

RESPONSE TO PUBLIC EXHIBITION



**Proposed Rural Residential Subdivision-Lot 2 DP 250984
Grandfathers Gully Road Lilli Pilli.**

This response addresses issues raised during the exhibition of the proposed rural residential subdivision at Lot 2 DP 250984 Grandfathers Gully Road Lilli Pilli. It is divided into three main parts.

Part (A) responds to key issues raised by the Department of Planning (DoP).

Part (B) addresses issues raised in two public submissions.

Part (C) answers concerns raised by NSW Government Agencies (the Department of Environment and Climate Change (DECC)).

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(A) Response to Department of Planning key issues identified subsequent to the exhibition of the proposed rural residential subdivision at Lot 2 DP 250984 Grandfathers Gully Road Lilli Pilli. MP 06 0125

Issue 1: Lot Sizes

The environmental assessment (EA) comprehensively addressed lot sizes, statutory instruments and planning policies in Sections: “3.6 Eurobodalla Settlement Strategy”; “3.7 Eurobodalla Rural Local Environmental Plan 1987”; 3.8 Development Control Plan 173”; “3.9 Development Control Plan 156”; “3.10 Eurobodalla Shire Council Interim Policy for Minimum Rural Residential Lot Sizes”; on pages 27 -33.

The above is a reasonably comprehensive addressing of the statutory situation. It seems that there is some questioning of whether the Council's Interim Policy on rural residential lot sizes applies in this instance even though Eurobodalla Shire Council planning staff have confirmed that it does. This situation seems quite absurd however the following points are made:

- Council has had a long standing provision in DCP 156 that allowed lots having areas of between 5000m² and 1 hectare. Basically these lots had to be serviced and adjacent to an existing urban area. This provision has been applied Shire wide since the inception of the DCP. A problem arose that Council for the past few years has a policy of not providing reticulated water and sewer to rural residential zones. This meant that Council had adopted conflicting policies. Council reviewed the position and adopted the "Interim Policy for Rural Residential Lot Sizes." In formulating the Interim Policy council planners examined a number of sites as case studies. The site at Grandfathers Gully was one such site. The current owner of the site had a number of meetings with Council staff prior to purchasing the land to confirm that the policy applied. After purchasing the site the current owner and the author of the EA met with Council staff to confirm the situation and clarify once again that the Interim Policy applied.
- Strategically Council reinforced the Interim Policy by including it in the Eurobodalla Settlement Strategy that has been endorsed by the DoP. Council has strategic problems in respect of rural residential development. The Settlement Strategy states that there will be no additional rural residential zonings in Eurobodalla over the next 20 years or so. Changes to the Native Vegetation Act that inappropriately apply to rural residential areas in Eurobodalla practically sterilize the majority of existing vacant rural residential zoned lands because they are usually vegetated. This situation seems inappropriate in an area that has 80% of its area as national park or State forest. In a broad strategic sense Eurobodalla needs to obtain the highest yields that can be responsibly obtained in rural residential zones or there will be consistent pressure to rezone land. It is particularly desirable to achieve higher yields adjacent to existing urban areas.
- The Interim Policy nor for that matter DCP 156 define "adjoins and is adjacent to an urban area". The Eurobodalla Rural LEP 1987 (LEP 87) does define "adjacent land" but that definition is specific to the definition of "holding" and "existing parcel" as applied to subdivision, dwellings and industries in either or some of the 1(a), 1(a1), 7(f) and 7(f1) zones. Not the 1(c) zone that applies to this land. Therefore it is irrelevant in a statutory sense. The interpretation of Council's policy therefore should rely heavily on Council interpretation and implementation.
- Council's letter to the DoP dated 11th October 07 states:

In relation to your concern with the minimal lot sizes proposed, discussions have been held with officers of Council and it has been determined that the Interim Policy for Minimum Lot Sizes for Rural Residential Land applies to this property. Therefore, Council considers that the lot sizes proposed are suitable provided that the other matters contained in this policy are fully complied with.

It is considered that the Interim Policy applies to the subject land and therefore there is no failure of compliance. Further it needs to be pointed out that the narrow strip of land between the subject land and George Bass Drive is owned by Council. It is in reality part of the road reserve as it has been retained by Council to give the option of realigning the road to eliminate the bend in George Bass Drive in the future. Urban land and open space exist on the other (eastern) side of George Bass Drive. A new bulky goods retail and industrial area is being developed less than a kilometre to the north of the site.

In the past the DoP has approved a 150 lot subdivision submitted by Canberra Investment Corporation at North Batemans Bay in a 1(c) zoned area. Lots went down to a minimum 2,500m² in area so a variation to the DCP provisions in terms of lot size was granted.

In view of the concerns raised Eurobodalla Shire Council has been approached once again to clarify that the Interim Policy applies to the subject land. Council has once again written to the Department of Planning on 22nd February 2008 as follows:

"In response to concerns raised in a meeting held with the proponents about the above development application, the following advice is provided to the Department to clarify the application of Council's Interim Policy – Minimum lot sizes for Rural Residential land to the subject land.

The policy was adopted by Council in December 2004, to set new criteria for minimum lots sizes of 5000m² on land zoned 1(c) Rural Small Holdings. The achievement of this minimum lot size was however made contingent on location, service capacity and environmental considerations (points a-m) in the policy.

While it is acknowledged that previous advice (August 2006) to the Department in respect of this land had suggested that the interim policy did not apply; a subsequent review of the land in light of improved environmental assessment tools, and the adopted Eurobodalla Settlement Strategy, have confirmed that the land is in a location, to enable its consideration under the policy. By letter dated 11 October 2007, Council subsequently advised the Department of this revised position.

In light of the above, and at the request of the proponent, Council writes to confirm again, that the provisions of the Interim Policy can be applied to the subject land for assessment purposes.

I trust this clarifies the situation for you."

In addition the proponents have reviewed the design of the proposed lots and associated building envelopes (see attachment 1 for the revised suite of plans prepared by Conway Burrows and Hancock Sheets 1-14 dated March 2008). The redesign has resulted in relatively minor changes to the proposed 13 lot subdivision but the Asset Protection Zone for proposed Lot 4 now does not encroach at all on the riparian corridor (see attached Sheet 14 of 14 prepared by Conway Burrows and Hancock and dated March 2008). In fact the

proposal now exceeds the Department of Water and Energy's published guidelines for riparian corridors dated February 2008.

A report dated 25th February 2008 addressing the stability of the site has been prepared by Geoff Metzler and Associates. The report assessed that there was no evidence of current, overall slope instability on the site. Each proposed building envelope was examined and it was concluded that there was a very low risk of instability for all of the proposed envelopes (the report is included as attachment 2).

Issue 2: Proposed Access Road and its Categorisation

It is proposed that the subdivision would be staged (see attached Sheet 6 of 14 prepared by Conway Burrows and Hancock and dated March 2008). The first stage would involve proposed lots 1, 4, 5 and 6. These would be Torrens Title lots each with access from Grandfathers Gully Road. Appropriate 88B instruments would be used for these lots as per the Statement of Commitments.

The second stage would include the lots fronting the proposed private road. These are proposed lots 2 and 3 and 7-13. All responsibility and aspects of matters such as access, storm water management, on-site waste disposal, building envelopes, vegetation management, fencing, APZs would come under 88B instruments. Maintenance arrangements for the private road and verges would be covered in the Community Title Management Statement. The private road would be community land. The Community Title Management Statement would be lodged with the final plan of survey.

In terms of signage Eurobodalla Shire Council require a generic private road sign to be installed on all private roads. The subdivision will not be gated. Private roads in Eurobodalla Shire do not have street lights. Country Energy does not provide street lighting for private roads and the Council does not accept the ongoing cost of street lights. The lack of street lighting on private roads in Eurobodalla has not resulted in any problems. Appropriate alterations have been made to the Statement of Commitments to refer to a Community Title Management Statement (the revised Statement of Commitments is included as attachment 3).

Issue 3: Connectivity and Regeneration Proposals

The EA addressed the riparian areas in Sections: "2.8 Water quality and use" and "2.9 Conservation of animals and plants and their habitats"; on pages 16-19. The Statement of Commitments on page 37 also specifies a number of undertakings for "vegetation retention and rehabilitation", "siting of building envelopes", "acceptable water quality", "acceptable wastewater treatment and quality" and "appropriate erosion, sediment control and water quality " at the pre-construction and construction stages.

In addition the following points need to be made:

- The Statement of Commitments makes it quite clear that acceptable conditions of consent are appropriate. If the DoP wish to impose conditions from the

recommendations of the consultant studies that are practical and can be implemented then that would be quite appropriate. After all the DoP is the consent authority.

- As advised above the proponents have reviewed the design of the proposed lots and associated building envelopes (see attachment 1 for the revised suite of plans prepared by Conway Burrows and Hancock Sheets 1-14 dated March 2008). The redesign has resulted in relatively minor changes to the proposed 13 lot subdivision but the Asset Protection Zone for proposed Lot 4 now does not encroach at all on the riparian corridor (see attached Sheet 14 of 14 prepared by Conway Burrows and Hancock and dated March 2008). In fact the proposal now exceeds the Department of Water and Energy's published guidelines for riparian corridors dated February 2008.
- An amended landscape plan has been prepared that shows the reduced APZ areas and therefore extends the retained/regenerated vegetation zones (see attachment 4 "Landscape Concept Plan" dated April 2008). It also designates planting and maintenance in accordance with the recommendations of the Southern Rivers Catchment Management Authority (CMA). All new planting in accordance with the Landscape Concept Plan and associated initial maintenance will be undertaken by the proponent. The amended landscape plan shows that 503 *Allocasuarina littoralis* are proposed to be planted in the general regeneration areas and 58 *Casuarina cunninghamiana* in the riparian corridor, far in excess of the numbers proposed by the NGH recommendation.
- The landscape plan clearly shows that two of the hollow bearing trees would be in the regeneration areas and therefore would be retained. The eastern-most hollow bearing tree is also shown on the plan as being retained.
- No recommendations have been made in respect of fencing in either the PMA or NGH studies. In fact the PMA report states the land does not in itself act as a corridor and the development of the property is not expected to isolate any fragments of vegetation. NGH in part disagree. The NGH report asserts that: "The subject site is likely to be part of an important corridor for fauna movement. It is imperative that corridors for movement be maintained. These corridors are identified as the vegetation within the riparian gullies. Retention of the riparian vegetation will lead to maintenance of movement of fauna in a local context." In view of this NGH has been asked to recommend appropriate fencing for the riparian areas (see attachment 5 NGH letter 12/12/07). The reply states:

"Rural style fencing has the potential to impact on native fauna movement across the site if constructed from materials without consideration of this factor. Appropriate style fencing as per the following guidelines would allow continued fauna movement across the site.

a) The use of barb-wire should not be permitted. This will protect native gliding and flying fauna.

- b) Fencing wire should be free from 'netting' type material, and should consist solely of three single strands of fencing wire (not barbed). This method of construction allows movement of terrestrial fauna without obstruction. The removal of vegetation for fence construction should be undertaken with a minimum of vegetation to be removed. By using handtools such as chainsaws, brushcutters and lawn mowers, it is possible to limit the removal of vegetation for fencing to a width of 1m.*
- c) No canopy trees should be removed for fence construction."*

This can be appropriately conditioned and included on an 88B instrument and on the Management Statement for Community Land. The Statement of Commitments has therefore been altered appropriately.

- In terms of identified weeds the owner has removed the Pampas grass. The whisky grass is all over the Eurobodalla area. It is predominantly spread by slashing. As the majority of the area is to be regenerated the whisky grass problem will be reduced in the long term. Only the APZ areas will be mown. NGH Environmental has been asked to comment on this issue (see attachment 5). The comments are as follows:

*"The biodiversity addendum highlights that the site hosts an extensive infestation of whisky grass (*Andropogon virginicus), which was probably established by slashing of the site. This species is widespread across the Eurobodalla local government area wherever slashing has occurred, in particular, on roadside reserves (pers.obs). This species is not listed as a noxious weed as defined by the Noxious Weeds Act. Weed control, while unlikely to be effective due to the occurrence of this weed at a active landscape level, could include the prohibition of grass slashers or mowers while the grass is seeding to assist in controlling the spread of this grass across the site and beyond. These actions within the site's boundaries, are unlikely to decrease the spread of this plant throughout the shire as roadside slashing continues.*

*The only recorded weed listed as noxious in Eurobodalla Local Government Area is a single Pampas grass (*Cortaderia selloana), a garden escape which is located on the east-facing slope above the small dam. The growth and spread of this plant species must be controlled according to the measures specified in a management plan published by the local control authority (if such a plan is available). The single plant should be removed and the seed heads bagged for safe disposal (Jackie Miles, pers. com, May 2007).*

Given the occurrence of a single specimen of a noxious weed, it would be premature to require that a weed management plan for a single plant of a noxious weed species, as it is doubtful that this would be beneficial to the proposed activity or the subject land."

It is considered that a separate weed management plan may not be needed. Discussions with the Southern Rivers Catchment Management Authority (CMA) and the Department of Planning lead to the conclusion that in addition to the undertakings given in the EA and on the plans a Vegetation Management Plan (VMP) will be required. A VMP would address:

- Clearing.
- Retention of existing vegetation.
- Managed regeneration/revegetation/supplementary planting of identified general and riparian native vegetation areas.
- Weed management.
- Retention of rocks/dead timber.
- Fencing within the riparian corridor.
- Maintenance and monitoring of regeneration/revegetation/supplementary planting areas.
- The VMP should be submitted and approved prior to the issue of the subdivision certificate.

Owners responsibilities arising from an approved VMP would come under 88B instruments as advised in the response to Issue 2 above. The Statement of Commitments has been amended accordingly (see attachment 3).

Issue 4: Asset Protection Zones and Lot Boundaries

The RFS has been accepting for some years that APZ's can overlap on private property provided that easements are created that give owners access to adjoining property to maintain APZs if necessary. That would be done via an 88B instrument placed on the individual titles. This was specified in the Statement of Commitments. In this regard the Bushfire Assessment prepared by an expert in the field made the following recommendation:

"2. Where a minimum required APZ area extends beyond the perimeter of its respective allotment and the effected section of the neighbouring allotment is not yet developed, that section of the effected neighbouring allotment have a temporary easement placed upon it to ensure the maintenance of the minimum required APZ until such time as the effected neighbouring allotment is developed."

The Bushfire Assessment goes on to conclude:

"Based on the above 11 recommendations to protect persons and property from the danger that may arise from a bushfire, the Consent Authority may determine that this development proposal complies with Planning for Bushfire protection 2001 as required under section 100B of the Rural Fires Act 1997."

That study was also updated to address the 2006 Guidelines (see attachment 6 "Supplementary Advice-APZ Compliance").

No APZs proposed for the development of Lot 2 DP 250984 extend onto adjoining private property.

Issue 5: Establishment and Protection of Riparian and Buffer Zones

It is difficult to come to grips with the suggestion that “neither the proposal nor the Environmental Assessment Report make any provision for the buffer zones and there is no long term management plan”

The DGEAR recommended a buffer zone of 20 metres each side of the gully line. No doubt this was based upon advice from Energy and Water then the Department of Natural Resources). Further consultation occurred with Energy and Water after the DGEARs were received including an on-site inspection. In this regard Energy and Water stated in writing:

“In response to your email (10th April 2007) to the Department of Natural Resources (DNR), concerning Rivers and Foreshores Improvement Act (RFI Act) requirements and guidelines for the development of the drainage lines within Lot 2 DP 250984 Grandfathers Gully Rd, Lilli Pilli. A minor drainage line is shown in the south western section of the Lot.

*With regard to the **RFI Act** requirements, the drainage line is **not** considered a river as defined by this Act. Consequently, works in association with this drainage line would not require a 3A Permit under the RFI Act.*

With regard to general Departmental advice concerning the protection of drainage corridors reference is made to the Landcom publication Managing Urban Stormwater: Soils and Construction – Volume 1, 4th Edition (2004), specifically, Chapter 5. Erosion Control: Management of Water (Copy attached). Similar guidelines are also provided in the draft DNR document “Riparian Corridor Objective Setting for Selected Streams Between Batemans Bay and Moruya”. DNR advice for the development of the site would be consistent with these guidelines.

It is to be noted that the drainage line within Lots 2 DP 250984 has been mapped as Category 2, management/maintenance of terrestrial and aquatic habitat. It is therefore recommended that the development of this land should aim to meet the objectives of maintaining channel stability, protecting water quality and providing sustainable habitat. In achieving these objectives at this particular site it was agreed that there is potential flexibility in the prescribed 20 metre riparian setback from each side of the drainage line, provided the objectives of maintaining/enhancing water quality, stability and habitat are still achieved. To this end, a 10 metre encroachment of the outer APZ into one side of the riparian area could be offset with habitat enhancements on the other side of the creek.

Establishment of the outer APZ could be achieved with minimal environmental impacts by selective removal of vegetation and replacement with a more suitable vegetative cover (preferably natives) meeting bushfire protection requirements and if possible supporting habitat values of the site. Any loss in habitat should be compensated with additional plantings on the other side of the drainage line.

It should be noted that; the central 10 metres of the drainage line should not be cleared at all and the overall width of the habitat zone should be no less than 50 metres. In assessing

the suitability of any compromise of the standard drainage line setbacks the proposed compensatory measures should demonstrate an overall enhancement in achieving the objectives of providing water quality protection, channel stability and sustainable terrestrial and aquatic habitat at the site."

A basic reading of the plans submitted shows that the width of the riparian buffer is proposed to be about 50 metres (m) at its narrowest point. The majority of the riparian buffer exceeds 60m in width and at the southern end exceeds 100m in width. The plans estimated that the areas set aside to have retained vegetation and or be revegetated with appropriate native species amounted to in excess of 6 hectares (ha). Therefore more than 50% of the total site will be vegetated. This is in the context that a substantial amount of the site as it exists has been cleared. The plans submitted with the application show that 6.9 ha (nearly 70%) of the existing site has basically been cleared (even though some scattered trees remain in this area). The landscape plan shows that 3619m² of the riparian area will be revegetated.

Therefore the compensatory measures suggested in the then Department of Natural Resources letter are well and truly proposed in the application. It also needs to be understood that as a result of redesign there are no encroachments into the corridor.

It is also worth noting that the Department of Water and Energy in February 2008 issued "Guidelines for controlled activities **Riparian Corridors**". The guideline states for a second order watercourse the core riparian zone width should be 20m. The vegetated buffer width is recommended to be 10m width but this depends on merit issues.

Relevant parts of the EA that dealt with these matters are Sections: "2.8 Water quality and use"; "2.9 Conservation of animals and plants and their habitats"; "2.10 Bushfire; "Native vegetation"; on pages 14-22.

Issue 6: Weed Management

Weed management has been dealt with in the response to issue 3.

Issue 7: Other Environmental Impacts of Native Vegetation Removal

The planting to be included in the regeneration and riparian infill areas will be as shown on the amended landscape plan dated March 2008 and submitted with this response (see attachment 4 "Landscape Concept Plan" dated April 2008). The amended plan now shows the required APZs under the 2006 guidelines. In this regard the response to Issues 3 and 5 is referred to. The amended plan also specifies numbers of plants to be planted by the proponent taking into account advice received by the CMA and has notes on planting and maintenance. The planting and maintenance to the point that the plants would be established as per the landscape plan would be initially be undertaken by the proponent and then long term maintenance in accordance with an approved VMP would be undertaken by the individual new owners of the created lots.

Owners responsibilities arising from an approved VMP would come under 88B instruments as advised in the response to Issues 2 and 3 above. The Statement of Commitments has been amended accordingly (see attachment 3).

On top of this there needs to be an understanding of the natural regeneration process in the Eurobodalla area. NGH have provided the following comments (see attachment 5):

*“The subject land is situated on Ordovician metasediments with the existing vegetation species being typical of the region on clay soils. This vegetation consists of species derived from Coastal Lowlands Cycad Dry Shrub Forest (Forest Ecosystem 9 in Thomas et al 2000) on the ridge and upper slopes, tending towards Northern Foothills Moist Shrub Forest (Forest Ecosystem 21) in the gullies and lower parts of the site. In both these communities the dominant tree is spotted gum (*Corymbia maculata*) with blackbutt (*Eucalyptus pilularis*), white stringybark (*E. globoidea*) and grey ironbark (*E. fibrosa*). Small trees consist largely of black sheoak (*Allocasuarina littoralis*) and wattles, *Acacia mabellae*, *A. longifolia*, *A. mearnsii* and *A. implexa*. The understorey is drier in the Cycad Dry Shrub Forest and includes burrawang (*Macrozamia communis*) and shrubs including *Acacia stricta*, *Acacia terminalis*, *Hibbertia aspera*, *Daviesia ulicifolia*, *Leucopogon lanceolatus* and *Bursaria spinosa*.*

The existing clearing of the site comprises of numerous shrubs, which due to repeated slashing of the land, are unable to grow in a natural form and exist as prostrate or as low height shrubs. Numerous vines and creepers are also present in the existing clearings. These features would indicate, that in the absence of frequent slashing of the ground vegetation, that it would infact, naturally regenerate. Evidence to support the process of natural regeneration being relevant to the subject land comes from a site also in the Batemans Bay area. Clearing of the same vegetation community occurred approximately six years ago, and in the absence of site development or slashing, this vegetation has naturally regenerated to between 3-4 metres in height (Plate 1).”

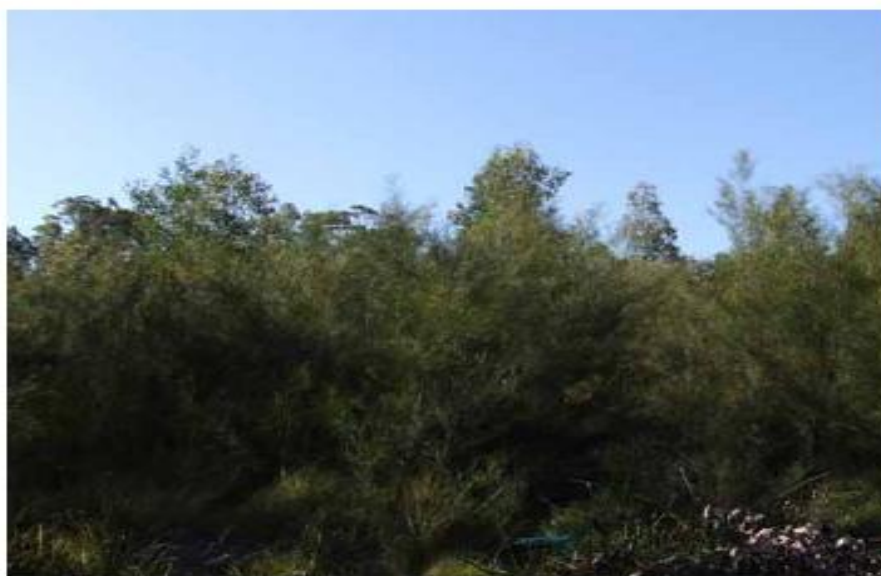


Plate 1: Regeneration of Coastal Lowlands Cycad Dry Shrub Forest near Batemans Bay.

Common sense would dictate that the APZ areas will be established by individual owners. Clearing methods for these are proposed to be specified in the 88B instruments. Basically as existing trees would be retained in the APZ's especially in the outer protection zones. The approach adopted in respect of vegetation management for the proposed 13 lot subdivision is considered to be rigorous.

Issue 8: Water Supply, Stormwater and Sewerage Treatment

Storm Consulting have been asked to comment (see attachment 7 Storm letter 6/11/07). The response is as follows:

“Water Supply and Wastewater Reuse

- *Wastewater (black and grey water) is treated and reused via disposal into the soil profile where vegetation makes use of the available moisture and nutrients. These plants may then be harvested in accordance with NSW health guidelines.*
- *Proposed residences will be self sufficient in terms of water supply and wastewater disposal. All water supply is provided from collected rainwater. Households may implement their own grey water reuse systems, however as there is no connection to Council's sewer or mains supply this should be at the owner's discretion.*

Stormwater

- *Roadway ponds and spillways should be treated in a similar manner to “turn out” drains in other rural residential areas. A level spreader should be provided at the pond spillway to produce diffuse flow.*
- *Individual DAs for housing on each lot will be required to meet Council's requirements for stormwater management from access roads and tank overflows.*
- *Stormwater is to be diverted around wastewater disposal areas. Individual DAs for new houses will require detailed wastewater designs to demonstrate this.*
- *Weed seed, “garden escapes” fertiliser and herbicide management are best addressed through behavioural change. A significant buffer (generally greater than 50m) exists between building envelopes and receiving waters providing a level of protection.*

On-site Wastewater Management

- *The on-site wastewater disposal areas are sized based on a monthly water balance to account for wet periods. Wastewater disposal is undertaken below the soil surface to isolate as much as feasible treated effluent from surface stormwater flows.*
- *The treatment systems and disposal areas have been designed to protect downstream ecosystems in accordance with AS 1547:2000, the Environment and Health Protection*

guidelines for On-site Sewage Management (Department of Local Government, 1998) and Councils On-site Sewage management Code of Practice. All the recommended health and environmental buffers have been allowed for.

- *Maintenance contracts between home owners and the provider of the wastewater treatment system will need to be provided for as part of individual DAs for each lot."*

Storm Consulting have also amended the Water Cycle Management Report for the proposal in view of the slight redesign work undertaken for the proposal (see attachment 8 "Water Cycle Management Report").

Issue 9: Setbacks of Dwellings from Boundaries

First of all it needs to be understood that the DCP's were adopted in 1989. Since then there have been numerous changes to legislation and policy. The quality of physical data has also improved. Eurobodalla Shire Council has completed a Settlement Strategy and has desktop (not all that accurate) strategic environmental assessment tools. Emphasis is now far more on physical/environmental constraints, more efficient use of land and infrastructure and use of new technologies. Both versions of the Planning for Bushfire Guidelines have had a significant impact on development in rural residential areas in Eurobodalla.

Numerical setbacks become less important in these circumstances. Especially as on-site waste disposal technologies have improved tremendously. In the case of DCP 173 setbacks are specified on the basis that lot sizes are likely to be a minimum of 2 ha. Both DCPs contain clauses permitting minor variations to development standards. Several meetings have been held with Eurobodalla Shire Council planning staff that involved examining the proposed subdivision plans. The issue of setbacks was never raised as an issue.

It needs to be pointed out that the Council in its letter to the DoP dated 11 October 2007 made no issue of setbacks. Council's Interim Policy -Minimum Lot Sizes on Rural Residential Land is silent on setbacks.

Further the DoP in its approval of the Canberra Investment Corporation subdivision allowed variations to setbacks by allowing dwellings to be located 7.5 metres from public streets.

In view of the concerns expressed by the DoP the proponents have reviewed the design of the proposed lots and associated building envelopes (see attachment 1 for the revised suite of plans prepared by Conway Burrows and Hancock Sheets 1-14 dated March 2008). The redesign has resulted in relatively minor changes to the proposed 13 lot subdivision but has enabled compliance with the setbacks designated in the relevant DCPs.

All side setbacks are now 12m. Where land slopes towards the road (both public and private roads) the minimum setback is 15m. Where the land slopes away from the road the minimum setback is 10m (see attachment 1 Sheet 13 "Plan Showing Proposed Development Envelopes"). In order to achieve these complying setbacks the proposed building envelopes on Lots 1 and 4 have been reduced to 500m² and 450m² respectively. This is a variation of

the provision requiring development envelopes to have an area of 600m². It is a relatively minor variation.

Issue 10: Removal of Trees on Steeply Sloping Land, Erosion and Sedimentation

Basically the EA addresses this point as follows:

"A number of points need to be discussed in respect of Council identified constraints:

- *Due to the previous use of a deer farm a significant amount of the site has been cleared and even though much of the cleared land has slopes exceeding 25% there have been no stability problems.*
- *Development sites are located on land having slopes not exceeding 25%.*
- *Asset protection zones (APZs) occur on slopes exceeding 25% in the case of proposed lots 1, 5, 6, 7 and 10-13. In many instances the land is already cleared."*

Once again it needs to be remembered that the DCP was written in 1989, well before the Planning for Bushfire Guidelines were introduced. Those guidelines suggest clearing on slopes up to about 33% (18°) is acceptable. In view of this situation Council allows some discretion. Once again Council has not raised this as an issue in correspondence to the DoP dated 11 October 2007.

A report dated 25th February 2008 addressing the stability of the site has been prepared by Geoff Metzler and Associates. The report assessed that there was no evidence of current, overall slope instability on the site (see attachment 2).

Issue 11: Demolition of the Existing Dwelling

The application is for the subdivision. The plans indicate the existing dwelling is to be demolished. The EA describes the dwelling as uninhabitable. A separate application for the demolition would be made to Eurobodalla Shire Council if that is required. It is not exempt development which in the case of demolition is defined by Council as follows:

"Demolition Generally

- *Works that do not involve disturbing asbestos materials.*
- *Is carried out in accordance with AS 2601-1991 The demolition of structures.*

Specifically

- *Where the structure:*
 - (i) has been ordered to be demolished,*
 - (ii) must be of exempt category development, or of a temporary building, the erection of which would be complying development."*

Demolition would therefore appear to require development consent under Council's Rural Local Environmental Plan 1987.

It would therefore be appropriate that if consent was issued for the subdivision it was made clear that the consent was not for the demolition of the existing dwelling on the land and that a separate application for this purpose needs to be lodged with Eurobodalla Shire Council.

Issue 12: Threatening Species

This matter has been referred to NGH for comment (see attachment 5). In this regard NGH has advised:

"The plague minnow (Gambusia holbrooki) was identified on the site and is listed as a key threatening species under schedule 3 of the Threatened Species Conservation Act 1995. Plague Minnow have spread widely throughout NSW since their introduction in the 1920s and thrive in shallow low flowing waterbodies.

While the plague minnow was present at the site, the risk of downstream contamination is considered low. This drainage line travels less than 1km and outfalls into the Pacific Ocean, and while it is known to inhabit brackish waters, it would not survive the saline conditions of the ocean. Upstream the drainage line does not appear to host any dams similar to that found within the subject land and could only be considered ephemeral in nature.

The Plague minnow is common across the region. In a recent study of coastal streams and wetlands in search of frogs it was revealed that Gambusia was found across many sites on the NSW South Coast, including the Eurobodalla local government area. To the direct south of the subject land, Plague Minnow was identified at Malua Bay. Surveys in the subcatchment to the north of the site, also revealed the presence of this fish. Their presence at the subject land is not surprising in a regional context. This species is likely to be more widely distributed than presently known.

The control of Plague Minnow is difficult in the absence of specific methods which target only this species of fauna. The only known effective control methods for this species will kill all fish species present, and will often result in deaths of other fauna such as frogs.

In summary, this fish species is present across the Eurobodalla and within catchments to the north and south of the subject land. Downstream of the subject land where this fish was recorded, provides an ephemeral stream with minimal habitat for this species before flowing into the ocean less than 1km from the dam. Control of Plague Minnow is very destructive, resulting in the death of not only Plague Minnow, but other fauna species present at the treatment site.

It is considered that the Plague Minnow is already likely to have contaminated the drainage line downstream of the subject land from the dam overflow, however, only a small stretch of aquatic habitat is present in an ephemeral state before it reaches the ocean. Control of this

species within the subject land would be potentially damaging to other fauna species and would result in the eradication of this fish in only a small section of drainage line before reaching the ocean, where it would not survive. This management action would not be considered appropriate."

Issue 13: Habitat and Habitat Enhancement

A number of points need to be made here.

- It is understood that the Catchment Management Authority do not have an approval role on major projects.
- As stated above (see Issues 3 and 7) the amended landscape plan specifies species types and numbers of each to be planted (see attachment 4). The species have been selected taking into account the Catchment Management Authority advice.
- Existing trees can be retained within the outer APZs.
- Regeneration is successful and viable in the Eurobodalla area.
- The NGH Report does not identify that the site is environmentally suitable for the planting of five threatened or vulnerable plants nor does it recommend that to occur. In fact the report states:

"No plant species which are listed as threatened under the Threatened Species Conservation Act 1995 or the Environment Protection and Biodiversity Conservation Act 1999 were found on the site, nor would any be expected from the type of habitat available. No plant communities listed as Endangered Ecological Communities occur on the site.

*The only threatened plant species which has been recorded within a 10km radius of the site is the shrub *Correa baeuerlenii* and it does not appear to be present, although some of the denser areas of vegetation were not able to be searched thoroughly. This species is very rare in Eurobodalla Local Government Area and the probability that it is present is very low.*

*Two species which may be of local conservation significance were seen. *Daviesia ulicifolia* ssp *stenophylla* is uncommon on the South Coast, but has been formally recorded from the Mogo area (Harden, 2002) and is not uncommon between Moruya and Batemans Bay (J. Miles, pers. Obs.).*

*Only a few small plants were recorded around the upper edges of the gully on the western slope. *Acacia paradoxa*, a prickly shrub which is widely distributed and not uncommon in NSW and Victoria, but on the NSW south coast appears to be restricted to the Batemans Bay area, where it occurs fairly commonly in moist forest. It is common around the edges of the site, and in some of the patches of retained forest.*

The two vegetation types on the site are widespread on the South Coast between about Termeil and Bega and are adequately reserved in National Parks. Threatened flora recorded in Eurobodalla Local Government Area, extracted from the Wildlife Atlas database held by Parks and Wildlife Division, Department of Environment and Climate Change, include a number of species known only from wetland habitats, from saltmarsh and from high elevations along the top of the coastal escarpments.

When these species are excluded, five remain which might possibly occur on the site. Their habitat requirements are outlined in Table 1 below.

Table 1: Threatened Flora recorded from Eurobodalla Local Government Area for which suitable habitat might occur on the site.

Species	Category*	Habitat required
<i>Correa baeuerlenii</i> Shrub, 1m high (Rutaceae).	V, v	This species grows in a range of forested habitats, including rocky and riparian situations. It is not present in the parts of the site which will be developed.
<i>Persicaria elatior</i> Erect forb to 1m high (Polygonaceae).	V, v	Grows in moist situations such as gullies within forest. No natural wetlands occur on the site. The vicinity of the three dams was searched and this species was not found.
<i>Haloragis exalata</i> ssp <i>exalata</i> Perennial forb to 1m high (Haloragaceae).	V, v	Grows in a range of situations within forest, often associated with water, either stream beds or around the margins of coastal lakes. Tolerates some types of disturbance. This is a conspicuous species which could not have been overlooked. It is not present.
<i>Thesium australe</i> Sprawling perennial herb to about 40cm high (Santalaceae).	V, v	<i>Thesium</i> grows in grassland and woodland, where it is parasitic on grasses, particularly kangaroo grass. It shows a preference for moist areas. The site is formerly forest making it very unlikely that <i>Thesium</i> occurs there, although kangaroo grass is common on the site.
<i>Galium australe</i> Perennial forb (Rubiaceae)	E	This is a very inconspicuous species which has been recorded in spotted gum forest (J Miles, pers. obs.). It usually occurs in small numbers and could have been overlooked if present. However, given the level of disturbance of the site, it is very unlikely that it occurs there.

V= listed as Vulnerable in NSW in Schedule 2 of the *Threatened Species Conservation Act*

E = listed as Endangered in NSW in Schedule 1 of the *Threatened Species Conservation Act*

v = listed as nationally vulnerable under the *Environment Protection and Biodiversity Conservation Act*

- The amended landscape plan has notes regarding maintenance and protection of plants and if approved would have to be implemented.
- Submission and approval of a Vegetation Management Plan (VMP) prior to the release of a subdivision certificate is proposed (see issue 3 responses on pages 5-7 above). Owners responsibilities arising from an approved VMP would come under 88B instruments as advised in the response to Issue 2 above. The Statement of Commitments has been amended accordingly (see attachment 3).

Issue 14: Grandfathers Gully Road-Sightlines

One would expect that the plans would form part of any approval and therefore have to be implemented by the proponent. The construction works necessary to provide clear sight distance is part of the engineering design of the whole subdivision and will be required by the Council. Eurobodalla will not approve any site works unless all engineering issues were addressed. The DoP could appropriately condition the consent (if issued) if further clarification was required.

Issue 15: Amendment of Plans

The plan that was not amended with the lesser APZs was the landscape plan. That has now been amended resulting in smaller APZs thereby improving the situation. Therefore it is unnecessary for the CMA plan to be amended.

Issue 16: Statement of Commitments

The Statement of Commitments was devised according to the Draft Guidelines. It has now been amended in accordance with the undertakings given in the relevant responses to issues above (see attachment 3).

(B) Response to Public Submissions

It is noted that two submissions were received. The responses will be brief.

Issue 1: Flora and Fauna

These issues have generally been dealt with in the Environmental Assessment. Two flora and fauna studies have been completed and they have concluded that the proposed development was unlikely to have an unacceptable impact on threatened or vulnerable species. An additional fauna study has been undertaken examining the southern brown bandicoot. The responses to Issue 3 (see pp.5-7) of this document, Issue 5 (pp. 8-10), Issue 7 (see pp. 10-11) and Issue 13 (pp. 15-17) under Part (A) of this document address the issues raised here.

Issue 2: Density of Development and Amenity

This point is disagreed with in that it is not considered that there would be an unreasonable loss of amenity and lifestyle in the Grandfathers Creek locality. The area does have affinity with the adjoining urban areas in terms of work, schooling, shopping and recreation. There is an increase in density compared with the rural residential lots immediately adjoining but this could change in the future. Eurobodalla Shire Council's "Interim Policy for Minimum Rural Residential Lot Sizes" permits lots of 5000m² in localities that are considered to be adjacent to existing urban areas and zoned for rural residential purposes. The proposed density is less than the maximum allowed under Council policies. See also the response to

Issue 1 in Part (A) (pp. 2-4). Also the proposed development would not create unreasonable noise levels, create building envelopes that interfere with views, overshadow existing development or create traffic increases that would adversely impact upon the existing road system.

An extensive visual analysis has been completed using aerial and other photographs and superimposing the proposed development onto these (see attachment 10 "Visual Analysis"). Visual impact was addressed in Section 1.5 "Views to and from the site" on page 3 of the EA. The attached visual impact demonstrates:

- A substantial amount of the existing site vegetation will remain.
- There will be significant areas of the site re-vegetated.
- There is one location along George Bass Drive (at the existing power easement) where in the short term there would be a possible glimpse of a dwelling on proposed Lot 10. This would only occur if the dwelling was two storey. An existing single storey dilapidate dwelling is on that lot and it is not visible from George Bass Drive. As a result of the subdivision the power easement is likely to be relocated and the power will be underground. In the longer term the dwellings associated with the subdivision will not be visible from George Bass Drive.
- It is anticipated that the most visible dwelling from Grandfathers Gully Road would be located on proposed Lot 4. Once again it would be most visible at the time of construction of the dwelling. Over time the dwelling would be substantially screened through regeneration/supplementary planting. This is because the riparian zone adjoins Lot 4 to the north and tree planting can occur in the outer asset protection zone. The following photos also show that other dwellings are visible from Grandfathers Gully Road.



Issue 3: Slope and Erosion

The site has been predominantly cleared for years and instability and erosion have not been significant problems. There will be significant tree planting and regeneration outside of the APZs. Vegetation will remain within the APZs as well. Responses to Issues 3 Part (A) (pp. 5-7) and 5 Part (A) (pp. 8-10) are relevant here. A consulting engineering firm has also prepared a report addressing stability (see attachment 2).

Issue 4: Traffic and Access

Work has been done to ensure that access is safe. Eurobodalla Shire Council in the letter dated 11 October 2007 has not proposed any conditions in respect of road sight lines at this stage. The letter does address S.94 contributions towards rural and arterial roads. Adequate sight lines would have to be allowed for when the engineering plans are submitted. The answer to Issue 14 Part (A) on page 19 is relevant here.

Issue 5: Bushfire Prone Land-High Risk

The two bushfire assessments have been prepared by an expert who believes that subject to recommendations the subdivision can comply with the appropriate legislation and guidelines. The response from the Rural Fire Service seems to imply this as that authority suggests conditions to be applied to the consent.

Issue 6: Compliance with Various Planning Instruments and Policies

Issue 1 as dealt with in Part (A) of this document (see pp. 2-4) largely answers the issues raised here.

The location of the proposed subdivision and its proposed scale leads to the conclusion that it would meet the aims of, and responsibly address the matters for consideration included in, SEPP 71 as specified in clauses 2 and 8. The proposal would not detrimentally affect coastal processes or restrict public access to coastal foreshores. Proposed land clearing is minimised and a significant proportion of existing vegetation would be retained. Visual amenity of the locality would be retained. There does not appear to be any unacceptable impacts on endangered flora and fauna or aboriginal archaeological heritage. Self sufficiency in terms of water supply and on-site waste disposal is achievable due to the lot sizes proposed.

Specifically in respect of aim (k) the scale of the development is appropriate for a rural residential area so close to urban settlement. This is particularly so taking into account Council's "Interim Policy for Minimum Rural Residential Lot Sizes". That Policy is reflected in the Eurobodalla Settlement Strategy which has been endorsed by DoP. The bulk of the development is screened from public places and would not impact on the views, privacy or solar access of adjoining neighbours. Substantial areas of existing vegetation are to be retained and existing cleared areas outside of APZs will be revegetated and regenerated.

The development is not contrary to the South Coast Regional Strategy as the development is located in an existing zoned rural residential area.

Dual occupancy development is permissible in the zone. This application is for a subdivision only. Any future development applications for dual occupancy development would be dealt with by Council in the context of legislative and policy requirements.

(C) Submissions from NSW Government Agencies

All of the NSW Government Agency responses have been reviewed. It is not proposed to respond to the submissions from the:

- Department of Planning Southern Region office
- Department of Water and Energy
- Eurobodalla Shire Council
- Southern Rivers Catchment Authority
- Department of Primary Industries
- Rural Fire Service

Many of these submissions tend not to oppose the proposed development but suggest conditions of consent. Some raise issues that have been comprehensively addressed in Parts (A) and (B) of this submission. It is proposed to comment on two issues raised in the correspondence from the Department of Environment and Climate Change.

The first issue relates to on-site waste disposal. Eurobodalla Shire Council has a policy of not providing reticulated water and sewer to rural residential developments. Therefore water and sewerage infrastructure has to be provided on-site. Storm Consulting have prepared a report detailing recommended systems for the proposed subdivision (see attachment 8):

“It is proposed that each lot have an on-site treatment system, either a Biolytix, or AWTs for wastewater treatment. The water from this treatment system will then be fed into a suitably sized subsurface irrigation or ETA/ETS trench system allowing water to be infiltrated into the ground, absorbed by vegetation and evaporated from the soil.

Lot 4 is located within the 1 in 5 year Wetness constraint area, however this is not an issue as Council’s soil wetness constraint mapping was undertaken with septic absorption trenches in mind. Generally, septic absorption trench disposal systems pose a higher risk to health and the environment than secondary treatment systems. Septic tanks do not remove nutrients and the water can be highly infectious, therefore must be disposed of below the surface. Additionally, absorption trenches rely primarily on the permeability of a soil and the long term ability of the soil to accept and therefore treat the effluent through the soil profile, not on evapotranspiration.

The recommended system for Lot 4 is an AWTs providing secondary level treatment and surface, or sub-surface irrigation, so that the effect of evapotranspiration is maximised. The

system has been sized such that effluent is retained to the disposal area in an average climate year. Therefore the 1 in 5 year wetness constraint is not a restriction on this lot.

A tank size of approximately 40-50kL is recommended for each lot; however, this depends on water usage of owners and roof sizes. Separate fire storage of 10kL is required which can be included in main storage, or contained in separate tanks.

The majority of the development will retain its pervious nature. Runoff from roads will be managed by maintaining diffuse flows and allowing filtration and infiltration. The impact of runoff from lots will be restricted through the use of rainwater tanks and the large buffer distances between the runoff source and receiving waters. Water quality modelling demonstrates that post development impacts will be negligible. Peak flows from the site will increase slightly, however will not increase peak flows in receiving water due to the location of the development within the catchment.

The 100 year ARI peak flow is approximately 1.3 m³/s. The 1% AEP flood level for flows out of the dam is 23.0m. We recommend a minimum finished floor level for Lot 4 of 23.5m AHD for any habitable floor level to ensure that the building is well beyond flood levels in the unnamed drainage line."

The other issue that requires comment is DECCs insistence that the proponent commission additional fauna fieldwork and study in respect of the southern brown bandicoot. NGH Environmental has completed a "Target Southern Brown Bandicoot Survey and Assessment" report (see attachment 9).

The methodology used in the study was guided by the 'Environmental Impact Assessment Guidelines for SBB' (NSW NPWS 2001). These guidelines were prepared to provide information to assist environmental consultants, proponents and consent authorities who are required to prepare or review assessments of likely impacts on SBB pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*. The methodology used considers the survey methods proposed within the guidelines and discussions held with Mr Dimitri Young, Threatened Species Coordinator and Dr Andrew Claridge (a bandicoot specialist) both of DECC, Queanbeyan.

The report concluded:

"This report documents the findings in relation to the target survey of the SBB on and adjacent to the Grandfathers Gully site. During this survey, no SBB were recorded. A review of other surveys in the direct locality, during the Southern CRA surveys, or by an ex-Forests NSW ecologist with 30 years experience in the Eurobodalla LGA have also not recorded SBB.

Previous studies at the subject site and across the road at the Lilli Pill Open Space Common failed to find any bandicoot diggings and assessed that the SBB is unlikely to occur due to an absence of suitable habitat. Extensive searches during this survey found only one bandicoot digging adjacent to where a Long-nosed Bandicoot was trapped.

Within the Eurobodalla LGA, twenty five vegetation communities using the classification of Thomas et al (2000) are considered to provide potential habitat for SBB (NSW NPWS 2001). None of these communities are found within or directly adjacent to the subject site.

Habitat connectivity is relatively poor on the subject site, with much of the remaining vegetation flanking the boundaries of Lot 2 apart from the vegetation of the riparian corridor leading up from Grandfathers Gully Rd toward the existing house. However, the value of this vegetation as a corridor to facilitate movement is dubious as it is essentially a 'dead-end' and does not lead, or connect to other areas of vegetation. The vegetation of the western boundary does provide a limited corridor to facilitate north-south movement along Grandfathers Gully Road. However, the value of this is compromised by the proximity of the roads, and its limited width, and is unlikely to contribute to fauna movement when corridors of highly quality are evident in the wider locality.

*The nature of the subject site, being predominately cleared, the absence of key vegetation communities or species such as *E.consideriana*, the intensity of this and past surveys in the locality, and that potential movement corridors are not present on the subject site, suggests that the site does not provide habitat for SBB. However, as a precautionary approach, the NSW and Commonwealth assessment of significance was undertaken from this and it was assessed that the proposed activity is unlikely to have a significant impact on SBB."*