

PLANNING ASSESSMENT REPORT

JRPP No	2012STH021
DA Number	2012.0360
Local Government Area	Bega Valley Shire Council
Proposed Development	Proposed Satellite Earth Station (SES) for the National Broadband Network (NBN)
Street Address	Lot 3 in Deposited Plan 592206 Wanatta Lane Wolumla
Applicant/Owner	National Broadband Network Company/Bega Valley Shire Council
Number of Submissions	5 (includes 1 supplementary submission)
Recommendation	Approval with Conditions
Report by	Paul May Planning Consultant (Planning Initiatives)

1.0 INTRODUCTION

1.1 Executive Summary

The National Broadband Network Company (NBN Co.) is the proponent for the proposed satellite earth station (SES) facility on part of Lot 3 DP 592206 which is owned by Council.

The proposed site is vacant and occasionally used for agriculture, namely the grazing of livestock. Lot 3 is the site of an approved Central Waste Facility (CWF), whereby the first stage of site preparation and earthworks has commenced.

The development is defined as a “utility undertaking” and is permissible with consent under the Bega Valley Local Environmental Plan 2002. In accordance with Schedule 4A of the Environmental Planning and Assessment Act 1979 the Southern Region Joint Regional Planning Panel (SRJRPP) is the consent authority.

The development application has been assessed in accordance with the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) and relevant state, regional and local Environmental Planning Instruments.

The application was placed on public exhibition with submissions received. The submissions raised concerns regarding the potential impacts associated with the development including health issues, the need for road upgrades, too many industrial uses on Lot 3 contrary to previous understandings, visual and heritage impacts, loss of agricultural land and removal of a possible leachate irrigation area associated with the CWF.

The proponent prepared a Submissions Report in response to concerns raised in submissions.

Referrals were sent to a range of external agencies and staff internally for comment.

Based on the Section 79C assessment provided in the report, and as per Attachment 2, the development application is recommended for approval subject to the conditions contained in the draft consent included as Appendix 1.

1.2 Reasons for consideration by Joint Regional Planning Panel

The Proposal has been referred to the Joint Regional Planning Panel (JRPP) as it constitutes Regional Development under Schedule 4A of the Environmental Planning and Assessment (EP&A) Act 1979 as the proposed development has a value exceeding \$5,000,000, is to be undertaken on Council owned land and is a telecommunications facility.

1.3 The Proposed Development

This application seeks approval for the construction of a satellite earth station (SES) facility on part of Lot 3 DP 592206. The proposed SES is a telecommunications facility that will form part of the wider National Broadband Network ("*NBN*") that is currently being rolled-out Australia-wide.

Specifically, the satellite earth stations will form part of NBN Company's Long Term Satellite Service (LTSS). The earth stations will connect to the two (2) satellites, which are planned to be launched in 2015. Once launched, the LTSS provide high-speed broadband coverage to around 3% of premises outside the reach of the NBN's fibre optic and fixed-wireless services, including outback areas and Australia's external territories such as Norfolk Island, Christmas Island, Macquarie Island and the Cocos Islands.

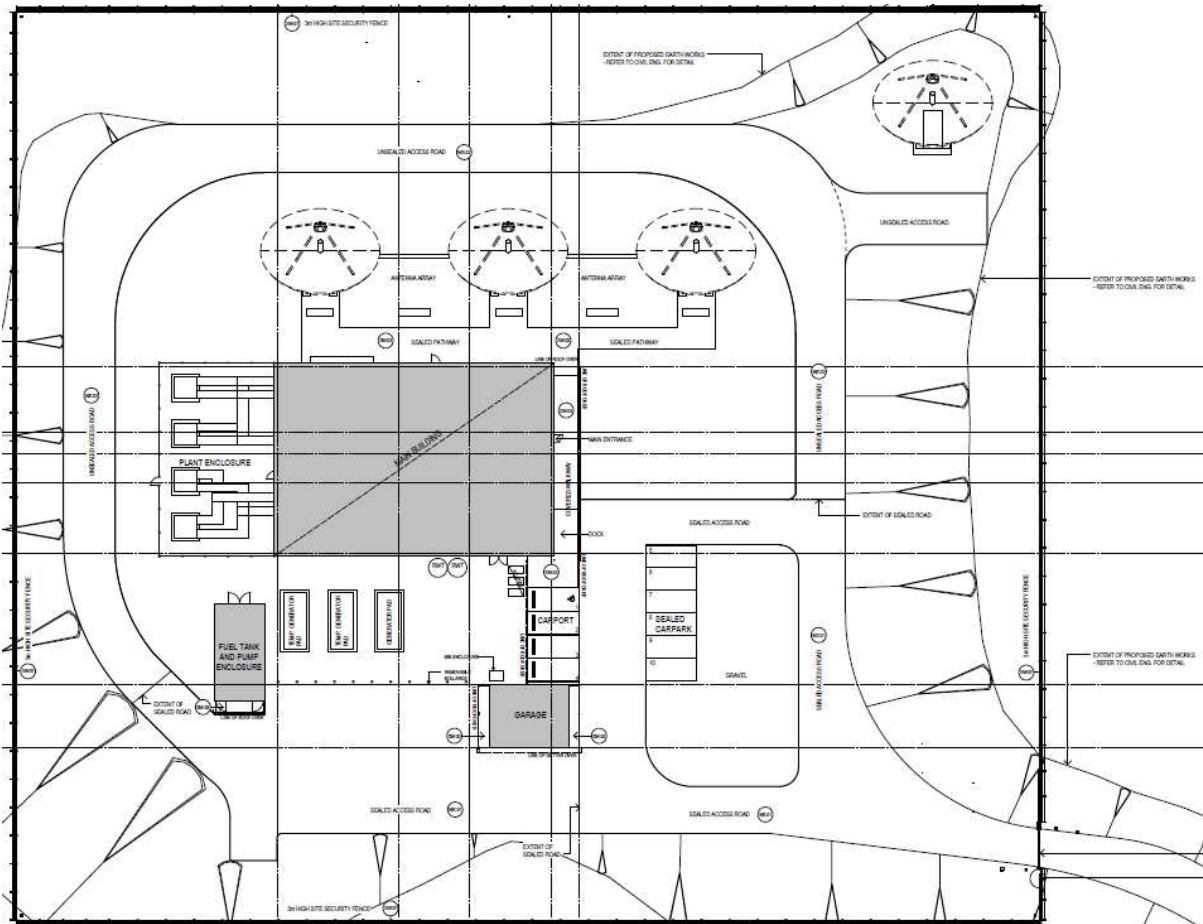
The proposed development involves:

- Construction of an unsealed access road that will extend from the road that will be constructed by Bega Valley Shire Council under the DA approval for the waste management facility. This road will provide access to the site from Wanatta Lane;
- Construction of internal sealed and unsealed roads around the perimeter of the site;
- Installation of four (4) antenna array in the northern part of the site, each with a maximum height of 15.67 metres;
- Construction of a building at the centre of the facility, which will consist of a vestibule, technical rooms, a store room, office room, staff lunch room and amenities (toilets and shower). The main building will have a sloping roof to a maximum height of 6.45 metres;
- To the north and east of the main building will be sealed pedestrian pathways;
- To the south-east of the main building will be an at-grade sealed car parking area with ten (10) car parking spaces. One (1) of these spaces will be accessible and four (4) will be sited under a covered carport. To the south of the carport will be an enclosed garage;
- A six (6) car sealed car park, a four (4) car carport and an enclosed garage;
- To the south of the main building are two (2) rainwater tanks, each with a capacity of 25,000 litres each, two (2) generators (with adequate space for a third generator provided) and a fuel tank (10,000 litre capacity) and pump enclosure, which will fuel the generators, mainly, for the purpose of isolating mains during storms or other events that could result in poor utility supply;
- To the west of the main building is an "open" / un-roofed air conditioner zone which will serve the main building;
- A three (3) metre high security fence is proposed around the perimeter of the facility. This fence will consist of chain mesh, internal electrified cable wires with four (4) strands of

barbed wire above. This fencing is required to ensure that the facility, which is critical telecommunications infrastructure, is secure; and

- An on-site sewerage system is required to be installed and constructed for the proposed development. Approval is sought for this element of the proposal under Section 68 of the Local Government Act 1993.
- Employment of two to four full time staff once the facility is operational.

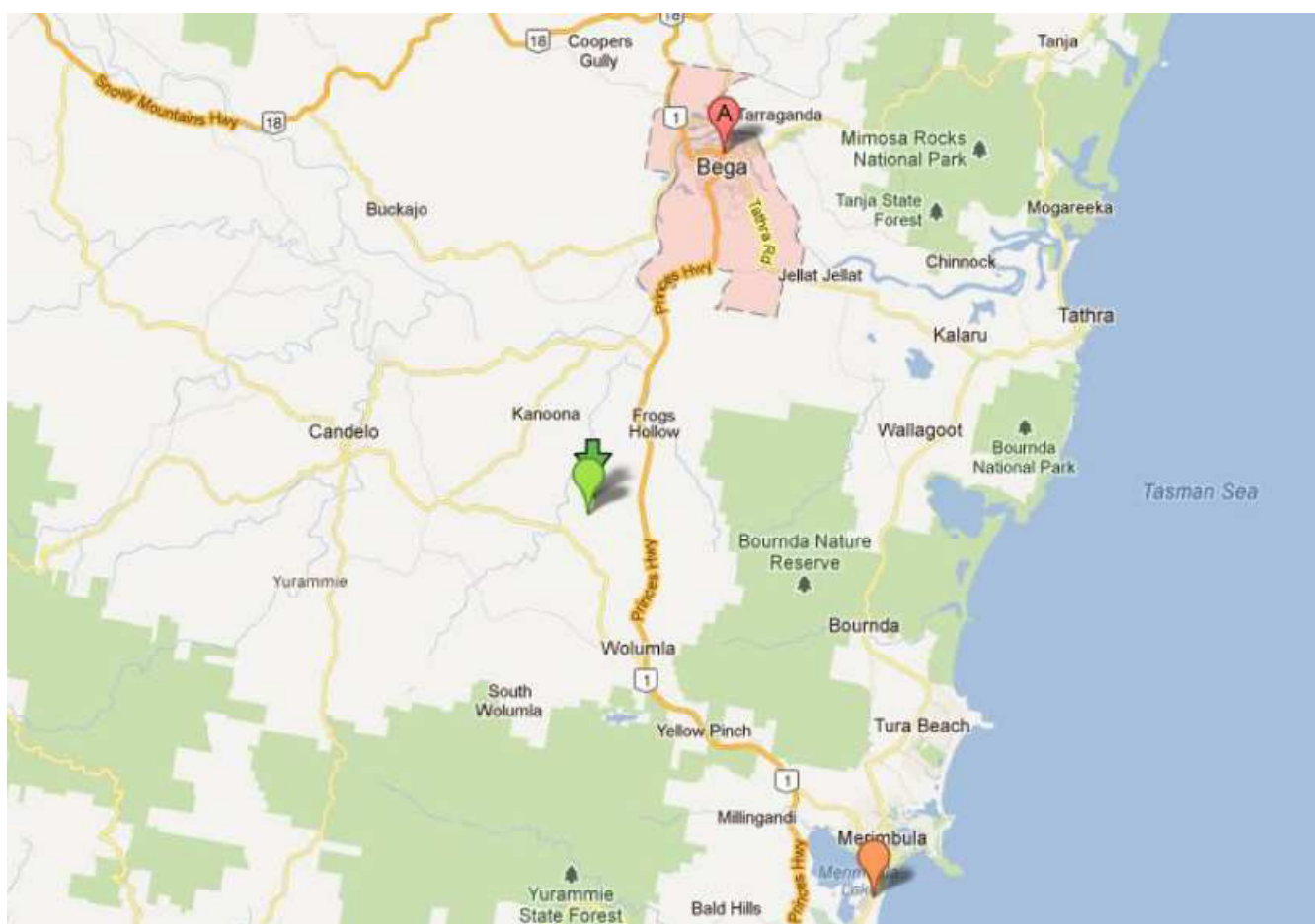
Site Plan (Woods Bagot)



1.4 Site description and surrounding land use and development context

The site is located near Wolumla which is located off the Princes Highway approximately 20 kilometres south of Bega and approximately 17 kilometres north-west of Merimbula. The location map illustrates the general location of the site with respect to the town of Bega and the closest commercial airport, being Merimbula Airport.

Location Map (taken from the Statement of Environmental Effects [SoEE] by City Plan Services)



The proposed site is on a Council-owned block of land adjacent the approved waste management facility known as the Bega Central Waste Facility. The proposed site and the waste facility site all form part of an allotment legally described as Lot 3 in Deposited Plan 592206.

Lot 3 is bounded to the east by Wanatta Lane and to the south by Greendale Lane. To the south of Lot 3 is the small rural village of Wolumla. To the north, east and west of the site are large rural properties (residential, farming and vacant).

Lot 3 has an area of 198.83 hectares, is currently vacant and access is gained from Wanatta Lane. Lot 3 slopes generally to the north-west and is traversed by two un-named watercourses that flow into Wolumla Creek, which is located immediately to the west of Lot 3.

The south-western part of Lot 3 is largely forested, whilst the remainder of the allotment (including the proposed NBNCo site) is comprised of largely cleared grazing land with a few isolated treed areas and a small vacant timber shed.

There is currently no formal vehicular access to the site. As a part of the DA approval for the waste facility, a sealed internal road will be constructed, providing vehicular access from Wanatta Lane to the approved facility. The operation of the waste facility also required the upgrade of Wanatta Lane, these upgrading works have recently been undertaken by Council.

Survey Plan of Lot 3 Showing 5ha Satellite Earth Station Site (Robert Gordon Webb Surveyors)



1.5 Public notification and referrals

The application has been placed on public exhibition and four submissions and one supplementary submission were received.

A number of Government Agencies were invited to comment and responses were received from:

- Airservices Australia
- Civil Aviation Safety Authority
- NSW EPA
- NSW Department of Primary Industries (DPI) - Office of Water
- NSW Rural Fire Service (RFS)
- Southern Rivers Catchment Management Authority (CMA)
- NSW Trade and Investment – Crown Lands
- NSW DPI - Fisheries NSW

2.0 SECTION 79C PLANNING ASSESSMENT

Section 79C 1(a)(i) Environmental Planning Instruments

Those provisions of Environmental Planning Instruments considered to be of sufficient importance to the Panel's consideration of the DA are discussed. The SoEE and S.79C Assessment Sheet include further information.

2.1 Bega Valley Local Environmental Plan 2002 (LEP 2002)

Relevant Clauses of LEP 2002 are discussed below.

Clause 8 and Clause 12 - 1(a) zone

Lot 3 DP 592206 is zoned 1(a) (Rural General Zone) under LEP 2002. The proposed development is defined as a "utility undertaking" and is permissible with consent.

The proposal is generally consistent with the objectives of the 1(a) zone. Objective (d) relates to maintaining the scenic amenity and landscape quality of the area. Whilst the proposed SES facility will be visible from surrounding land, it is considered it will not have an adverse visual impact. The facility is proposed to be adequately setback from any public roads and is of a neutral colour scheme, to minimise visual impact. Building design and use of materials are consistent with rural architecture.

Montages of Proposed Development (provided by Applicant)





An assessment of the proposed facility with regard to the nearby heritage item has been undertaken by City Plan Heritage. The report concludes:

"In conclusion, it is considered by City Plan Heritage that the proposed works, including the construction of a 'Satellite Earth Station' facility will result in no detrimental impact to the heritage significance of the nearby heritage item, Arydale Dairy Village. Due to their technical requirements and necessary scale and height, the proposed radio communication antenna array will have some visual impacts within the rural landscape setting of the area; however, they will not be visible from the main elements of the heritage item, rather altering the views of the otherwise rural landscape. The proposed satellite station facility is an important telecommunication infrastructure facility and is necessary for the improved communication within rural and remote areas of Australia in line with the Federal Government's vision. It is apparent that the proposed facility and associated antennas are new introductions to the existing landscape and some level of impact is inevitable."

Clause 18 - Controls for subdivision for other purposes within 1(a) zone

Whilst subdivision is not proposed as part of this DA, separate subdivision approval has been issued by Council under DA 2012.485 to excise the earth station from the remainder of Lot 3.

Clause 61 – Development in the vicinity of heritage items

As the site is located adjacent to a heritage item, "the consent authority may refuse to grant any such consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item". A Heritage Impact Statement (HIS) has been prepared. In summary, the HIS concludes that the proposal will not result in any adverse impact on the adjacent heritage item and will therefore be consistent with the provisions of Clause 61 of LEP 2002.

Clause 65 – General principles for the development of land and buildings

It is considered that the proposed development complies with Clause 65 because:

- Erosion and sediment control measures are proposed to be undertaken, in accordance with the details submitted in the civil package prepared by AECOM, to

mitigate any potential impact on water quality in the locality during construction of the facility.

- Appropriate on-site effluent and stormwater disposal will be undertaken on site in accordance with the management strategy prepared by AECOM, to ensure that no downstream impacts occur as a result of the operation of the facility.
- The proposed development will not result in any significant degradation of the land with regard to its agricultural capacity. It is unlikely that the site would be used for commercial agricultural purposes due to direct proximity to the approved waste management facility.
- The SES would be located on the CWF site which has a total area of 198.8ha. The area of the proposed NBN site is 5ha thus only a small percentage of the total CWF site.
- The EIS for the CWF site stated that the CWF site was part of a larger cattle grazing property but since the purchase of the land by Council in 2002 livestock grazing largely decreased and the land has remained vacant.
- No adverse flora or fauna impact will result from the proposal, as confirmed by the assessment undertaken by AECOM. This conclusion is reinforced by the previous flora and fauna assessment undertaken for the approved Central Waste Facility.
- No "streetscape" or unacceptable visual impact will result and no significant views will be interrupted.
- Minimal traffic generation is anticipated. Two to four permanent staff members would be required to operate the facility. Vehicular access to the site from Wanatta Lane is proposed. Wanatta Lane has been upgraded to a two-lane bitumen seal from the site back to the Princes Highway, in accordance with the approved CWF consent.

Clause 74 – On-site sewerage management

An on-site effluent management plan has been prepared by AECOM for the proposed facility. There is no public sewerage facility available to be connected to and therefore, sewerage management will be undertaken on-site. The proposed method for effluent disposal on the site is via connection to an on-site septic tank. The AECOM report concludes that such a system is capable of accommodating any demands generated by the proposed development.

The recommended system is as follows:

“The septic tank shall be of Taylex manufacture of 5000 litre capacity complete with trafficable lid.....

The adsorption trench shall be of Reln drain manufacture of 410mm Jumbo size complete with Drain Matting in accordance with AS 1547.....

The maintenance of the system is provided by the manufacturer for the first 12 months of operation as part of the standard terms of agreement, after which the manufacture may be retained or another service provider sort.”

Clause 75 – Land subject to bushfire hazard

Part of the site is identified as being bushfire prone. A Bushfire Hazard Assessment has been undertaken by Building Code & Bushfire Hazard Solutions for this application. The assessment confirms that subject to adopting the bushfire safety measures recommended in the report, and consideration of the site specific bushfire risk assessment, the proposed development will provide a reasonable and satisfactory level of bushfire protection and also satisfies both the Rural Fire Service's concerns and those of Council in this area.

Construction recommendations are as follows:

“2. That the proposed buildings be constructed to that of section 3 and BAL 12.5 under section 5 of AS3959 – 2009.

3. That the proposed buildings be constructed to that of the ‘Additional Construction Requirements’ detailed in A3.7 of the Addendum to Appendix 3 of Planning for Bushfire Protection 2006 and NSW Rural Fire Service Fast Facts, Development Control Notes and Practice Notes.

4. That the external roller doors on the proposed garage be provided with an ember protection device at the top of the door that captures any embers where a gap of 2.0 mm on the external surface exists.”

APZ recommendations are:

“5. That all grounds within the subject site for a minimum distance of 22 metres to the north and south, 19 metres to the east and 29 metres to the southwest of the new buildings/ satellites be maintained in accordance with an Asset Protection Zone (Inner Protection Area) as detailed in Appendix 2 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service publication ‘Standards for Asset Protection Zones’.”

There is also a recommendation in respect to landscaping:

“6. That any new landscaping within the subject site is to comply with Appendix 5 ‘Landscaping and Property Maintenance’ of Planning for Bush Fire Protection 2006.”

The NSW Rural Fire Service (RFS) requires:

- APZs to be 19m to the north, south, east and west.
- Water, electricity and gas to comply with Section 4.1.3 of Planning for Bush Fire Protection 2006.
- Property access roads are to comply with Section 4.1.3(2) of Planning for Bush Fire Protection 2006.
- Landscaping within the subject site is to comply with Appendix 5 ‘Landscaping and Property Maintenance’ of Planning for Bush Fire Protection 2006.”

Clause 76 – Contaminated land

The site is unlikely to be contaminated. It has previously been used for cattle grazing and since 2002 has been owned by Council and remained vacant land.

Previous documentation for the Central Waste Facility (CWF) nominated no existing contamination issues. The SoEE also states that the site is not affected by S59(2) of the Contaminated Land Management Act 1997 and that it appears the EPA has not issued any regulatory notice in respect of contamination on the site.

Clause 79 – Ecologically sustainable development

It is considered that the proposed development complies with Clause 79 because:

- The parts of the building occupied by staff have a northern orientation.
- The site is predominantly cleared grassland and the flora and fauna report concluded:

“The proposed SES is unlikely to have a significant adverse effect on threatened species, populations or ecological communities, or their habitats.”

- No trees are proposed to be removed.
- Solar panels and rainwater tanks will be utilised.
- Buffers are provided from drainage lines.
- Dense tree planting will provide a buffer/screen from the CWF.
- Suitable conditions are recommended in respect of detailed landscape plans and a waste management plan.

Clause 84 – Building lines

The minimum setback from a road in a rural zone is specified as being 20m under DCP 6 “Minimum Setbacks to Roads and Nominated Waterways”. It is noted that there are no “nominated waterways” on the subject land. The subject development is well setback from Wanatta Lane and exceeds the minimum 20 metre setback requirement.

Clause 85 – Height of buildings

Generally, the maximum building height prescribed for the site is three (3) storeys or 10 metres between any part of the building and the natural ground level. However, clause 85(3) states that a 10 metre height limit is not applicable for “utility installations”. As the proposed SES facility is defined as a “utility installation” under LEP 2002, these height restrictions do not apply.

The main building will have a sloping roof to a maximum height of 6.45 metres.

The four (4) antennae in the northern part of the site have a maximum height of 15.67 metres.

Clause 86 – Development in flight paths

The proposed development is in the vicinity of the Frogs Hollow Airstrip.

Council officers sought advice from Air Services Australia in this regard. The advice confirms that, with respect to procedures promulgated by Air Services in accordance with ICAO PANS-OPS and Document 9905, at a maximum assessed height, the proposed antennae “*will not affect any sector or circling altitude, nor any instrument approach or departure procedures at Merimbula Airport*”.

The Civil Aviation Safety Authority advised Council to consult with the operator of Frogs Hollow Airfield (as it is an uncertified and unregistered airfield).

Frogs Hollow Flyers Inc. have been contacted by Council officers and in a letter dated 27th March 2013 stated they had no objections to the proposed NBN development provided they are allowed to continue to fly as they have been for 50 years. The Flyers have had verbal and written communication with the NBN and advise they are satisfied with the outcomes of those.

2.2 State Environmental Planning Policies

A number of SEPPs provisions (but not all) are discussed and considered. A detailed assessment of all applicable SEPP’s is provided in Attachment 2.

SEPP 44 – Koala habitat protection

The investigations that were undertaken on Lot 3 for DA 2009/0563 (the CWF) addressed the relevant provisions of SEPP 44. The independent assessment report by Geolyse (dated January 2011) prepared for that DA provides the following summary of those investigations and findings:

- *"No koalas were identified on the site during either the surveys undertaken. Further there are no recordings (DECC Threatened Species Database records) of koalas within a radius of 5km of the site. On this basis it is accepted that the subject site does not constitute core koala habitat."*

It is considered that the provisions of SEPP 44 are satisfied for the site of the earth satellite station, particularly given the site is cleared of trees. Flora and fauna investigations have been undertaken by AECOM in support of the SES application and do not identify any potential for koala habitat.

SEPP 55 – Remediation of land

Contaminated land has previously been dealt with under Clause 76 – Contaminated Land of LEP 2002 above. The SoEE conclusion that the SEPP 55 is complied with without the need to undertake any further investigation is agreed with.

SEPP (Infrastructure) 2007

The proposed Satellite Earth Station (SES) would fall under the SEPP 2007 definition of "telecommunications facility."

Clause 115 of SEPP 2007 permits telecommunications facilities with development consent.

The consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of Clause 115(3) and published in the Gazette.

The guidelines referred to in Clause 115(3) of the SEPP 2007 are found within the NSW Telecommunications Facilities Guideline Including Broadband July 2010.

Consideration of these guidelines, and specifically, the four (4) principles for the location and design of telecommunications facilities is as follows.

Principle 1 (Visual Impact)

The proposed facility has been located and designed to take into consideration a number of matters, including:

- To meet NBN Co's strict location criteria for these facilities;
- Any potential for land use conflict; and
- Site constraints

A detailed consideration of Principle 1 is undertaken under Section 79C matters for consideration. Brief comment is as follows:

- By virtue of the required size and stature of the satellite antennae, which will be constructed / installed in rural and remote areas across Australia, they will be visible.
- The potential visual impact of the antennae has been considered with regards to the adjacent heritage item (Arydale Dairy Farm) and the nearest residential properties. The outcome of the heritage and view assessment confirm that whilst there will be some visual impact, it is appropriate within the given rural context.

In general, it is considered that the facility has been located and designed appropriately to respond to the rural landscape setting. There will undoubtedly be an impact on the existing visual amenity of the rural locality but these facilities are most likely to be located in rural areas. Given the nature of surrounding vegetation, the undulating topography of land surrounding the facility, and the fact that the antennae have been located as far as practically possible away from existing residential properties in the locality, the proposed site is considered to be appropriate and not have a detrimental visual impact.

The visual impact that will result will not be to such an extent so as to warrant refusal of the proposal.

Principle 2 (Co-location)

Co-location is 'not practicable' as there is no existing tower or other suitable telecommunications facility that can meet technical specifications.

Furthermore, for security reasons, it is one of NBN's key criteria that the facility be self-controlled and secure in its location and operation.

Principle 3 (Health Standards)

Principle 3 prescribes certain health standards in relation to radiofrequency emissions. Principle 3 also states that an electromagnetic emissions report is required to be submitted with the DA, in "the format required by the Australian Radiation Protection Nuclear Safety Agency". The purpose of this report is to demonstrate that the predicted levels of electromagnetic energy surrounding the proposed facility will comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard.

An Electro-magnetic Energy (EME) Assessment Report has been prepared which indicates that no adverse impact will result from the EMEs generated from the proposed facility. The report concludes that the EME level at 1.5m above ground level is estimated to be 0.00542% of the Australian Radiation Protection and Nuclear Safety Agency public exposure limits.

Principle 4 (Minimise Disturbance)

Principle 4 prescribes matters for consideration in relation to minimising disturbance and risk and maximising compliance. Each of the matters for consideration is addressed below:

- The siting and height must not penetrate any obstacle limitation surfaces and must be reported to the Civil Aviation Safety Authority Australia. The site is not affected by a maximum height by any OLS plan. Advice has been received from Air Services Australia which confirms that the proposed height will not affect any sector, or circling altitude, nor any instrument approach or departure procedures at the nearby Frogs Hollow Airfield.

- The site operations will be subject to an apparatus licence issued by Australian Communications and Media Authority (ACMA) and will therefore not impact on any other licensed RF operator.
- The proposed facility will be carried out in accordance with any applicable specifications in relation to the installation of the proposed facility.
- Owners consent is provided for the subject application and therefore, the proposed facility will be erected within the boundaries of a property where the landowner has agreed to the facility being located on the land. Separate consent has also been issued for excision of the land onto separate title as part of DA.
- The proposed facility will be constructed in accordance with the relevant regulations of the "Blue Book"- 'Managing Urban Stormwater Soils and Construction' (Landcom 2004). Erosion and sediment control plans have been submitted with the DA.
- The proposed facility will not result in any obstruction or risks to any pedestrians or vehicles. The facility will be secure and only authorised persons will be able to enter the site (pedestrian or motor vehicle). Appropriate conditions of consent can be issued with respect to construction traffic management.
- There will be no disturbance to any flora and fauna, as confirmed by the assessment undertaken by AECOM.
- As confirmed in the heritage assessment undertaken by City Plan Heritage, it is unlikely that there are any aboriginal places or objects on the site. However, mitigation measures have been recommended in the event that any such objects are encountered during excavation / construction works. These mitigation measures should be included as conditions in the issue of any consent notice for the development. With regard to the above, Principle 4 is satisfied.

On the basis of the above, it is considered that the proposed development satisfies the key principles of the NSW Telecommunications Facilities Guideline Including Broadband.

As the subject site does not have frontage to a classified road, and as the proposal does not meet the thresholds for "traffic generating development" under Schedule 3, referral to Roads and Maritime Services is not required for this application.

Section 79C 1(a)(ii) Draft Environmental Planning Instruments

2.3 Draft Bega Valley Local Environmental Plan 2012

Land Use Table

The subject site is proposed to be zoned RU1 Primary Production. Telecommunications facilities are prohibited in the table for the RU1 Zone in DLEP 2012 but permitted under SEPP (Infrastructure) 2007.

The proposal is consistent with the objectives of the proposed RU1 zone as follows:

- The proposed SES facility will not result in any impact on any sustainable primary industry production. The majority of the subject land is vacant with earthworks commenced for a waste management facility on part of the land however, the proposed development will not result in any degradation of the agricultural capability of the land not utilised for the SESF (5ha) and the CWF.
- The proposed SES facility has been located within Lot 3 to ensure that there will be no conflict between adjoining land uses, including the approved waste facility on Lot 3.

- The proposal will encourage "other forms of development" in the way of critical telecommunications infrastructure that is compatible with surrounding land uses and will not result in any adverse impact on the environmental and cultural amenity of the zone.
- The proposal will result in an acceptable impact on the "visual" rural landscape characteristics of the zone. The ancillary structures associated with the proposed facility (including the main building, car parking areas and garage, fuel tank and generators etc) are proposed to be constructed in materials, with finishes that are consistent with the "grey" colour scheme of the antennae. Dense landscaping is proposed along the site's eastern boundary to screen the proposed facility.

The design of the ancillary buildings has taken as its cues the farm building typology of a structure in the landscape. These buildings are notable for their simplicity of form and construction which is a direct response to the function of enclosure & water shedding. Colouring has been chosen to resemble the dominant colours of the Australian vegetation with silvery greys & greens which do not cause the building to stand out. Reflecting the Australian Eucalypt the design contains a dark top which breaks down into patterns of silvery greens, greys and galvanised metal posts.

Mapping

Lot Size

Minimum lot size for a dwelling is 120ha. No dwelling is involved. Lots of less than 120ha can be created for primary production purposes.

Cl. 4.3 - Height of Buildings

Maximum height of buildings is specified as 10m. The proposed buildings comply. Proposed antennae/satellite dishes are higher but are not governed by the height restriction.

Cl. 6.2 - Natural Resource Biodiversity

Whilst significant vegetation (remnant tree cover) is shown on the south western part of the CWF site none is shown on the proposed SES Facility site. No tree clearing is proposed.

Cl. 6.4 - Natural Resource Land

No constrained land is mapped for the site of the SES Facility.

Cl. 6.3 - Natural Resource Water and Wetlands

A number of watercourses are mapped for Lot 3. Development should be setback 40m from the top of the banks of the watercourses. The site plan indicates a gully to the west of the proposal. Construction works and the location of the septic trench are located more than 40m from the identified gully.

Cl. 5.10 - Heritage

The adjoining property to the north "Ayrdaile Dairy Village" is a mapped and listed heritage item. Heritage is dealt with in more detail in Section 2.5.

Section 79C 1(a)(iii) Development Control Plans (DCP)

2.4 Bega Valley Shire Council Development Control Plans

Relevant DCPs are discussed.

DCP 3 – Notification policy

The application has been placed on exhibition in accordance with Council's Notification Policy.

DCP 5 – On-site sewage management

It is proposed to use a septic tank and absorption trench system.

The following information is required for most development applications (including subdivision) or applications for an approval under Section 68 of the Local Government Act 1993 (also applicable) requiring systems of OSM:

a) A basic site and soil assessment addressing the minimum criterion as specified by the Local Government (General) Regulations 2005 and Council's On-site Sewage Management Policy; or

b) A detailed site and soil assessment report, prepared by a suitably qualified soil scientist, engineer or consultant, assessing the suitability of the land for on-site sewage management in accordance with the following publications: -

- Environment and Health Protection Guidelines – On-site Sewage Management for Single Households; or
- Australian Standard 1547 – On-site Domestic Wastewater Management.

c) Options a) and b) above shall be supported by a detailed water balance using a rainfall allowance of the 70th percentile historic data for the appropriate locality.

The On-site Sewer Management Report accompanying the application does not provide this level of information.

In view of the paucity of information provided by the applicants in this regard comments were sought from Council's Building Services Co-ordinator and they are:

"...the hydraulic buffers are in the attached document and I am confident they can be met on this site. From "Soil Landscapes of the Bega-Golen Point 1:1000 Sheet, Tulau, 1997, DLWC, pp. 105-108, the soil landscape on the site is Transferral Landscape Bemboka has in general only moderate limitations for effluent disposal. Council has over a thousand septic tanks and absorptions trenches in this landscape with few problems other than an expected renewal around the 10 year mark. With an intended low volume use of this nature and ample room to augment if necessary there is little if any risk for this use on this site."

The document referred to is Council's "On-site sewage management policy". The relevant hydraulic buffer is 40m from intermittent streams and dams.

On the basis of the information provided the proposed development complies with DCP 5- On-site Sewage Management.

DCP 6 – Minimum setbacks to roads and nominated waterways

There are no nominated waterways within 150m of the site. The setback from the nearest rural road exceeds 20m.

DCP 6 setbacks are exceeded.

DCP 7 – Parking code

Parking spaces are required to be provided in accordance with Schedule 1. There are no requirements listed for the proposed use. Parking is thus assessed on merit.

Ten (10) sealed car parking spaces (including one (1) accessible space) are proposed as a part of this development.

The proposed car parking provision is considered to adequately meet the anticipated parking demands of the proposal that will have between 2 and 4 permanent employees. There is ample room and driveway circulation space to accommodate service vehicles on to the site.

DCP 8 – Contaminated land

The application complies with SEPP 55. See comments for SEPP 55 and Clause 76 of LEP 2002 earlier in this report.

Section 79C 1(b) and (c) – Likely Impacts of the Development and Suitability of the Site for the Development

2.5 Likely Impacts of the Development

Many of the issues that would be addressed under Sections 79C (1)(b) and (c) have already been discussed in the report as follows:

- Visual impact: LEP 2002 Clause 12; SEPP (Infrastructure) 2007
- Development in the vicinity of heritage items; LEP 2002 Clause 61
- On-site sewerage management: LEP 2002 Clause 74
- Bushfire hazard: LEP 2002 Clause 75
- Contaminated land: LEP 2002 Clause 76
- Ecologically sustainable development: LEP 2002 Clause 79
- Flora and fauna: LEP 2002 Clause 79; SEPP 44 Koala Habitat Protection
- Electro-magnetic energy (EME): SEPP (Infrastructure) 2007

Additional matters are now discussed.

Noise

An environmental acoustic assessment of the proposed facility has been undertaken by AECOM with regard to the identified rural receivers within two (2) kilometres of the site (north, east, south and west). The assessment considers the potential noise impact of the facility, with regard to the proposed generators, condensers, and plant and fuel pumps during both normal and emergency operations. The acoustic assessment report concludes as follows:

"The facility has been assessed against the relevant NSW INP (Industrial Noise Policy) noise criteria. Results of the assessment show that under emergency operating conditions with adverse weather effects, the proposed facility will comply with the most stringent environmental noise criteria. No additional noise mitigation is recommended for this facility".

The NSW EPA agrees with this conclusion. The EPA also recommends that management of noise from construction activities is to be in accordance with the objectives and provisions of the "Interim Construction Noise Guidelines" (DECC 2009). This recommendation could form a condition of consent.

Heritage

The impact on the adjoining "Ayrdale Dairy Village" has been previously discussed. The Heritage Impact Statement submitted with the DA also addressed archaeology and concluded:

"Although the Due Diligence Assessment above did not identify any known archaeological potential for the subject development area and Lot 3 as a whole, the following mitigation measures have been provided for both Aboriginal and Non-Aboriginal archaeology in the event of any unexpected finds.

- *Aboriginal objects are protected under the National Parks and Wildlife (NP&W) Act, regardless the location of a site. In the unlikely event of discovery of any objects during the course of site works, all works must cease and the Department of Environment, Climate Change and Water (DECCW) (Southern Branch, Environment Protection and Regulation Division, Regional Archaeologist - Office of Environment and Heritage Queanbeyan on 02 6229 7188) be contacted in regard to appropriate permit requirements and actions before any further impact is undertaken.*
- *If any suspected human remains are discovered during any activity the following steps must be undertaken steps to determine if the remains are of Aboriginal ancestral origin:*
 - 1. Immediately cease all work at that location and not further move or disturb the remains*
 - 2. Notify the NSW Police and OEH's Environmental Line on 131 555 as soon as practicable and provide details of the remains and their location*
 - 3. Not recommence work at that location unless authorised in writing by OEH.*
- *In NSW the non-Aboriginal "relics" and in situ archaeological deposits over 50 years old are protected under the NSW Heritage Act 1977. In the unlikely event of discovery of an archaeological resource, the advice of a suitably qualified archaeologist is to be sought, to inspect the finds, photograph them and notify the Heritage Council in writing, in accordance with Section 146 of the Heritage Act, 1977. Depending on the nature of the discovery, additional assessment and possibly an excavation permit may be required prior to the commencement of excavation in the affected area."*

The recommended mitigation measures can be included as conditions of consent.

Waste management

Commitments to waste management are included in the SoEE as follows:

"Appropriate waste management practices will be undertaken during the construction phase in accordance with any conditions included in any consent that maybe granted to this application. A waste management plan will be prepared for submission with the Construction Certificate once the terms of any approval are known, and a builder has been appointed."

Odour

A “letter of opinion” has been prepared by AECOM to address the potential impacts associated with the operation of the approved waste facility. An extract from that assessment is provided below.

“There are a variety of potential impacts associated with the operation of a landfill. From an air quality perspective, these relate to impacts from odour and dust emissions. AECOM undertook a number of air quality impact assessments for the proposed Wolumla Landfill between 2006 and 2010 which incorporated on-site meteorological data along with expected odour and dust emissions to allow the prediction of potential impacts.

The findings of the air quality studies were that there were no adverse impacts expected as a result of the operation of the landfill. These findings were however based around the predictions at known sensitive receptors which were located off-site at some distance from the landfill. Given the proximity of the landfill, and particularly the leachate ponds (often are strong sources of odour if poorly managed) to the satellite facility, it is expected that the building would be impacted by odour and possibly by dust (odour from the landfilling activities and dust from top cover material spreading).

To mitigate the potential impacts, the following is recommended:

- *The satellite facility to be air conditioned with maximum internal air recirculation to minimise ingress of dust or odour into the facility;*
- *Minimise work hours to ensure that the facility is manned during hours when odour and dust impacts are at a minimum e.g. daylight hours for odour;*
- *Incorporation of the facility into the landfill air quality management plan (to ensure the particular aspects of the facility are considered by the facility plan).*
- *Contemplate the use of odour removal technology for air conditioning intakes; and*
- *Establish dense tree screening between the CWF and the NBN facility.”*

In respect to the recommendations above the SoEE states:

- *The facility / main building will be air conditioned to minimise ingress of dust or odour into the facility;*
- *The facility will generally be manned during daytime;*
- *Dense vegetation planting is proposed along the eastern boundary of the proposed site to provide a buffer to the adjacent “approved” waste management facility.*

We consider that the above is adequate to mitigate any potential odour impacts from the waste management facility on the proposed SES facility.”

The NSW EPA supports the measures included in the SoEE as stated above. It also considers that Council as the holder of the licence for the CWF should consider the potential odour management requirements arising from the location of the SES in close proximity to the leachate ponds.

Construction management plan

The following quote from the SoEE is agreed with:

“Given the size of this project it is appropriate for the works to be controlled by way of a Construction Management Plan (CMP). The objectives of CMP are typically to:-

- *Minimise inconvenience to the public and adjoining properties during the constructions stages.*
- *Maintain effective communication with the developer and the community.*

- *Maintain a safe working environment.*
- *Ensure the requirements of relevant approvals, licenses or standards are met.*

To implement such objectives a CMP will usually address the following matters:-

- *An overall construction management framework*
- *Construction traffic management*
- *Construction zones*
- *Pedestrian management*
- *Hoardings*
- *Dust management*
- *Hours of work*
- *Materials handling*
- *Waste Management and recycling*
- *Construction program*

We anticipate that any consent notice granted to the subject application would include a condition requiring the preparation of a comprehensive CMP prior to any construction works commencing.”

Social and Economic Impacts

The SoEE summarises the social and economic impacts as follows:

“The proposed development will provide a positive economic and social impact for the following reasons:-

- *Employment will be generated during the construction and operational phases of the project;*
- *The proposed SES facility will be located on a larger allotment which consists of vacant land, with an approved waste facility to be constructed on part of the lot. The take up of the proposed part of Lot 3 for the NBN satellite earth station will result in the economic and orderly use of land that would otherwise likely remain vacant due to its proximity to the approved waste facility. The proposed SES facility will not result in any land use conflict with the approved waste facility;*
- *The proposed development will result in an investment in, and contribution to, the local economy; and*
- *Foremost, the proposed development forms part of the wider National Broadband Network which will ultimately result in the delivery of high-speed broadband access for the rural and remote regions of Australia, including Wolumla.”*

The SoEE states that the level of permanent employment at the operational phase is between two and four staff members. Additional staffing would be required during upgrade and maintenance activities.

The Capital Investment Value of the project is estimated to be \$16.842 million.

The proposed development contributes positive social and economic benefits.

2.6 Suitability of the Site for the Development

The SoEE adequately summarises the suitability of the site as follows:

“The proposed site is considered suitable given its size, location and context.

Having regard to the location of the proposal, the site will adequately accommodate the development in that:-

- The proposed site, location and design of the facility is consistent with the NSW Telecommunications Facilities Guideline including Broadband.*
- The proposed development will result in the use of part of Lot 3 that would otherwise likely remain un (unused) / under-utilised, due to its direct proximity to the approved waste management facility. Other land uses that are typical to a rural setting, such as rural residential housing and agricultural uses, would likely result in land use conflict with the approved waste facility.*
- The impact on visual amenity of the locality will be acceptable and will not adversely affect the heritage significance of Arydale Dairy Farm, the adjacent heritage item.*
- The site is not subject to any natural or man-made hazards that may inhibit the operation of the proposed facility."*

In conclusion the proposed development is suited to the site especially as it needs to be located in a rural area.

Section 79C 1(d) – Submissions

2.7 Issues Raised in Public Submissions

Health impacts of electromagnetic radiofrequencies (EMRs)

The submission states that even low level EMRs can impact on health. At the time of public exhibition the proponents had not prepared an appropriate study on EMRs.

A summary report dated 12/2/13 has been submitted to Council that summarises the estimated maximum radiofrequency (RF) electromagnetic energy (EME) levels at ground level from the proposed NBN wireless earth station antennas. The estimated maximum cumulative RF EME levels from the antennas at a point 1.5m above ground level is predicted to be 0.00542% of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) public exposure limits. The point is made that the actual level would be less than predicted due to path losses (obstructions).

The proponents have commented on this issue as follows:

'In response, an EME report has been prepared and accompanies this letter at Attachment 1, Ref: C130205 EME Summary Report and referenced Report C130205E Environmental EME Report. The report confirms that the proposed satellite earth station will not pose any adverse health risk. Refer below for a summary of the findings:-

"The limited used as the ARPANSA average reference levels. These limits are a more conservative limit than the basic restrictions mandated by ARPANSA.

The amount of electromagnetic energy radiating from the NBN Co earth station antennas only exceeds the general public limits for human exposure when directly in front of the antenna. The antennas are pointed towards the sky, making it highly unlikely for anyone to be present in the antenna beam. Even if an airplane were to fly directly through the antenna beam, it would not be possible to expose the persons inside the airplane for a long enough time to exceed the average exposure limit.

The system parameters used to complete the analysis were representative of an absolute worst case configuration. It is expected that in a real installation, the actual values would be lower than those presented in the analysis."

It may be reasonable to require the proponents to monitor RF EME levels on an annual basis. This matter could be conditioned.

Wanatta Lane should be sealed for its entire length

The lane has been upgraded with seal to service the CWF. This is considered adequate and will cater for the proposed development. Council's Engineering Department has not required any further upgrade of Wanatta Lane as a result of the proposed development.

The proponent's comments are as follows:

'One (1) of the objections made to the subject DA comments that based on the state of the current road (Wanatta Lane), it is "insufficient for increased road use and has not been addressed by the NBN".

In response to this objection, we note that Wanatta Lane has recently been upgraded by the Council to improve its condition. The upgrade of the road was a condition of the approval of the Bega Central Waste Facility DA. We understand that Wanatta Lane is now wider and sealed from the Princes Highway intersection up to, and past, the main entrance to the CWF. The purpose of the upgrade was to ensure it can accommodate waste trucks, as well as general road traffic. The traffic associated with the proposed facility, other than during construction, will generally consist of only a few cars.

Whilst the current state of Wanatta Lane is a matter for Council to consider in the assessment of the subject DA, we consider that the current state of the upgraded road is adequate to meet any traffic demands generated by the proposed facility.'

As part of the CWF deliberations Council has indicated that the CWF would be a single industrial undertaking on the land

A moral argument is put that Council and the EIS for the CWF have consistently indicated that the site would be utilised for the CWF with the residue used for occasional cattle grazing. A second "industrial use" such as the NBN facility is inappropriate in the location and contrary to the expectations of ratepayers/residents. If the NBN DA is approved then the CWF should be located elsewhere.

The Planning Consultants employed by the proponents have stated:

'In response to this objection, we note the following:-

- At the time that the CWF DA was prepared and assessed, NBNC Co had not expressed any interest in purchasing the subject land. The detailed site selection process had not yet commenced.*
- There is no condition of the CWF DA which restricts the use of the proposed NBNC Co site for the proposed purpose. The proposed use is permitted with consent under the current planning controls and there is no covenant or restriction on the land to prohibit the use of the land for the proposed facility. We also note that there is no condition on the CWF consent which requires the residual part of Lot 3 (including the proposed NBNC Co site) to be used for agricultural purposes.*
- The proposed area of the Wanatta Lane Site (Lot 3) for the NBNC Co facility is minor in comparison to the residual area of land (approximately 190 hectares) that can be used for agricultural / rural uses.*

Further to the above, we wish to emphasise that the site selection process for the proposed NBNCo infrastructure, including the satellite earth station facilities, is detailed and based on a number of factors. Discussion in this regard is provided below.

In the first instance, we note that it is important for facilities of this scale to not be located in dense urban areas. This is widely recognised and is a principle that is applied in the site selection process Australia-wide for facilities of this scale. The subject site, whilst located in an area where there is existing development, is not located in a dense urban area. Whilst we understand that the antennae do not have any health related impacts, from a visual amenity perspective, these types of facilities are more conducive to a more "rural" context.

The site selection process involves specific computer software choosing a particular area, that is deemed to be appropriate on the basis of a number of technical matters, including weather, frequency etc. These factors cumulatively impact upon the performance of the facility. The area chosen for regions such as the Wolumla region, is chosen by a specific software system used by NBNCo in the site selection process for all infrastructure within the network.

Upon selecting this "wider" search area, there are detailed sub-criteria which influence the site selection process. Such matters include:-

- *Availability of land to purchase*
- *Cost of land to purchase*
- *Minimum site area of 3 hectares*
- *Consideration of adjacent activities or potential future activities. there are certain industries that cannot be adjacent to the facility as they impact on its performance (for example, welding activities).*
- *Line of site to horizon, amenity, power and fibre.*
- *Shape – adequate for placing the facility with clearances*
- *Threat – security risks to the facility*
- *Maintenance access timing – location of local trades for quick breakdown response*
- *Flight Paths – avoid regular flights to minimise impact on facility operations*
- *Amenity – Minimise impact on residents, the environment and tourism (in some cases the installation is a benefit to tourism)*
- *Line of site to horizon – ensure no mountains, etc impact of the line of sight to the satellite*
- *Flood – zero flood area*
- *Industry – ensure no major local industry that can impact on performance*
- *Contamination – no or acceptable contamination*
- *Radio Frequency – require RF clearance so there is no interference*
- *Primary Transport, roads, airport, etc – access to major arterial roads for construction, maintenance and staff*
- *Fibre – close to existing fibre runs*
- *Power – close to HV*
- *Water – not essential but good if available*
- *Natural Gas – not required*
- *Rights of Way – prefer no rights of way unless other criteria are ok*
- *Overhead cables – minimal or no overhead powerlines over the site*
- *All weather – all weather access required to the site*
- *Capacity – roads require heavy vehicle access to the site*
- *Alternate Access Route – prefer a second route to access the site as a contingency*
- *Zoning – allowance development under the zoning*
- *Planning & approval – clear paths available*
- *Subdivision – confirm if required, prefer no subdivision if possible*
- *Cost of development – consider construction costs in site selection*

A property consultant was engaged by NBNCo to utilise the above criteria and select possible sites. There were a number of sites within the region that were investigated with the majority of these considered unsuitable due to failure to meet NBNCo's criteria or unavailability for purchase.

In balancing the above criteria, availability of land for purchase, and the critical timescale that the National Broadband Network is subject to, we consider that the proposed site is the most appropriate for this critical part of the nationally significant telecommunications network.

In response to the BVSRAI's submission that they are not opposed to the development, but rather, its chosen location, we contend that there are no other viable sites. In the absence of any adverse environmental impacts resulting from the proposal and the lack of available appropriate sites for this critical telecommunications infrastructure development, we consider that the subject site is the most appropriate location for the proposed satellite earth station facility."

Whilst it appears that it may well be that Council and the EIS for the CWF have consistently indicated that the site would be utilised for the CWF with the residue used for occasional cattle grazing that does not mean that an NBN facility cannot be considered to be co-located on the land next to the CWF. Both the CWF and the NBN facility can only be appropriately located in a rural area (although not necessarily on the same site). Documentation and plans accompanying the DA for the NBN facility demonstrate that it can be located adjacent to the CWF. The DA and accompanying documentation have been placed on exhibition for public comment.

Visual and heritage impacts

The proposal will result in an acceptable impact on the "visual" rural landscape characteristics of the zone. The ancillary structures associated with the proposed facility (including the main building, car parking areas and garage, fuel tank and generators etc.) are proposed to be constructed in materials with finishes that are consistent with the "grey" colour scheme of the antennae. Dense landscaping is proposed along the site's eastern boundary to screen the proposed facility.

The design of the ancillary buildings has taken as its cues the farm building typology of a structure in the landscape. These buildings are notable for their simplicity of form and construction which is a direct response to the function of enclosure & water shedding. Colouring has been chosen to resemble the dominant colours of the Australian vegetation with silvery greys & greens which do not cause the building to stand out. Reflecting the Australian eucalypt the design contains a dark top which breaks down into patterns of silvery greens, greys and galvanised metal posts.

A Heritage Impact Statement ("HIS") has been prepared. In summary, the HIS concludes that the proposal will not result in any adverse impact on the adjacent heritage item.

The proponent's response to the heritage impact issue is as follows:

'Council's Heritage Adviser, confirms in the heritage advice dated 11 December 2012 that the proposed development will not result in any adverse heritage impact on Ayredale for the following reasons:-

- the proposed facility is some 900 metres from Ayredale*
- is partly obscured by landform*
- is not overly high*
- will have no direct or physical on the LEP listed Ayredale site*
- the nearby "Lord's House" is in an advanced state of decay and unlikely to meet the threshold for Listing in the LEP heritage schedule.*

Notwithstanding the above, Council's Heritage Adviser has recommended that planting of one or two trees between Ayredale and the facility should be considered to further screen the proposed development.

Should the Council deem it to be necessary, the recommended planting can be accommodated on site.'

It is considered that appropriate conditions can be formulated to ensure concerns relating to visual and heritage impacts are properly addressed. Conditions addressing these issues have been included in Attachment A.

Loss of agricultural land

The proposed development will not result in any significant degradation of the land with regard to its agricultural capacity. It is unlikely that the site would be used for commercial agricultural purposes due to direct proximity to the approved waste management facility.

The SES would be located on the CWF site which has a total area of 198.8ha. The area of the proposed NBN site is 5ha thus only a small area of the total CWF site.

The EIS for the CWF site stated that the CWF site was part of a larger cattle grazing property but since the purchase of the land by Council in 2002 livestock grazing largely decreased and the land has remained vacant.

That part of the site proposed to house the NBN facility was designated as a potential longer term leachate spray area

The documentation accompanying the CWF DA EIS Volumes 1 and 3 nominated as part of the proposed leachate strategy that at Stage 6 (which would occur 20+ years after landfill commenced) up to 4ha of land outside of the landfill footprint may be required for leachate irrigation during wet years. That 4ha of land was shown partly in the area proposed to be utilised for the NBN facility. The approval for the CWF states that development should take place in accordance with the endorsed plans and reports including the EIS Volumes 1-3.

Legal advice has been sought by Council as to whether a modification to the CWF approval may be required that relocates the 4ha possible future irrigation area to a location outside of the site proposed to be utilised for the NBN facility.

The legal advice is that a modification to the CWF is not required at this point in time. The CWF approval did not approve disposal of leachate by irrigation other than by irrigation within the leachate dam or within the active cell of the landfill. Thus the leachate strategy for Stage 6 has not been approved. Thus a modification of the approval or a separate application for approval of the leachate strategy for stage 6 is required.

It is not necessary to modify the consent or lodge a separate application for approval at this stage. It may not be necessary to proceed to Stage 6 if Condition 12 of the CWF approval is triggered. Condition 12 provides for a leachate monitoring program. Once the information of the monitoring program is available an application can be made to Council and the NSW Office of Environment and Heritage to modify the means of disposal of the leachate.

It is pointed out that should Council sell the land to the NBN Co. then the CWF cannot proceed beyond Stage 5 unless a separate consent is issued in the future for Stage 6. This consent may not be able to be done as a modification under Section 96 of the EPA Act if the proposal was not considered to be "substantially the same development".

Consultants acting for the proponent have made the following comments:

'The submission prepared by Bega Valley Shire Ratepayers Association Incorporated ("BVSRAI") integrating the Wolumla Residents Action Group ("WRAG"), has prepared a submission regarding the proposal. The submission clearly states that they are not opposed to the development, but rather, are opposed to its "chosen location and the long term resultant costs".

The BVSRAI's concerns regarding the proposed location directly relate to its adjacent proximity to the approved waste facility and the potential for leachate disposal on or directly near the proposed NBNCo site. A response to this concern was provided by Bega Valley Shire Council by email correspondence on 24 December 2012 to the BVSRAI, which is provided below:-

"The EPA regulates what may take place at the CWF via the environmental protection licence. Condition O5.2 of the General Term of Approval issued by the EPA states that "unless otherwise approved in writing by the EPA, leachate must only be disposed of by:

- a) evaporation;*
- b) irrigation within the leachate or within the active cell of the landfill;*
- c) disposal at a facility licenced to accept such waste".*

Consequently, under development application 2009.0563, "no approval" is given for the disposal of leachate other than by: irrigation within the leachate dam; within the active landfill cell; or, disposal at a facility licenced to accept such waste (i.e. a licenced waste water treatment plant).

These two documents: the EPA's general terms of approval; and, Council's development consent, do not permit irrigation of leachate, treated or otherwise, anywhere else on the site. Should Council seek to modify the consent to allow irrigation of leachate on the land proposed for sale to NBNCo, there is a planning process to be followed and ultimately the EPA would determine either or not such an activity would be permitted under the environmental protection licence. However, Council would be seeking approval for something which may not be required for approximately 25 years or possibly not at all.

Appendix O of the EIS, the Leachate Disposal Options Report, which was requested by the NSW EPA in 2008 and prepared by Council's consultant, identified a number of areas which might be used for treated leachate irrigation outside the landfill footprint. This included the area which is subject to the NBNCo DA. However, neither the EPA nor Council has approved any options except as per the above.

The reason an area outside the landfill footprint might be required is because the leachate generation modelling indicates that during stage 6 of the landfill (in approximately 26-27 years of operation) an additional land application area may be required subject to prevailing rainfall (i.e. 10% AEP wet year).

It is prudent that Council has available to it appropriate areas of land on which to irrigate treated leachate outside the landfill footprint in the future, should this indeed be required. However the application for such a proposal is likely to occur in approximately 25 years, and planning processes, best practice, technology and operations are likely to overtake any decisions made".

Whilst this is primarily a matter for Council to assess, the above is considered to adequately address the concerns raised by the BVSRAI in relation to the potential impact of leachate overflow to the NBNCo site.

The BVSRAI also raises concerns regarding one of the approved methods of leachate disposal, being to a facility licenced to accept such waste, and the cost to Bega Valley Shire ratepayers. The BVSRAI comments that:-

"Due to the sheer volume of leachate requiring transportation and disposal in this manner, clearly there will be a high cost to the shires ratepayers. Any upgrade of existing sewerage treatment plants

and additional equipment required due to this added leachate burden will also be at a further cost to ratepayers".

The BVSRAI suggests that one way to mitigate this potential economic impact to ratepayers is to require NBNSCo to indemnify the ratepayers of the shire "against any and all costs arising from the need to transport and dispose of leachate away from the CWF, including any upgrading required to sewerage treatment plants or the like".

In response to the above, we consider that this is not necessary. As stated in Council's response to the BVSRAI, approval has already been granted under DA 2009.0563 for three (3) potential forms of disposal of leachate, including disposal at appropriate external facilities. The potential impacts of this type of disposal method would have been considered in the assessment and approval of DA 2009.0563. The proposed NBNSCo satellite earth station does not alter this situation / arrangement for disposal of leachate by the CWF. Therefore, the BVSRAI's concerns regarding these "long term resultant costs" are not a matter for consideration in the assessment of the subject application.'

The NSW EPA has also commented on this issue as follows:

'BVSC will therefore need to confirm that the SES (Satellite Earth Station) will not jeopardise the capacity of the BCWF to store manage or dispose of any leachate generated at the premises'.

Section 79C 1(e) – Public Interest

The SoEE summarises the public interest benefit:

'The proposal forms part of the wider and extensive National Broadband Network which is to be rolled-out across Australia within the next decade. At the end of the NBN project, "the plan is for every home, school and workplace in the country to have access to the NBN". The long term benefits of the NBN are widely known and the proposed SES facility within the Bega Valley LGA will form a small but critical part of the wider network. The proposal will also result in the utilisation of vacant land and the identified benefits and the absence of any unreasonable environmental impacts indicate that the approval of this development is in the public interest.'

The assessment of the DA as provided in this report demonstrates that the proposed SES facility is considered to be in the public interest.

PLANNING ASSESSMENT REPORT – APPENDIX A

RECOMMENDED DRAFT CONDITIONS OF CONSENT

Approved Development and Plans

1. Development shall take place in accordance with the:

- Approved Development Plans including
 - RW Surveying & Valuations 1830B Sheets 1-2 Revision 2;
 - Woods Bagot WL-AR-DA-1002F, 1000B, 1001B, 1003B, 2200E, 2201B, 3000B, 3001B, 3100B, 5400B, 9000B and 9003B;
 - AECOM WL-CW-CD-1101-03, 1102-02, 1103-02, 1104-02, 1350-01 and 1351-01;
- Application Form; and,
- Supporting documentation received with the Application including the Statement of Environmental Effects prepared by City Plan Services and Appendices and the Earth Station EME Explanations and Summary Report prepared by EMC Technologies;

except, as may be amended in red on the attached plans and by the following conditions.

These conditions have been applied to this consent for the following reasons:

- Ensure the proposed development:
 - (a) achieves the objects of the Environmental Planning and Assessment Act, 1979;
 - (b) complies with the provisions of all relevant environmental planning instruments;
 - (c) complies with the Local Government Act 1993.
- Minimise or mitigate any potential adverse environmental, social or economic impacts of the proposed development.
- Require appropriately qualified people to oversee the works.
- Ensure legal access is provided.
- Specify that construction should meet appropriate technical standards.
- Specify that contractors must have appropriate insurances.
- Include recommendations and/or undertakings given in specialist studies and the Statement of Environmental Effects submitted with the Development Application.
- Ensure the development does not conflict with the public interest.

General Conditions

2. Any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) must be paid prior to the issue of a Construction Certificate.
3. Prior to the issue of a Construction Certificate by the Principal Certifying Authority, a detailed colour and building materials schedule shall be submitted to and approved by Council. The schedule shall include:
 - a) External building finishes (including glazing treatments)
 - b) A colour palette (including colour samples) that adopts the colour themes outlined in the Statement of Environmental Effects.

The development shall be finished in accordance with the approved schedule, prior to occupation.

4. All roofing and building material shall be non-reflective. Details of proposed materials shall be submitted for approval by Council with the application for the Construction Certificate.

Note: White surfaces are not considered to be satisfactory for this purpose.

5. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with *Australian Standard 4282 "Control of the obtrusive effects of outdoor lighting" (1997)*.
6. All on-site car parking, loading/unloading areas and their associated driveways shall be constructed to a suitably drained waterproof and dustproof surface and clearly defined or line marked in accordance with the Approved Development Plan and Council's adopted Development Control Plan 7: Parking.

Engineering design plans for the car parking, loading/unloading areas and their associated driveways shall be prepared and certified by a chartered professional engineer and submitted to Council prior to the issue of any subsequent Construction Certificate.

7. No sign shall be erected, painted or displayed without prior approval from Council except those in accordance with the exempt provisions of Development Control Plan No. 4: Exempt and Complying Development.

Note: Signage includes real estate signs and construction signs.

8. Construction work shall take place during normal working hours, namely 7am to 5pm, Mondays to Fridays and 8am to 1pm Saturdays (no work on Sundays or Public Holidays) and in a manner so as not to cause a nuisance (by the generation of unreasonable noise or other activity) to the owners and/or residents of adjoining and adjacent properties.
9. Prior to the issue of a Construction Certificate by the Principal Certifying Authority, a Waste Management Plan shall be submitted to and approved by Council.
10. Prior to the issue of a Construction Certificate by the Principal Certifying Authority, a Construction Management Plan shall be submitted to and approved by Council.

11. Radiofrequency (RF) electromagnetic energy (EME) levels are to be monitored to prove compliance with the ARPANSA standard and a report of the monitoring results is to be submitted to Council on an annual basis.
12. Dense vegetation planting using appropriate native species is to be provided along the eastern boundary of the proposed site to provide a buffer to the adjacent approved waste management facility.

Weeds Management

13. All noxious weeds are to be controlled or provision made for their effective management by way of a management plan agreed to and signed off by Council and the landowner prior to the release of the subdivision certificate. Consultation with Council's Noxious Weeds Officer is required.

A management plan shall include (but is not limited to) the following:

- Name of weed/s being managed;
- Method and timing of control operations – either by season or stage of growth;
- Areas of property where work will be implemented;
- Ongoing maintenance details;
- Outline of any proposed rehabilitation works;
- Development of a Weed Management Plan for all access roads and tracks, the site for the facility and a 15 metre strip around these areas for an annual control program targeting African lovegrass, blackberry, fireweed and submit to Council for approval

Note: To avoid any delays in the issue of the Subdivision Certificate an early pro-active response to the control of noxious weeds is recommended.

Council requires that noxious weeds are controlled in accordance with the declaration requirements specified in the Government Gazette. It should be noted that Class 4 declared weeds are to be managed in accordance with Bega Valley Shire Council's weeds specific management plan.

14. Prior to the issue of the subdivision certificate, the applicant must submit to Council documentation from Council's Noxious Weeds Officer to confirm that effective control of noxious weeds has occurred on the property or an endorsed management plan is being suitably implemented.
15. Management of noise from construction activities is to be in accordance with the objectives and provisions of the "Interim Construction Noise Guidelines" (DECC 2009).

Heritage

16. Aboriginal objects are protected under the National Parks and Wildlife (NP&W) Act, regardless the location of a site. In the unlikely event of discovery of any objects during the course of site works, all works must cease and the Department of Environment,

Climate Change and Water (DECCW) (Southern Branch, Environment Protection and Regulation Division, Regional Archaeologist - Office of Environment and Heritage

Queanbeyan on 02 6229 7188) be contacted in regard to appropriate permit requirements and actions before any further impact is undertaken.

17. If any suspected human remains are discovered during any activity the following steps must be undertaken steps to determine if the remains are of Aboriginal ancestral origin:
- a) Immediately cease all work at that location and not further move or disturb the remains
 - b) Notify the NSW Police and OEH's Environmental Line on 131 555 as soon as practicable and provide details of the remains and their location
 - c) Not recommence work at that location unless authorised in writing by OEH.
18. In NSW the non-Aboriginal "relics" and in situ archaeological deposits over 50 years old are protected under the NSW Heritage Act 1977. In the unlikely event of discovery of an archaeological resource, the advice of a suitably qualified archaeologist is to be sought, to inspect the finds, photograph them and notify the Heritage Council in writing, in accordance with Section 146 of the Heritage Act, 1977. Depending on the nature of the discovery, additional assessment and possibly an excavation permit may be required prior to the recommencement of excavation in the affected area.
19. Native trees are to be planted between "Ayredale" and the facility structures to further screen the proposed development.

Engineering Related Conditions

20. Conditions to be satisfied prior to Construction Certificate

The following matters shall be completed prior to the endorsement of a Construction Certificate for any part of this development:

- a) Establishment of continuous legal access to this development from Wanatta Lane by the creation of suitable right for access over the vehicular access through lot 3 in DP 592206. A copy of the plan registered by the NSW Land Titles Office creating this easement shall be provided to the Council to demonstrate compliance with this requirement.
- b) Approval of detailed construction plans and specifications for the access road works by Council's Director of Engineering Services or his delegate.

These works shall be designed and specified in conformity to the standards set out in Council's Technical Specifications (or other documents formally adopted by Council for the purpose of specifying standards for construction works, DCP No .2) as current at the date of approval, and sound engineering practice.

These detailed construction plans must include all erosion and sediment control works necessary to ensure that the quality of stormwater discharged from these works, both during and after the construction period, will not result in erosion, sedimentation or pollution of any land or water. These plans shall be in accordance with Council's Development Design Specification D7, Erosion Control and Stormwater Management.

- c) All public works (such as road work, kerbing and guttering, footway construction, stormwater drainage, water supply and sewerage works and environmental controls) shall be designed by persons holding suitable qualifications for the design of works of this type and current professional indemnity insurance.

- d) Each contractor engaged in the construction of public works (such as road work, kerbing and guttering, footway construction, stormwater drainage, water supply and sewerage works and environmental controls) must hold current public liability insurance for an amount of not less than \$20,000,000.00 suitably endorsed to note the contractor and Council for their respective rights and interests.

Prior to the commencement of the construction of these public works Council must be provided with evidence of the currency of this insurance.

21. Conditions to be satisfied prior to commencement and use subject to Council acceptance.

The following matters shall be completed prior to the commencement of use of any part of this development. These works shall be designed and constructed in conformity with Council's Technical Specifications (or other documents formally adopted by Council for the purpose of specifying standards for construction works) as current at the date of the approval of construction plans, and sound engineering practice. One or more Compliance Certificates must evidence the satisfactory completion of these works. See below.

- a) Construction of the following in the right of access to the frontage of the development:
- 4 metre wide gravel road pavement,
 - 1.0 metre wide table drains as necessary,
 - all associated stormwater and subsoil drainage works, and,
 - all other works necessary to achieve the above.

The design speed for this road shall be not less than 40 km/h.

- b) Construction of stormwater drainage works as necessary to convey stormwater flows within the development and downstream. Any design shall be in accordance with Council's Development Design Specification, Stormwater Drainage Design D5.

Note: Appropriate easements shall be created to contain all drainage works that are located outside of roads and drainage reserves.

- c) Compliance Certificate(s) in relation to the inspection and testing of all public works associated with this consent (such as road work, kerbing and guttering, footway construction, stormwater drainage, water supply and sewerage works and environmental controls) must be obtained either from Council or from an Accredited Certifier to demonstrate that these works have been completed.

These public works must be inspected and tested either by Council's inspector, or by an Accredited Certifier at each of the following stages of construction to confirm compliance with the standards set out in the approved plans and specifications. Any inspection and testing performed by Accredited Certifiers shall be documented by Compliance Certificate(s) for those parts of the public work.

- After completion of road subgrade.
- After placement and compaction of each layer of gravel pavement material.
- After laying and jointing of all stormwater pipelines prior to backfilling.
- After completion of works.

- As otherwise required to confirm that the works are satisfactorily executed and in conformity with environmental controls.

It should be noted that Council charges fees for inspections and Compliance Certificates. These fees must be paid prior to the endorsement of a Final Occupation Certificate.

Building Related Conditions

22. The proposed structures will be exposed to ember attack under bush fire conditions. The development is to be constructed in accordance with Australian Standard 3959 "Construction of Buildings in Bushfire Prone Areas 2009", Bushfire Attack Level 12.5 and Planning for Bushfire Protection 2006", Addendum Appendix 3, section A3.7.
23. That the external roller doors on the proposed garage be provided with an ember protection device at the top of the door that captures any embers where a gap of 2.0 mm on the external surface exists."
24. That all grounds within the subject site for a minimum distance of 19 metres to the north, south, east and west of the new buildings/ satellites be maintained in accordance with an Asset Protection Zone (Inner Protection Area) as detailed in Appendix 2 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service publication 'Standards for Asset Protection Zones' and specified by the Rural Fire Service.
25. That any new landscaping within the subject site is to comply with Appendix 5 'Landscaping and Property Maintenance' of Planning for Bush Fire Protection 2006.
26. Water storage tanks to hold roof water for domestic and fire fighting purposes shall be provided in an appropriate location to Council's satisfaction. Such tanks shall have a minimum maintained capacity of 20,000 litres that will ensure provision of water for fire fighting purposes adjacent to the building. An approved 38 mm gate valve and 65 mm. storz adaptor (coupling) shall be fitted to the base of the tank and a manhole or other opening in the top of the tank
27. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
28. Any roof storm water and surface water from driveways and car parking area to be disposed of to the satisfaction of the consent authority.
29. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing. A construction certificate certifies that the provisions of Clauses 79A-79H of the Environmental Planning and Assessment Amendment Regulations, 1998 have been satisfied, including compliance with the Building Code of Australia and conditions of Development Consent.
30. A Final Fire Safety Certificate must be issued for the building prior to the issue of an Occupation Certificate. As soon as practicable after a Final Fire Safety Certificate is issued, the owner of the building to which it relates:
 - a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades, and
 - b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

31. A final Occupation Certificate must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an occupation certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the *Environmental Planning and Assessment Act 1979* have been satisfied.
32. Erosion and sedimentation control measures are to be applied during site development in accordance with Council's Guidelines as follows: -
 - e) Erosion and sediment control measures shall be installed prior to the clearing of any site vegetation.
 - f) Site clearing and disturbance shall be confined to the base area of the approved structure, sites of permanent access ways, and land extending maximum three (3) metres beyond the building envelope.
 - g) Topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping.
 - h) Uncontaminated runoff shall be intercepted and diverted around all disturbed areas.
 - i) The capacity and effectiveness of the erosion and sedimentation control measures shall be maintained at all times.
 - j) All disturbed areas shall be progressively revegetated or stabilized to prevent erosion.
 - k) Stormwater from roof areas shall be collected and linked to a Council approved disposal system immediately after completion of the roof.
 - l) All disturbed areas shall be rendered erosion resistant by turfing, mulching, paving or otherwise suitably stabilized within thirty (30) days of completion of the structure and before erosion and sedimentation controls are removed.

Approvals Pursuant to the Local Government Act 1993

Local Government Act, 1993 approvals granted pursuant to Section 78A (5) of the Environmental Planning and Assessment Act, 1979.

Installation conditions for on-site sewage management facility:

Application No: 2012.360

Type of Installation: Septic tank

Method of Effluent Disposal: Absorption trenches

Plumber: TBA

Lic No.:

1. All house sewer and plumbing work to be carried out in accordance with the requirements of *The National Plumbing and Drainage Code* and *Local Government Act, 1993*.
2. The top of the yard gully is to be minimum of 150mm below the finished floor level and a minimum of 75mm above the finished ground level.
3. A works as executed diagram to include drainage, stormwater and water supply is to be submitted to the Council prior to issue of an Occupation Certificate.
4. All plumbing and drainage works to be carried out by Licensed Tradesmen.

5. All waste pipes, stack work and vents to be concealed.
6. All pipes and outlets that utilize an alternative or recycled water supply shall be clearly marked or labelled in accordance with AS 1319 and AS 1345 or AS 2700.
7. The system of on-site sewage management MUST NOT be used until Council has given the applicant for approval a notice in writing that it is satisfied that the facility has been installed, constructed or altered substantially accordance with the approval and the fee for the issue of the approval to operate a system of on-site sewage management has been paid.
8. a) A minimum of TWO WORKING DAYS NOTICE shall be given by the Builder to Council to enable inspections to be carried out at each of the following steps where applicable:
 - i) When sanitary drainage (internal/external) is laid ready for test; and
 - ii) Prior to backfilling of land application areas for on-site sewage management systems; and
 - iii) Prior to commissioning of systems of on-site sewage management before occupation of the premises.

NOTE: Approval shall be obtained from Council at each inspection stage prior to further works proceeding.

Inspections and payment of inspections fees (Allocation No. 1680-233-112) may be arranged by contacting Council's Customer Services on 6499 2222.

- b) Certificates of compliance for plumbing and drainage works and colour coded works as executed diagrams that include all drainage, stormwater, fire services and water supply works are to be submitted to the Council for acceptance in both hard copy and pdf. Electronic formats prior to issue of any Occupation Certificate.

Advice to those who made Submissions

Council advise in writing those people who made submissions as a result of the public exhibition of the JRPP decision in respect of the NBN Company Development Application and forward them a copy of the report submitted to the JRPP.