

MAJOR PROJECT ASSESSMENT:

***7 Lot Rural Subdivision of Lot 14 DP 750222 and
Boundary Adjustment of Lot B DP 33573,
Wonboyn Lake***



Director-General's
Environmental Assessment Report
Section 75I of the
Environmental Planning and Assessment Act 1979
February 2011

Abbreviations

| | |
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| Department | Department of Planning |
| DGRs | Director-General's Requirements |
| Director-General | Director-General of the Department of Planning |
| EA | Environmental Assessment |
| 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 |
| Part 3A | Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> |
| PPR | Preferred Project Report |
| Proponent | Planning Group NSW Pty Ltd |

Cover Photograph: View from Wonboyn Lake of proposed development site. Courtesy of Proponent's Environmental Assessment Report

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EXECUTIVE SUMMARY

The Planning Group NSW Pty Ltd ('the proponent') on behalf of the owners (Picnic Point Pty Ltd) has submitted a project application which seeks approval to subdivide land at Wonboyn Lake (Lot 14 DP 750222) into 7 lots and adjust its boundary with an adjoining lot (Lot B DP 33573). The subdivision will create 6 lots no greater than 4.6 hectares in area and a large allotment (Lot 7) 107 hectares in area. A right of way will provide access to the proposed new lots from Ivor Jones Drive across. Dwellings are not proposed as part of this project application. The estimated capital investment value of the development is \$376,200.

On 16 June 2006, the Director-General as delegate for the Minister for Planning formed the opinion that the project was a development of a kind described in Schedule 2 of the MD SEPP, namely subdivision of rural-zoned land into more than 5 lots in a coastal zone (as then applicable) and was 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 five submissions from public authorities and two submissions from the public. Public submissions were in support of the proposal while agency submissions raised issues for consideration. Key issues considered in the Department's assessment included:

- Bush fire hazards;
- Impacts to native fauna and flora; and
- Water quality and supply.

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. This assessment has determined the proposed development is unsuitable because of the unacceptable bush fire hazards associated with the site. The proposed development, if approved, would create an isolated community, situated in a large tract of bushland, with inadequate emergency access and egress for firefighters and residents. The Department therefore does not consider the proposal to be in the public interest and recommends the project be disapproved.

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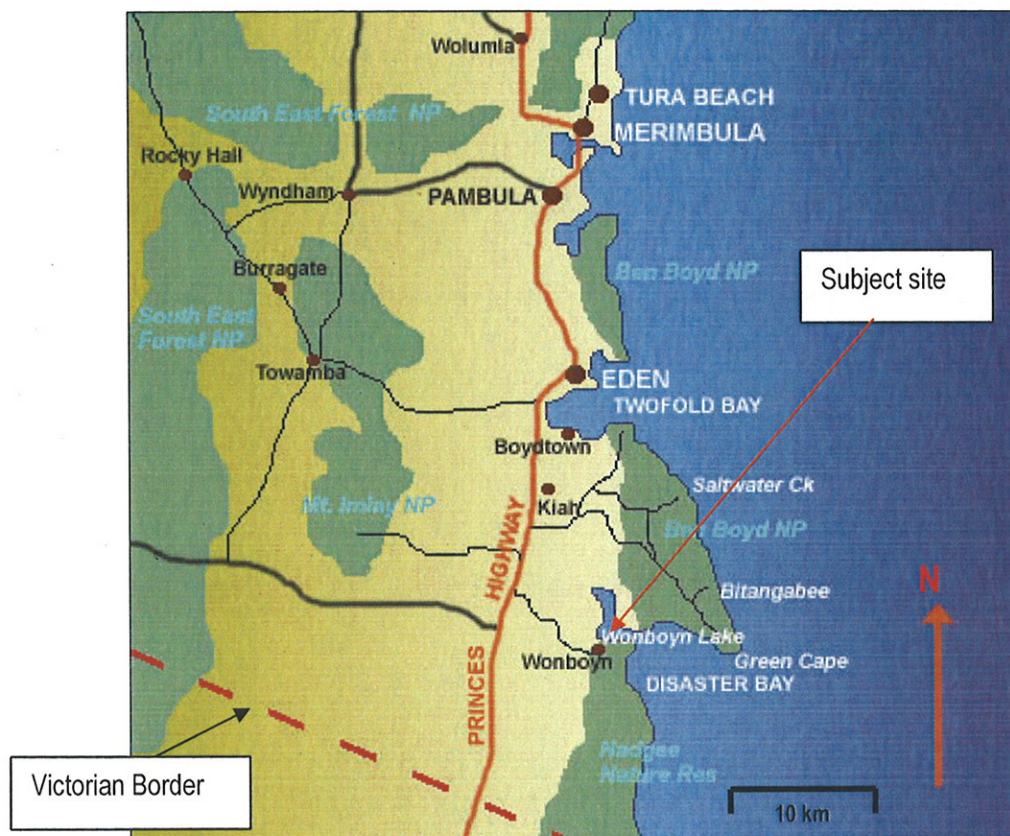
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1. BACKGROUND

1.1. Location

The site is located at Wonboyn Lake, in the Bega Valley local government area, on the New South Wales far south coast (Figure 1). It is 35km's north of the Victorian border, 33km's south of Eden and 2km's north of Wonboyn village. Wonboyn village is located 15km's to the east of the Princes Highway and is accessed via Wonboyn Road. Merimbula, the closest major town, is 50km's to the north and is known as a tourist destination and service centre with an airport, retail, commercial and recreational services.

Figure 1: Site Location



1.2. Surrounding Land Use

Wonboyn village has a small commercial and retail area as well as recreational facilities including tennis courts, picnic grounds and tourist accommodation. The town had a population of 310 at the 2006 Census and primarily services tourist activities including recreational fishing. The surrounding area is illustrated in Figure 2.

The site is bordered by Wonboyn Lake and Wonboyn River (Figure 3). It is surrounded by undisturbed vegetated land including Nadgee Nature Reserve, Ben Boyd National Park, East Boyd State Forest and Nadgee State Forest. Wonboyn Lake contains a large number of Priority Oyster Aquaculture Areas including one located less than 200 metres east of the site. The Lake also contains 4 SEPP 14 wetlands, with one being located approximately 300 metres north of the site.

Figure 2: The Surrounding Area

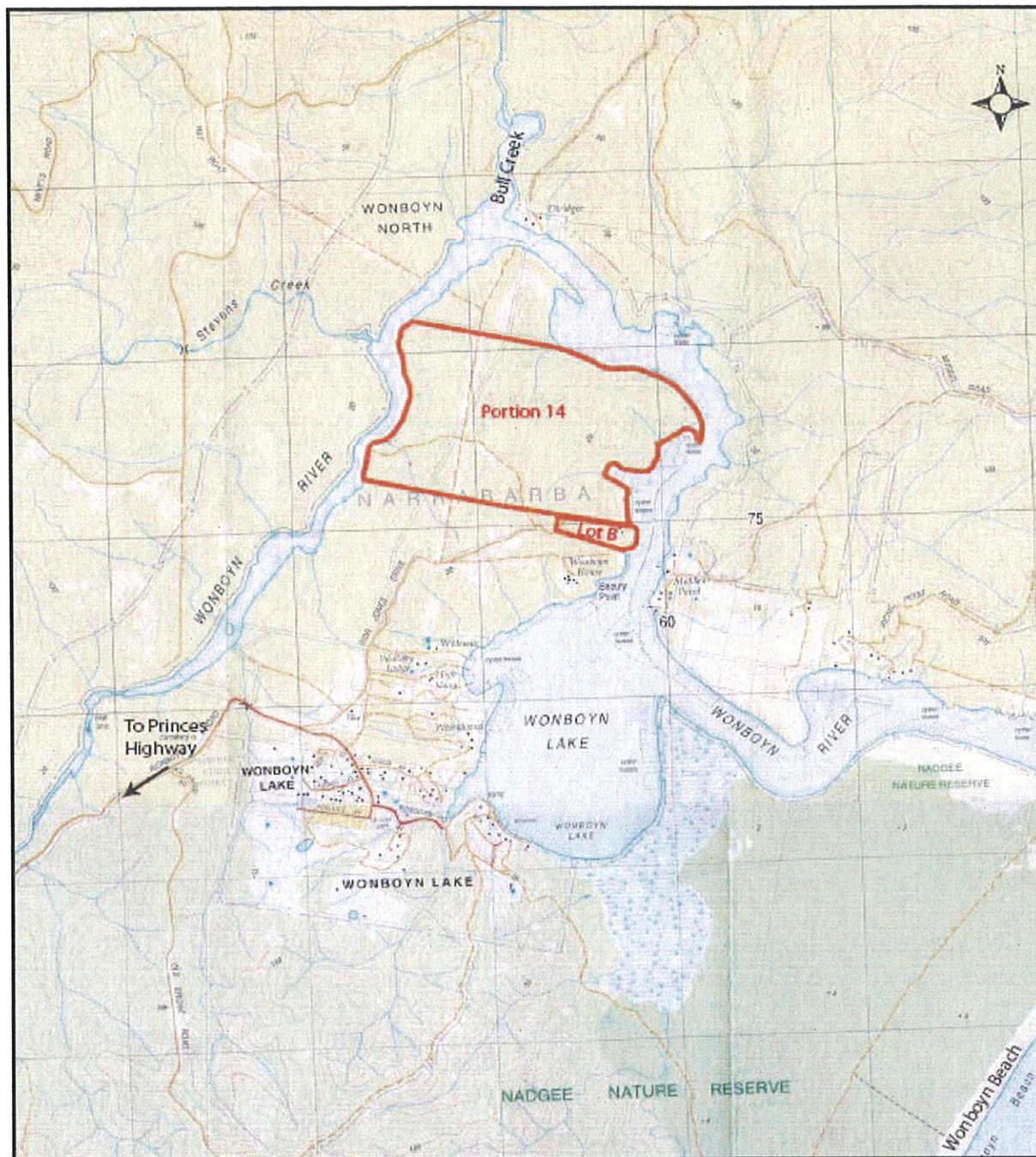
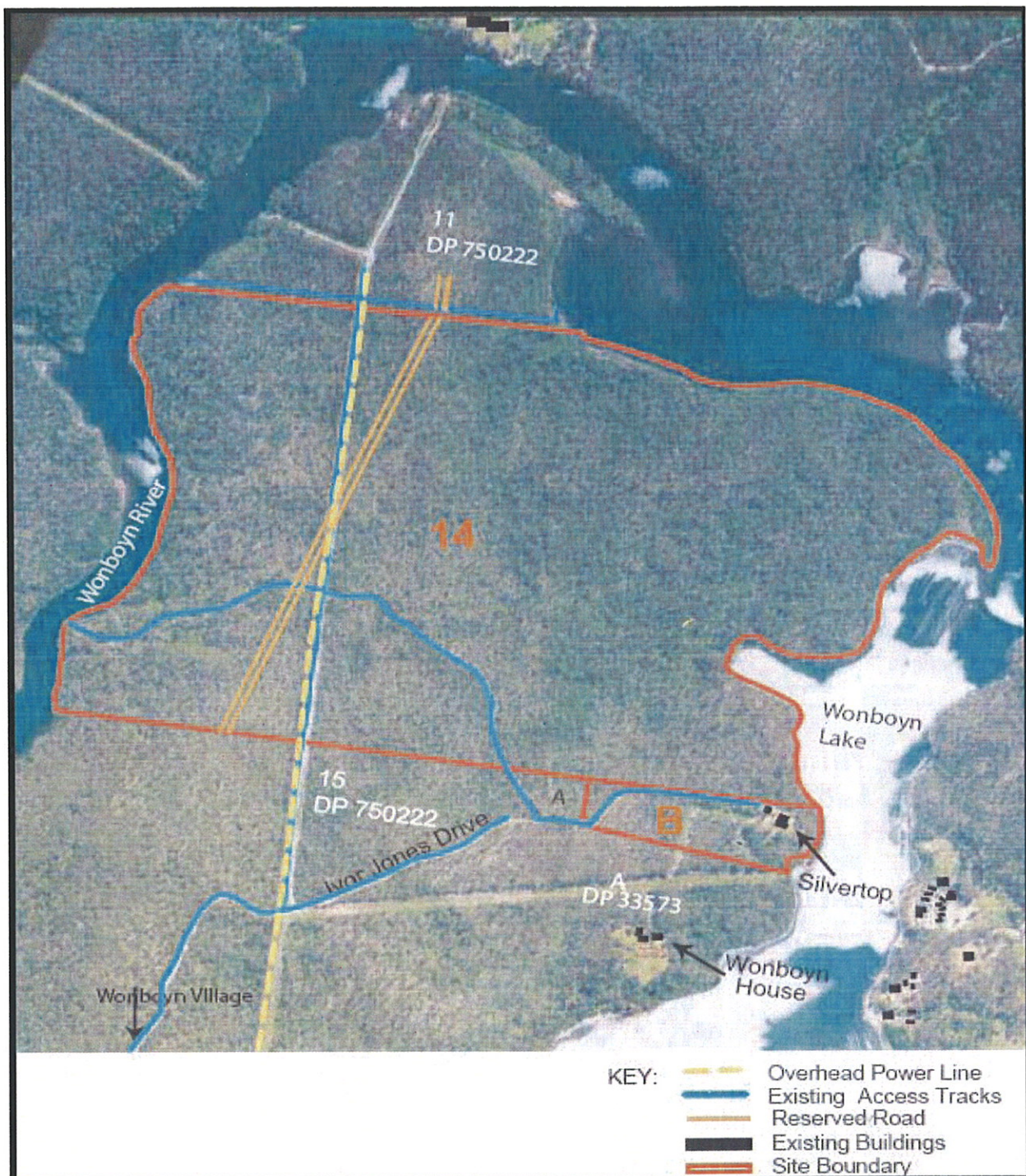


Figure 3: The Site



2. THE PROPOSED DEVELOPMENT

2.1. Project Description

It is proposed to subdivide Lot 14 DP 750222 into 7 Torrens Title rural lots and adjust its boundary with Lot B DP 33573 (Figure 4). The subdivision would create six lots no greater than 4.6 hectares in area and a single large allotment (Lot 7) having an area of 107 hectares. Easements for electricity will be located over Lot 7 and Lot B. Each lot will make provision for on-site effluent disposal.

A right of way will provide access to the proposed new lots from Ivor Jones Drive across Lot B DP33573. A fire trail is proposed that links the right of way along the subdivided lots to Lot 11 located at the tip of Wonboyn Lake peninsula.

Approval for dwellings is not sought as part of this application.

2.2. Project Amendments

In response to issues raised in submissions, a PPR was submitted incorporating the following amendments:

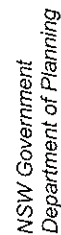
- The alignment of the fire trail was amended to avoid hollow bearing trees;
- The location and sizes of the effluent management areas were revised; and
- An offset strategy was created based on the biodiversity impacts expected to result from the development.

2.3. Project Need and Justification

The South Coast Regional Strategy 2007 (the strategy) sets a framework to guide sustainable growth throughout the South Coast for the next 25 years. The primary purpose of the strategy is to ensure that adequate, appropriately located land is available to accommodate the regions projected housing and employment needs.

The strategy recognises that some areas are affected by natural hazards. An intended outcome of the plan is to prevent future urban development from being located in areas of high risk from natural hazard. The proposed development would be inconsistent with this general strategic outcome for the region as it would create additional allotments in an area of high bush fire hazard.

Figure 4: Plan of the Proposed Development



3. STATUTORY CONTEXT

3.1. Major Project

The proposal is a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) because it is development for the purpose of subdivision of land in a rural/residential zone into more than 5 lots based on transitional amendments contained under clause 16 of Schedule 2 of *State Environmental Planning Policy (Major Development) 2005*. 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(a) Rural General and 7(b) Environment Protection Foreshore Zone, permitting a range of rural and environmental uses that do not create undesirable environmental and cultural impacts. Under these zonings and consistent with their objectives, the project to subdivide land is permissible with consent.

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 Development) 2005;
- State Environmental Planning Policy No. 14 – Coastal Wetlands;
- State Environmental Planning Policy No 62 – Sustainable Aquaculture;
- State Environmental Planning Policy No. 44 – Koala Habitat Protection;
- State Environmental Planning Policy No. 71 – Coastal Protection
- State Environmental Planning Policy – Rural Lands 2008; 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 EP&A 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 that pertain to this project 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 not an orderly development of the land, as it would create a community at significant risk from bushfire. |
| (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 is located immediately adjacent of a "sensitive coastal location", namely Wonboyn Lake according to Schedule 2 Clause 4 of the EP&A Act. The subject land is also in an undisturbed state and contains Endangered Ecological Communities and several threatened species. |
| (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 the document from 02/10/2009 until 03/11/2009 (33 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 (29/09/2009), Merimbula News Weekly (30/09/2009), Eden Inlay Magnet (01/10/2009) and notified landholders, and relevant State and local government authorities in writing.

The Department received 7 submissions during the exhibition of the EA consisting of 5 submissions from public authorities and 2 submissions from the general public.

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

4.2. Summary of Issues Raised in Public Submissions

Public submissions received included letters of support and did not raise any issues of objection. Comments suggested the scale and location of the proposal would be appropriate and sympathetic to the surrounding environment.

4.3. Public Authority Submissions

Five submissions were received from public agencies including, Bega Valley Shire Council, the Department of Environment, Climate Change and Water, Industry and Investment and the Rural Fire Service. One submission did not support the proposal, two were unable to provide an opinion on the project based on the information contained in the EA while the remaining submissions raised issues for consideration. A summary of submissions is provided below:

Bega Valley Shire Council (Council)

Council was unable to provide an opinion regarding the project based on the information provided in the exhibited EA and raised the following concerns:

- State Environmental Planning Policy No 62 – Sustainable Aquaculture ("SEPP 62") had not been considered and the project may impact on the oyster fishery adjoining the site. No cumulative impact assessment has been undertaken which adequately addresses potential total impact of on-site sewage management systems, land clearing and stormwater run-off on the fishery;
- The on-site sewage management system lacks sufficient detail to provide certainty over the long term effectiveness of future systems on the individual lots. The concerns include the lack of a phosphorus leak point to soil, unsuitability of rainfall data and a minimum setback to the waterway is 150 metres according to the Council's Development Control Plan (DCP);
- Concerns relating to the proposed access to the site. Clarification as to the access to be provided, whether access is to be provided to Lot 11 and whether the road design complies with the requirements of the DCP;
- Creation of a Core Riparian Zone having a width of 40 metres (from Mean High Water Mark) across the water frontages to the individual lots within the subdivision. There is to be a restriction on building and clearing with this Zone, protected by a covenant; and

- A building envelope is required to be nominated on the residual lot.

Department of Environment, Climate Change and Water (DECCW)

DECCW did not support the proposal and recommended the following concerns be addressed should it be approved:

- Potential impacts on Wonboyn Lake from effluent disposal, particularly given there were no predictions made of the quality of treated effluent or the impact of this effluent on the receiving environment;
- Potential impacts on sensitive ecosystems from changes to the hydrological regime resulting from the development;
- The use of causeways in the road design is not supported due to potential for pollution of waters by vehicles and potential blockage of culverts by litter;
- Concerns that the water quality modelling has not demonstrated that pollutant loadings would be sufficiently low to protect adjacent waterways and Endangered Ecological Communities;
- A 100 metre buffer to Wonboyn Lake is required to protect water quality leaving the site; and
- Inadequate surveying and information relating to vegetation along the proposed transmission line, fire trail and development areas, lack of adequate hollow bearing tree and yellow bellied glider feed tree assessment.

Rural Fire Service (RFS)

The RFS stated it was unable to properly assess the project due to a lack of information, including:

- A lack of a buffer zone to afford occupants adequate protection from exposure to bushfire;
- An adequate water supply is required to be available to each site; and
- Ensure that safe operational access and egress for emergency service personnel and residents is available.

Industry and Investment (I&I)

I&I raised the following issues:

- Potential impacts on the water quality of Wonboyn Lake particularly in relation to aquatic habitats, fish communities, oyster aquaculture and recreational fishing industries;
- Concerns with water quality modelling results which show better water quality discharges post development, notwithstanding that the site is currently in a natural state; and
- Potential impact on Priority Oyster Aquaculture Areas located in Wonboyn Lake resulting from on-site effluent disposal.

NSW Office of Water (NoW)

Now raised the following issues:-

- Core riparian setback of 100 metres with fully structured vegetation and clear of any Asset Protection Zones is required;
- Any causeways must be constructed in accordance with the relevant guidelines;
- Any disturbances to watercourses and riparian zones associated with the project must be rehabilitated to emulate a naturalised system for aquatic, riparian and terrestrial environments;
- Water licensing requirements have not been adequately considered; and
- An adequate sustainable water supply to each proposed lot has not been demonstrated.

4.4. Proponent's Response to Submissions

The Proponent provided a response to the issues raised in submissions (Appendix B). The response included a Preferred Project Report (PPR) which included the following;

- Targeted flora and fauna surveys;
- A compensatory habitat package to offset unavoidable flora and fauna impacts from the project;
- A core riparian vegetation buffer of 40 metres;

- Revised Effluent Management Areas;
- Confirmation of access road, width and passing bays; and
- Adjusted Drawings and Reports.

The PPR was made public via the Department's website on 16 August 2010, however it was not advertised. Comments regarding the PPR were sought from DECCW, I&I, RFS & Council.

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 |
|---|--|
| Bushfire Hazard | Section 5.1 |
| Flora and Fauna | Section 5.2 |
| Water Quality and Supply | Section 5.3 |
| Other issues: Traffic and Access, Acid Sulfate Soils, Flooding, Subdivision and restrictions. | The Departments assessment determined that these issues had been adequately addressed in the Preferred Project Report and / or final Statement of Commitments or could have been dealt with by condition had the development been supported. |

5. ASSESSMENT OF ENVIRONMENTAL IMPACTS

The key issues considered in the Department's assessment of the EA, PPR and the Proponent's Statement of Commitments include the following:

- Bush fire;
- Flora and Fauna; and
- Water Quality and Supply.

5.1. Bush fire Hazard

Issue

The site is located on an isolated peninsular of land that is largely undisturbed and is bordered by large tracts of native vegetation including Ben Boyd National Park, East Boyd State Forest, the Nadgee State Forest and the Nadgee Nature Reserve, which puts it at significant risk from bush fire. With the exception of Lake Wonboyn Village (pop. 300) located 2 kilometres to the south, no other population centres are within 30 kilometres of the site.

The site is identified as bush fire prone land on the Bega Valley Bushfire Prone Map. According to the Lake Wonboyn Village Development Control Plan No.36, the village was seriously threatened four times last century by bush fires (not including a number of smaller fires).

Submissions

Issues regarding bush fire hazard were raised in agency submissions, with comments including:

- The development cannot afford future occupants adequate protection from exposure to bush fire;
- The development has not provided adequate water supply for each site; and
- The development does not ensure that safe operational access and egress for emergency service personnel and residents is available.

Consideration

The Proponent in their PPR addressed issues raised in submissions as follows:

- Updated Asset Protection Zones (APZs) to protect occupants;
- Included improved building design and construction standards;
- Requirement that every lot contain a 100 mega litre water tank with at least 20 000 litres to be dedicated for the purpose of fighting bushfires;
- Proposed passing bays along Ivor Jones Drive to facilitate access and egress to the site during emergencies and;
- Measures were proposed to ensure that safe operational access and egress for emergency service personnel as well as residents is available according to the *Planning for Bushfire Protection Guidelines 2006*.

While acknowledging the proponents efforts to demonstrate an acceptable bushfire outcome, the additional measures did not resolve concerns regarding the sites isolated location and restricted access. An on-site meeting which was attended by the proponent, the Department and the RFS, was held to discuss these issues. The outcome of this meeting was that the proponent was required to reconsider their proposed bush fire protection measures having regard to the sites specific constraints. The Proponent subsequently committed to the following additional measures:

- Alternative emergency egress via Wonboyn Lake – A landing area including a suitable structure for mooring of a boat would be provided at each lot and a linking 3 metre wide path would be established from each dwelling to allow for evacuation via the water;
- A further increase in the size of APZs for each lot based on a lower bush fire attack level as contained in the *Planning for Bushfire Protection Guidelines 2006*, whilst at the same time maintaining a higher construction standard for buildings as committed to in the PPR;
- The provision of a bushfire bunker or similar shelter to be made available on each new lot subject to criteria set by the RFS and the Building Code of Australia (BCA) for a Class 10(c) building ;
- Provision of a modified fire trail layout that is amalgamated with the existing powerlines easement; and
- Inclusion of the project site within the *Wonboyn Village Fire Protection Plan* and upgrade of the plan to classify the area as "Occupied" rather than its current "Outer Area" classification.

The Proponent's supplementary measures were submitted to the RFS. A response from the RFS's Group Manager Community Resilience on 7/2/11 indicates:

"Notwithstanding, when considering developments in bush fire prone areas, there is also a need to assess other factors relating to potential bush fire behaviour in the area, and the impact this may have on the proposed development. In this case, factors such as the large scale of the bush fire hazard surrounding the site, the potential for extreme fire events, the inadequacy of the existing access and egress arrangements and the isolated nature of the development all need to be carefully weighed up.

On evaluation of these factors and the impact these will have on the proposed development, the RFS remains concerned that the development proposal will create an isolated community in a large tract of bushland where emergency access and egress by residents and firefighters remain an issue. For this reason the RFS is unable to support the development of the proposed 7 lot subdivision at Portion 14 Wonboyn Lake."

The Department shares the RFS concerns about the isolated nature of the site. Notwithstanding the mitigation measures proposed, the site will have only one access, being Ivor Jones Drive. This public road is approximately two kilometres long and is situated within dense undisturbed vegetation along its entire length. It is a single lane unsealed carriageway that is overtopped by a vegetated canopy and provides inadequate passage for large vehicles such as fire fighting trucks. The Department does not consider this road to provide suitable access and egress for fire fighters and residents during a bushfire emergency.

The Department notes the potential for Wonboyn Lake to be an evacuation route during emergencies for residents. This would require approval for wharves and determination of appropriate evacuation routes for wharf access. If approved, this subdivision would facilitate development subject to a significant bush fire hazard and future residents and their property would be subject to an unacceptable risk.

5.2. Flora and Fauna

Issue

The potential impact of the development on threatened species habitat and Endangered Ecological Communities which exist on site.

Submissions

Key flora and fauna issues raised in submissions included:

- Potential for adverse impacts to Endangered Ecological Communities and threatened species not identified in the assessment including the Koala, Southern Brown Bandicoot and Long-nosed Potoroo; and
- The need for the proponent to offset any unavoidable impacts to native vegetation/ fauna habitat resulting from the project.

Consideration

In their PPR the proponent committed to avoiding the EECs and to protecting them in perpetuity. Further, the proponent committed to providing signage that would identify the EEC's conservation value. Based on these mitigation measures, the Department considers the project would satisfactorily avoid any impact to these communities.

The proponent undertook additional flora and fauna species investigations as part of their PPR. The investigations found only a limited amount of native vegetation/threatened fauna habitat would be impacted and subsequently a low level of impact would likely occur to threatened species. The proponent offered 7.62 ha's of land to offset on a "like for like" basis unavoidable adverse impacts to native vegetation/threatened fauna habitat. The proposed compensatory habitat offset is insufficient to achieve a "maintain or improve" outcome.

Had the project been recommended for approval, conditions would have been imposed requiring the retention of the whole of the area of Lot 7 (outside the building envelope) as an offset, implementation of a Vegetation Management Plan for the retained areas, retention of trees with a circumference/diameter larger than 80cm's when clearing for APZs and amalgamation of the fire trail easement with the proposed power line to address the outstanding flora and fauna issues.

5.3. Water Quality and Supply

Issue

The potential impacts of the development on the water quality of Wonboyn Lake.

Submissions

Key water quality issues raised in submissions included:

- Potential for offsite impacts to aquatic habitat, fish communities, Priority Oyster Aquaculture Areas, SEPP14 Coastal Wetlands and recreational fishing industries at Wonboyn lake as a result of the development;
- Appropriate setback distances of development from Wonboyn Lake;
- Appropriateness of water quality modelling and subsequent results; and
- The source and availability of a sustainable water supply for the development.

Consideration

The Proponent's consideration of water quality issues in its PPR broadly encompassed the following;

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

The proponent's assessment concluded that the development would have no appreciable effect on water quality at Wonboyn Lake. Measures proposed in the water quality management plan include appropriate setbacks for building envelopes from riparian areas, onsite effluent and wastewater management located away from Wonboyn Lake, construction phase erosion and sediment control, water sensitive urban design (WSUD) and vegetation retention and management.

The Department has concern about the conclusion of the Water Cycle Management Plan that the development will have no appreciable effect on the water quality of Wonboyn Lake. It is important that water quality be maintained in order to preserve the ecological values and the numerous priority oyster aquaculture areas found to exist at such an undisturbed site.

Had the project been recommended for approval conditions would have been imposed requiring a water quality monitoring and compliance program more stringent than is typically incorporated in such subdivisions. This in

conjunction with the measures proposed by the proponent would have ensured the biological diversity and ecological integrity of the lake could be maintained.

6. RECOMMENDATION

The Department has assessed the Environmental Assessment and Preferred Project Report and considered the submissions in response to the proposal. Key issues considered were water quality, biodiversity and bush fire hazard. The water quality and biodiversity issues can be satisfactorily resolved. This assessment has however determined that the site is unsuitable for the proposed development because of the bushfire hazard which is present. The proposed development, if approved, would create an isolated community, situated in a large tract of bushland, with inadequate emergency access and egress for firefighters and residents. The Department therefore recommends the project be disapproved and requests that the Deputy Director-General sign the attached instrument of disapproval (Tag A).

Marek Holin
A/Senior Planner



28.2.11

Chris Wilson
Executive Director
Major Projects Assessment



28/2/11

Richard Pearson
Deputy Director-General
Development Assessment & Systems
Performance

APPENDIX A - ENVIRONMENTAL ASSESSMENT

See the Department's website at http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=1135

APPENDIX B – PREFERRED PROJECT REPORT

See the Department's website at http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=1135

APPENDIX C – 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 5 July 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 numerous SEPP 14 wetlands are contained immediately downstream of the site in Wonboyn Lake, the closest being sited 200 metres north of the project site. As the site is located on an inclined slope that drains into the Lake water runoff has the potential to adversely affect the SEPP 14 wetlands. 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. 44 – Koala Habitat Protection

State Environmental Planning Policy No 44 – Koala Habitat Protection ("SEPP 44") aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. The potential for the site to contain koala habitat has been assessed by the Proponent and no Koala's were identified at the site. The project is considered to be consistent with this Policy.

State Environmental Planning Policy No. 71 – Coastal Protection

State Environmental Planning Policy 71 - Coastal Protection applies to the site as it is located within the coastal zone of NSW. The relevant clauses of SEPP 71 are addressed below:

- a) the suitability of the development given its type, location and design and its relationship with the surrounding area is maintained based on the development layout and setback from the foreshore;

- b) scenic qualities of the coast have been maintained as the development will have low visual impact in a relatively remote area;
- c) measures to conserve animals and fish, wildlife corridors have been undertaken. Habitat clearing is to be avoided to the maximum feasible extent, surveyed nesting and feed trees of threatened species are to be avoided. The proposed fire trail is amended to be amalgamated with the proposed powerline easement in order to minimise habitat fragmentation and a compensatory habitat package is to be established to offset in perpetuity any unavoidable impacts for the remainder of the lot that is not being developed;
- d) likely impacts on water quality of coastal water bodies are minimised with a stringent water quality monitoring plan to be implemented during and post construction and to test the assumptions of the Proponent's water quality assessment;
- e) cumulative impacts of the proposed development on the environment are expected to be minimal with the inclusion of the Department's proposed vegetation management plan, compensatory habitat package and mitigation measures proposed by the Proponent.

It is considered that the project is consistent with these matters as outlined in Section 5 of the report and conditions of approval.

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(a) Rural General. The site does not support full time farming activities. The land is fully vegetated in an undisturbed state. The Department considers the aims of this policy have been met in that subdivision of the land will not impact significant agricultural land.

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(a) Rural General and 7(b) Environment Protection Foreshore Zone 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.

Project Disapproval

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

I disapprove the carrying out of the project application referred to in schedule 1, for the reasons listed in Schedule 2.



Richard Pearson
Deputy Director-General
Development Assessment & Systems Performance
Department of Planning

Sydney

28th February

2011

SCHEDULE 1

| | |
|----------------------------|---|
| Application No.: | MP 06_0147 |
| Proponent: | The Planning Group Pty Ltd on behalf of the owners (D.W Ross, M.A.J. Ross and D. Hemingway). |
| Approval Authority: | Minister for Planning |
| Land: | Lot 14 DP 750222 and Lot B DP33573, off Ivor Jones Drive, Wonboyn Lake, NSW. |
| Project: | Torrens title subdivision of the subject land into 7 lots within Lot 14 including one residual lot (Lot 7) and associated boundary adjustment to incorporate Lot B as well as construction of roads, electricity easements and landscape works. |

SCHEDULE 2

REASONS FOR DISAPPROVAL

1. The development does not provide safe bushfire access/egress, so occupants leaving and firefighters/rescuers accessing the property can do so in relative safety.
2. The development would create an isolated community in a large tract of bushland, with people and property subject to an unacceptable bush fire threat.
3. The proposal is not in the public interest.



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Department Generated Correspondence (Y)