2031. These residents will require an additional 45,600 dwellings and 25,800 new jobs. The site is located within the existing urban area.

The relevant aims of the Regional Strategy for this project include:

- *Protect high value environments including pristine coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that no new urban development occurs in these important areas and their catchments.*
- *Limit development in places constrained by coastal processes, flooding, wetlands, important primary industry resources and significant scenic and cultural landscapes.*
- *Protect the cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes.*

The project is considered to be consistent with the Regional Strategy as the area within the site of high ecological importance being the EECs and surrounding estuary, have been adequately protected through the water quality mitigation measures proposed by the Proponent and considered in Chapter 5 of this report. It is considered that the project is consistent with the Regional Strategy.

Bega Valley Local Environmental Plan 2002

The site is subject to the provisions of the Bega Valley Local Environmental Plan 2002 ("LEP 2002") which zones the site 1(c) Rural Small Holdings where subdivision is permissible with development consent.

The proposal provides for a non-rural form of development that is compatible with agricultural uses elsewhere in the vicinity, it maintains the scenic amenity of the area and protects and preserves natural systems by providing adequate setbacks to the lake and river and revegetation of a riparian zone on the site. The proposal is therefore considered to be consistent with the zones objectives contained in Chapter 3.2 of this Report.

Further, the LEP 2002 requires consideration of several environmental hazards including on-site sewage management (Clause 74), Bushfire hazard (Clause 75), ecologically sustainable development (Clause 79), flood liable land (Clause 81) and acid sulphate soils (Clause 82). These matters were considered in detail by the Proponent to the satisfaction of the Department as discussed in Chapter 4 and in Chapter 5 of this report. The project is therefore considered to be generally consistent with the LEP 2002.

